

HB 4281 (veto)

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**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4281**

(By Delegates Ellem, Miley, Wooton, Hamilton,  
D. Poling, C. Miller, Williams, Border and Hunt)



Passed March 13, 2010

In Effect Ninety Days From Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4281

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CLERK OF THE HOUSE  
LEGISLATIVE BUILDING  
CHARLESTON, WEST VIRGINIA

(BY DELEGATES ELLEM, MILEY, WOOTON, HAMILTON,  
D. POLING, C. MILLER, WILLIAMS, BORDER AND HUNT)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to repeal §27-1A-12 of the Code of West Virginia, 1931, as amended; to repeal §27-2-1a and §27-2-1b of said code; to amend and reenact §9-4C-1 and §9-4C-5 of said code; to amend and reenact §9-5-11c of said code; to amend and reenact §11-27-10 and §11-27-11 of said code; to amend and reenact §16-1-4 of said code; to amend and reenact §16-2D-2 and §16-2D-5 of said code; to amend and reenact §16-5F-2 of said code; to amend and reenact §16-5O-2 of said code; to amend and reenact §16-22-1 and §16-22-2 of said code; to amend and reenact §16-29A-3 of said code; to amend and reenact §16-30-7 and §16-30-24 of said code; to amend and reenact §27-1-3, §27-1-6, §27-1-7 and §27-1-9 of said code; to amend and reenact §27-1A-1, §27-1A-4 and §27-1A-6 of said code; to amend and reenact §27-2-1 of said code; to amend and reenact §27-2A-1 of said code; to amend and reenact §27-5-9 of said code; to amend and reenact §27-9-1 of said code; to amend and reenact §27-12-1 of said code; to amend and reenact §29-15-1, §29-15-5 and §29-15-6 of said code; to amend and reenact §44A-1-1 and §44A-1-2 of said code; and to amend and reenact §49-4A-6 of said code, all relating to updating code references relating to intellectually disabled persons; replacing the term “mentally retarded” with “intellectually disabled” or



**§9-4C-1. Definitions.**

1 The following words when used in this article have the  
2 meanings ascribed to them in this section, except in those  
3 instances where the context clearly indicates a different  
4 meaning:

5 (a) “Ambulance service provider” means a person  
6 rendering ambulance services within this state and receiving  
7 reimbursement, directly as an individual provider or  
8 indirectly as an employee or agent of a medical clinic,  
9 partnership or other business entity.

10 (b) “General health care provider” means an audiologist,  
11 a behavioral health center, a chiropractor, a community care  
12 center, an independent laboratory, an independent x-ray  
13 service, an occupational therapist, an optician, an optometrist,  
14 a physical therapist, a podiatrist, a private duty nurse, a  
15 psychologist, a rehabilitative specialist, a respiratory therapist  
16 and a speech therapist rendering services within this state and  
17 receiving reimbursement, directly as an individual provider  
18 or indirectly as an employee or agent of a medical clinic,  
19 partnership or other business entity.

20 (c) “Inpatient hospital services provider” means a  
21 provider of inpatient hospital services for purposes of Section  
22 1903(w) of the Social Security Act.

23 (d) “Intermediate care facility for individuals with an  
24 intellectual disability services provider” means a provider of  
25 intermediate care facility services for individuals with an  
26 intellectual disability for purposes of Section 1903(w) of the  
27 Social Security Act.

28 (e) “Nursing facility services provider” means a provider  
29 of nursing facility services for purposes of Section 1903(w)  
30 of the Social Security Act.

31 (f) "Outpatient hospital service provider" means a  
32 hospital providing preventative, diagnostic, therapeutic,  
33 rehabilitative or palliative services that are furnished to  
34 outpatients.

35 (g) "Secretary" means the Secretary of the Department of  
36 Health and Human Resources.

37 (h) "Single state agency" means the single state agency  
38 for Medicaid in this state.

**§9-4C-5. Facility providers' Medicaid enhancement board.**

1 (a) The outpatient hospital Medicaid enhancement board  
2 created by this section shall cease to exist on the effective  
3 date of this article.

4 (b) There is hereby continued the facility providers'  
5 Medicaid enhancement board to consist of seven members.  
6 In order to carry out the purpose of this article, the board  
7 shall represent ambulatory surgical centers, inpatient hospital  
8 service providers, outpatient hospital service providers,  
9 nursing facility service providers and intermediate care  
10 facility for individuals with an intellectual disability service  
11 providers.

(c) The board shall consist of one representative from  
each of the aforementioned classes of health care providers,  
the secretary and the secretary, or his or her designee, who  
shall be an ex officio nonvoting member. The  
board shall make all appointments within thirty days after  
the effective date of this article.



(d) If a vacancy occurs in the board, any  
1 vacancy shall be filled for the unexpired term  
2 of the member who vacated the position. The initial

21 appointment, and the terms of all members shall expire on the  
22 first day of July, one thousand nine hundred ninety-six.

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-11c. Right of the Department of Health and Human  
Resources to recover medical assistance.**

1 (a) Upon the death of a person who was fifty-five years  
2 of age or older at the time the person received welfare  
3 assistance consisting of nursing facility services, home and  
4 community-based services, and related hospital and  
5 prescription drug services, the Department of Health and  
6 Human Resources, in addition to any other available remedy,  
7 may file a claim or lien against the estate of the recipient for  
8 the total amount of medical assistance provided by Medicaid  
9 for nursing facility services, home and community-based  
10 services, and related hospital and prescription drug services  
11 provided for the benefit of the recipient. Claims so filed shall  
12 be classified as and included in the class of debts due the  
13 state.

14 (b) The department may recover pursuant to subsection  
15 (a) only after the death of the individual's surviving spouse,  
16 if any and only after such time as the individual has no  
17 surviving children under the age of twenty-one, or when the  
18 individual has no surviving children who meet the Social  
19 Security Act's definition of blindness or permanent and total  
20 disability.

21 (c) The state shall have the right to place a lien upon the  
22 property of individuals who are inpatients in a nursing  
23 facility, intermediate care facility for individuals with an  
24 intellectual disability, or other medical institution who, after  
25 notice and an opportunity for a hearing, the state has deemed  
26 to be permanently institutionalized. This lien shall be in an  
27 amount equal to Medicaid expenditures for services provided

28 by a nursing facility, intermediate care facility for individuals  
29 with an intellectual disability or other medical institution, and  
30 shall be rendered against the proceeds of the sale of property  
31 except for a minimal amount reserved for the individual's  
32 personal needs. Any such lien dissolves upon that  
33 individual's discharge from the medical institution. The  
34 secretary has authority to compromise or otherwise reduce  
35 the amount of this lien in cases where enforcement would  
36 create a hardship.

37 (d) No lien may be imposed on such individual's home  
38 when the home is the lawful residence of: (1) The spouse of  
39 the individual; (2) The individual's child who is under the  
40 age of twenty-one; (3) The individual's child meets the  
41 Social Security Act's definition of blindness or permanent  
42 and total disability; or (4) The individual's sibling has an  
43 equity interest in the home and was residing in the home for  
44 a period of at least one year immediately before the date of  
45 the individual's admission to a medical institution.

46 (e) The filing of a claim, pursuant to this section, neither  
47 reduces or diminishes the general claims of the Department  
48 of Health and Human Resources, except that the department  
49 may not receive double recovery for the same expenditure.  
50 The death of the recipient neither extinguishes or diminishes any  
51 right of the department to recover. Nothing in this section  
52 affects or prevents a proceeding to enforce a lien pursuant to  
53 this section or a proceeding to set aside a fraudulent  
54 conveyance.

55 (f) Any claim or lien imposed pursuant to this section is  
56 effective for the full amount of medical assistance provided  
57 by Medicaid for nursing facility services, home and  
58 community-based services, and related hospital and  
59 prescription drug services. The lien attaches and is perfected  
60 automatically as of the beginning date of medical assistance,  
61 the date when a recipient first receives treatment for which

62 the Department of Health and Human Resources may be  
63 obligated to provide medical assistance. A claim may be  
64 waived by the department, if the department determines,  
65 pursuant to applicable federal law and rules and regulations,  
66 that the claim will cause substantial hardship to the surviving  
67 dependents of the deceased.

68 (g) Upon the effective date of this section, the Attorney  
69 General, on behalf of the State of West Virginia, shall  
70 commence an action in a court of competent jurisdiction to  
71 test the validity, constitutionality, and the ability of the  
72 Congress of the United States to mandate the implementation  
73 of this section. This subsection does not limit the right of  
74 others, including recipients, to intervene in any litigation, nor  
75 does it limit the discretion of the Attorney General or  
76 appropriate counsel to seek affected persons to act as parties  
77 to the litigation, either individually or as a class.

## **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

### **§9-6-1. Definitions.**

1 The following words and terms, when used in this article,  
2 shall have the same meaning hereinafter ascribed to them  
3 unless the context clearly indicates a different meaning:

4 (1) "Adult protective services agency" means any public  
5 or nonprofit private agency, corporation, board or  
6 organization furnishing protective services to adults;

7 (2) "Abuse" means the infliction or threat to inflict  
8 physical pain or injury on or the imprisonment of any  
9 incapacitated adult or facility resident;

10 (3) "Neglect" means: (A) The failure to provide the  
11 necessities of life to an incapacitated adult or facility resident  
12 with intent to coerce or physically harm the incapacitated



13 adult or resident; and (B) the unlawful expenditure or willful  
14 dissipation of the funds or other assets owned or paid to or  
15 for the benefit of an incapacitated adult or resident;

16 (4) “Incapacitated adult” means any person who by  
17 reason of physical, mental or other infirmity is unable to  
18 independently carry on the daily activities of life necessary to  
19 sustaining life and reasonable health;

20 (5) “Emergency” or “emergency situation” means a  
21 situation or set of circumstances which presents a substantial  
22 and immediate risk of death or serious injury to an  
23 incapacitated adult;

24 (6) “Legal representative” means a person lawfully  
25 invested with the power and charged with the duty of taking  
26 care of another person or with managing the property and  
27 rights of another person, including, but not limited to, a  
28 guardian, conservator, medical power of attorney  
29 representative, trustee or other duly appointed person;

30 (7) “Nursing home” or “facility” means any institution,  
31 residence, intermediate care facility for individuals with an  
32 intellectual disability, care home or any other adult residential  
33 facility, or any part or unit thereof, that is subject to the  
34 provisions of articles five-c, five-d, five-e or five-h, chapter  
35 sixteen of this code;

36 (8) “Regional long-term care ombudsman” means any  
37 paid staff of a designated regional long-term care  
38 ombudsman program who has obtained appropriate  
39 certification from the Bureau for Senior Services and meets  
40 the qualifications set forth in section seven, article five-l,  
41 chapter sixteen of this code;

42 (9) “Facility resident” means an individual living in a  
43 nursing home or other facility, as that term is defined in  
44 subdivision (7) of this section;

45 (10) “Responsible family member” means a member of  
46 a resident’s family who has undertaken primary  
47 responsibility for the care of the resident and who has  
48 established a working relationship with the nursing home or  
49 other facility in which the resident resides. For purposes of  
50 this article, a responsible family member may include  
51 someone other than the resident’s legal representative;

52 (11) “State long-term care ombudsman” means an  
53 individual who meets the qualifications of section five, article  
54 five-1, chapter sixteen of this code and who is employed by  
55 the State Bureau for Senior Services to implement the state  
56 long-term care ombudsman program;

57 (12) “Secretary” means the Secretary of the Department  
58 of Health and Human Resources.

## CHAPTER 11. TAXATION.

### ARTICLE 27. HEALTH CARE PROVIDER TAXES.

#### **§11-27-10. Imposition of tax on providers of intermediate care facility services for individuals with an intellectual disability.**

1 (a) *Imposition of tax.* -- For the privilege of engaging or  
2 continuing within this state in the business of providing  
3 intermediate care facility services for individuals with an  
4 intellectual disability, there is levied and shall be collected  
5 from every person rendering such service an annual  
6 broad-based health care related tax.

7 (b) *Rate and measure of tax.* -- The tax imposed in  
8 subsection (a) of this section is five and one-half percent of  
9 the gross receipts derived by the taxpayer from furnishing  
10 intermediate care facility services in this state to individuals  
11 with an intellectual disability.

12 (c) *Definitions.* --

13 (1) "Gross receipts" means the amount received or  
14 receivable, whether in cash or in kind, from patients,  
15 third-party payors and others for intermediate care facility  
16 services furnished by the provider, including retroactive  
17 adjustments under reimbursement agreements with  
18 third-party payors, without any deduction for any expenses  
19 of any kind: *Provided*, That accrual basis providers are  
20 allowed to reduce gross receipts by their contractual  
21 allowances, to the extent those allowances are included  
22 therein, and by bad debts, to the extent the amount of those  
23 bad debts was previously included in gross receipts upon  
24 which the tax imposed by this section was paid.

25 (2) "Contractual allowances" means the difference  
26 between revenue (gross receipts) at established rates and  
27 amounts realizable from third-party payors under contractual  
28 agreements.

29 (3) "Intermediate care facility services for individuals with  
30 an intellectual disability" means those services that are  
31 intermediate care facility services for individuals with an  
32 intellectual disability for purposes of Section 1903(w) of the  
33 Social Security Act.

34 (d) *Effective date.* -- The tax imposed by this section  
35 applies to gross receipts received or receivable by providers  
36 after May 31, 1993.

**§11-27-11. Imposition of tax on providers of nursing facility  
services, other than services of intermediate care  
facilities for individuals with an intellectual  
disability.**

1 (a) *Imposition of tax.* -- For the privilege of engaging or  
2 continuing within this state in the business of providing

3 nursing facility services, other than those services of  
4 intermediate care facilities for individuals with an intellectual  
5 disability, there is levied and shall be collected from every  
6 person rendering such service an annual broad-based health  
7 care related tax: *Provided*, That hospitals which provide  
8 nursing facility services may adjust nursing facility rates to  
9 the extent necessary to compensate for the tax without first  
10 obtaining approval from the health care authority: *Provided*,  
11 *however*, That the rate adjustment is limited to a single  
12 adjustment during the initial year of the imposition of the tax  
13 which adjustment is exempt from prospective review by the  
14 health care authority and further which is limited to an  
15 amount not to exceed the amount of the tax which is levied  
16 against the hospital for the provision of nursing facility  
17 services pursuant to this section. The health care authority  
18 shall retroactively review the rate increases implemented by  
19 the hospitals under this section during the regular rate review  
20 process. A hospital which fails to meet the criteria  
21 established by this section for a rate increase exempt from  
22 prospective review is subject to the penalties imposed under  
23 article twenty-nine-b, chapter sixteen of the code.

24 (b) *Rate and measure of tax.* -- The tax imposed in  
25 subsection (a) of this section is five and one-half percent of  
26 the gross receipts derived by the taxpayer from furnishing  
27 nursing facility services in this state, other than services of  
28 intermediate care facilities for individuals with an intellectual  
29 disability. This rate shall be increased to five and ninety-five  
30 one hundredths percent of the gross receipts received or  
31 receivable by providers of nursing facility services after June  
32 30, 2004 and shall again be decreased to five and one-half  
33 percent of the gross receipts received or receivable by  
34 providers of nursing services after October 31, 2007.

35 (c) *Definitions.* --

36 (1) "Gross receipts" means the amount received or  
37 receivable, whether in cash or in kind, from patients,

38 third-party payors and others for nursing facility services  
39 furnished by the provider, including retroactive adjustments  
40 under reimbursement agreements with third-party payors,  
41 without any deduction for any expenses of any kind:  
42 *Provided*, That accrual basis providers are allowed to reduce  
43 gross receipts by their bad debts, to the extent the amount of  
44 those bad debts was previously included in gross receipts  
45 upon which the tax imposed by this section was paid.

46 (2) "Nursing facility services" means those services that  
47 are nursing facility services for purposes of Section 1903(w)  
48 of the Social Security Act.

49 (d) *Effective date*. -- The tax imposed by this section  
50 applies to gross receipts received or receivable by providers  
51 after May 31, 1993.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

#### §16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with the  
2 provisions of article three, chapter twenty-nine-a of this code  
3 that are necessary and proper to effectuate the purposes of  
4 this chapter. The secretary may appoint or designate  
5 advisory councils of professionals in the areas of hospitals,  
6 nursing homes, barbers and beauticians, postmortem  
7 examinations, mental health and intellectual disability centers  
8 and any other areas necessary to advise the secretary on rules.

9 The rules may include, but are not limited to, the  
10 regulation of:

11 (a) Land usage endangering the public health: *Provided*,  
12 That no rules may be promulgated or enforced restricting the

13 subdivision or development of any parcel of land within  
14 which the individual tracts, lots or parcels exceed two acres  
15 each in total surface area and which individual tracts, lots or  
16 parcels have an average frontage of not less than one hundred  
17 fifty feet even though the total surface area of the tract, lot or  
18 parcel equals or exceeds two acres in total surface area, and  
19 which tracts are sold, leased or utilized only as single-family  
20 dwelling units. Notwithstanding the provisions of this  
21 subsection, nothing in this section may be construed to abate  
22 the authority of the department to: (1) Restrict the  
23 subdivision or development of a tract for any more intense or  
24 higher density occupancy than a single-family dwelling unit;  
25 (2) propose or enforce rules applicable to single-family  
26 dwelling units for single-family dwelling unit sanitary  
27 sewerage disposal systems; or (3) restrict any subdivision or  
28 development which might endanger the public health, the  
29 sanitary condition of streams or sources of water supply;

30 (b) The sanitary condition of all institutions and schools,  
31 whether public or private, public conveyances, dairies,  
32 slaughterhouses, workshops, factories, labor camps, all other  
33 places open to the general public and inviting public  
34 patronage or public assembly, or tendering to the public any  
35 item for human consumption and places where trades or  
36 industries are conducted;

37 (c) Occupational and industrial health hazards, the  
38 sanitary conditions of streams, sources of water supply,  
39 sewerage facilities and plumbing systems and the  
40 qualifications of personnel connected with any of those  
41 facilities, without regard to whether the supplies or systems  
42 are publicly or privately owned; and the design of all water  
43 systems, plumbing systems, sewerage systems, sewage  
44 treatment plants, excreta disposal methods and swimming  
45 pools in this state, whether publicly or privately owned;

46 (d) Safe drinking water, including:

47 (1) The maximum contaminant levels to which all public  
48 water systems must conform in order to prevent adverse  
49 effects on the health of individuals and, if appropriate,  
50 treatment techniques that reduce the contaminant or  
51 contaminants to a level which will not adversely affect the  
52 health of the consumer. The rule shall contain provisions to  
53 protect and prevent contamination of wellheads and well  
54 fields used by public water supplies so that contaminants do  
55 not reach a level that would adversely affect the health of the  
56 consumer;

57 (2) The minimum requirements for: Sampling and  
58 testing; system operation; public notification by a public  
59 water system on being granted a variance or exemption or  
60 upon failure to comply with specific requirements of this  
61 section and rules promulgated under this section; record  
62 keeping; laboratory certification; as well as procedures and  
63 conditions for granting variances and exemptions to public  
64 water systems from state public water systems rules; and

65 (3) The requirements covering the production and  
66 distribution of bottled drinking water and may establish  
67 requirements governing the taste, odor, appearance and other  
68 consumer acceptability parameters of drinking water;

69 (e) Food and drug standards, including cleanliness,  
70 proscription of additives, proscription of sale and other  
71 requirements in accordance with article seven of this chapter  
72 as are necessary to protect the health of the citizens of this  
73 state;

74 (f) The training and examination requirements for  
75 emergency medical service attendants and emergency  
76 medical care technician-paramedics; the designation of the  
77 health care facilities, health care services and the industries  
78 and occupations in the state that must have emergency  
79 medical service attendants and emergency medical care

80 technician-paramedics employed and the availability,  
81 communications and equipment requirements with respect to  
82 emergency medical service attendants and to emergency  
83 medical care technician-paramedics: *Provided*, That any  
84 regulation of emergency medical service attendants and  
85 emergency medical care technician-paramedics may not  
86 exceed the provisions of article four-c of this chapter;

87 (g) The health and sanitary conditions of establishments  
88 commonly referred to as bed and breakfast inns. For  
89 purposes of this article, “bed and breakfast inn” means an  
90 establishment providing sleeping accommodations and, at a  
91 minimum, a breakfast for a fee: *Provided*, That the secretary  
92 may not require an owner of a bed and breakfast providing  
93 sleeping accommodations of six or fewer rooms to install a  
94 restaurant-style or commercial food service facility:  
95 *Provided, however*, That the secretary may not require an  
96 owner of a bed and breakfast providing sleeping  
97 accommodations of more than six rooms to install a  
98 restaurant-type or commercial food service facility if the  
99 entire bed and breakfast inn or those rooms numbering above  
100 six are used on an aggregate of two weeks or less per year;

101 (h) Fees for services provided by the Bureau for Public  
102 Health including, but not limited to, laboratory service fees,  
103 environmental health service fees, health facility fees and  
104 permit fees;

105 (i) The collection of data on health status, the health  
106 system and the costs of health care;

107 (j) Opioid treatment programs duly licensed and  
108 operating under the requirements of chapter twenty-seven of  
109 this code. The health care authority shall develop new  
110 certificate of need standards, pursuant to the provisions of  
111 article two-d of this chapter, that are specific for opioid  
112 treatment program facilities. No applications for a certificate



113 of need for opioid treatment programs shall be approved by  
114 the health care authority as of the effective date of the 2007  
115 amendments to this subsection. The secretary shall  
116 promulgate revised emergency rules to govern licensed  
117 programs: *Provided*, That there is a moratorium on the  
118 licensure of new opioid treatment programs that do not have  
119 a certificate of need as of the effective date of the 2007  
120 amendments to this subsection, which shall continue until the  
121 Legislature determines that there is a necessity for additional  
122 opioid treatment facilities in West Virginia. The secretary  
123 shall file revised emergency rules with the Secretary of State  
124 to regulate opioid programs in compliance with subsections  
125 (1) through (9), inclusive, of this section: *Provided, however*,  
126 That any opioid treatment program facility that has received  
127 a certificate of need pursuant to article two-d, of this chapter  
128 by the health care authority shall be permitted to proceed to  
129 license and operate the facility. All existing opioid treatment  
130 programs shall be in compliance within one hundred eighty  
131 days of the effective date of the revised emergency rules as  
132 required herein. The revised emergency rules shall provide  
133 at a minimum:

134 (1) That the initial assessment prior to admission for  
135 entry into the opioid treatment program shall include an  
136 initial drug test to determine whether an individual is either  
137 opioid addicted or presently receiving methadone for an  
138 opioid addiction from another opioid treatment program. The  
139 patient may be admitted to the program if there is a positive  
140 test for either opioids or methadone or there are objective  
141 symptoms of withdrawal, or both, and all other criteria set  
142 forth in the rule for admission into an opioid treatment  
143 program are met: *Provided*, That admission to the program  
144 may be allowed to the following groups with a high risk of  
145 relapse without the necessity of a positive test or the presence  
146 of objective symptoms: Pregnant women with a history of  
147 opioid abuse, prisoners or parolees recently released from  
148 correctional facilities, former clinic patients who have

149 successfully completed treatment but who believe themselves  
150 to be at risk of imminent relapse and HIV patients with a  
151 history of intravenous drug use.

152 (2) That within seven days of the admission of a patient,  
153 the opioid treatment program shall complete an initial  
154 assessment and an initial plan of care. Subsequently, the  
155 opioid treatment program shall develop a treatment plan of  
156 care by the thirtieth day after admission and attach to the  
157 patient's chart no later than five days after such plan is  
158 developed. The treatment plan is to reflect that detoxification  
159 is an option for treatment and supported by the program.

160 (3) That each opioid treatment program shall report and  
161 provide statistics to the Department of Health and Human  
162 Resources at least semiannually which includes the total  
163 number of patients; the number of patients who have been  
164 continually receiving methadone treatment in excess of two  
165 years, including the total number of months of treatment for  
166 each such patient; the state residency of each patient; the  
167 number of patients discharged from the program, including  
168 the total months in the treatment program prior to discharge  
169 and whether the discharge was for:

170 (A) Termination or disqualification;

171 (B) Completion of a program of detoxification;

172 (C) Voluntary withdrawal prior to completion of all  
173 requirements of detoxification as determined by the opioid  
174 treatment program; or

175 (D) An unexplained reason.

176 (4) That random drug testing of patients be conducted  
177 during the course of treatment. For purposes of these rules,  
178 random drug testing shall mean that each patient of an opioid

179 treatment program facility has a statistically equal chance of  
180 being selected for testing at random and at unscheduled  
181 times. Any refusal to participate in a random drug test shall  
182 be considered a positive test: *Provided*, That nothing  
183 contained in this section or the legislative rules promulgated  
184 in conformity herewith will preclude any opioid treatment  
185 program from administering such additional drug tests as  
186 determined necessary by the opioid treatment program.

187 (5) That all random drug tests conducted by an opioid  
188 treatment program shall, at a minimum, test for the  
189 following:

190 (A) Opiates, including oxycodone at common levels of  
191 dosing;

192 (B) Methadone and any other medication used by the  
193 program as an intervention;

194 (C) Benzodiazepine including diazepam, lorazepam,  
195 clonazepam and alprazolam;

196 (D) Cocaine;

197 (E) Methamphetamine or amphetamine; and

198 (F) Other drugs determined by community standards,  
199 regional variation or clinical indication.

200 A positive test is a test that results in the presence of any  
201 drug or substance listed in this schedule and any other drug  
202 or substance prohibited by the opioid treatment program;

203 (6) That a positive drug test result after the first six  
204 months in an opioid treatment program shall result in the  
205 following:

206 (A) Upon the first positive drug test result, the opioid  
207 treatment program shall:

208 (1) Provide mandatory and documented weekly  
209 counseling to the patient, which shall include weekly  
210 meetings with a counselor who is licensed, certified or  
211 enrolled in the process of obtaining licensure or certification  
212 in compliance with the rules and on staff at the opioid  
213 treatment program;

214 (2) Immediately revoke the take home methadone  
215 privilege for a minimum of thirty days; and

216 (B) Upon a second positive drug test result within six  
217 months of a previous positive drug test result, the opioid  
218 treatment program shall:

219 (1) Provide mandatory and documented weekly  
220 counseling, which shall include weekly meetings with a  
221 counselor who is licensed, certified or enrolled in the process  
222 of obtaining licensure or certification in compliance with the  
223 rules and on staff at the opioid treatment program;

224 (2) Immediately revoke the take-home methadone  
225 privilege for a minimum of sixty days; and

226 (3) Provide mandatory documented treatment team  
227 meetings with the patient.

228 (C) Upon a third positive drug test result within a period  
229 of six months the opioid treatment program shall:

230 (1) Provide mandatory and documented weekly  
231 counseling, which shall include weekly meetings with a  
232 counselor who is licensed, certified or enrolled in the process  
233 of obtaining licensure or certification in compliance with the  
234 rules and on staff at the opioid treatment program;

235 (2) Immediately revoke the take-home methadone  
236 privilege for a minimum of one hundred twenty days; and

237 (3) Provide mandatory and documented treatment team  
238 meetings with the patient which will include, at a minimum:  
239 The need for continuing treatment; a discussion of other  
240 treatment alternatives; and the execution of a contract with  
241 the patient advising the patient of discharge for continued  
242 positive drug tests.

243 (D) Upon a fourth positive drug test within a six-month  
244 period, the patient shall be immediately discharged from the  
245 opioid treatment program or, at the option of the patient, shall  
246 immediately be provided the opportunity to participate in a  
247 twenty-one day detoxification plan, followed by immediate  
248 discharge from the opioid treatment program.

249 (7) That the opioid treatment program must report and  
250 provide statistics to the Department of Health and Human  
251 Resources demonstrating compliance with the random drug  
252 test rules including confirmation that:

253 (A) The random drug tests were truly random in regard  
254 to both the patients tested and to the times random drug tests  
255 were administered by lottery or some other objective standard  
256 so as not to prejudice or protect any particular patient.

257 (B) The total number and the number of positive results;  
258 and

259 (C) The number of expulsions from the program.

260 (8) That all opioid treatment facilities be open for  
261 business seven days per week: *Provided*, That the opioid  
262 treatment center may be closed for eight holidays and two  
263 training days per year.

264 (9) That the Office of Health Facility Licensure and  
265 Certification develop policies and procedures in conjunction  
266 with the Board of Pharmacy that will allow access to the  
267 Prescription Drug Registry maintained by the Board of  
268 Pharmacy before administration of methadone or other  
269 treatment in an opioid treatment program, after any positive  
270 drug test, and at each ninety-day treatment review to ensure  
271 the patient is not seeking prescription medication from  
272 multiple sources.

273 (k) The secretary shall propose a rule for legislative  
274 approval in accordance with the provisions of article three,  
275 chapter twenty-nine-a of this code for the distribution of state  
276 aid to local health departments and basic public health  
277 services funds.

278 (1) The rule shall include the following provisions:

279 (A) Base allocation amount for each county;

280 (B) Establishment and administration of an emergency  
281 fund of no more than two percent of the total annual funds of  
282 which unused amounts are to be distributed back to local  
283 boards of health at the end of each fiscal year;

284 (C) A calculation of funds utilized for state support of  
285 local health departments;

286 (D) Distribution of remaining funds on a per capita  
287 weighted population approach which factors coefficients for  
288 poverty, health status, population density and health  
289 department interventions for each county and a coefficient  
290 which encourages counties to merge in the provision of  
291 public health services;

292 (E) A hold-harmless provision to provide that each local  
293 health department receives no less in state support for a  
294 period of three years beginning in the 2009 budget year.

295 (2) The Legislature finds that an emergency exists and,  
296 therefore, the secretary shall file an emergency rule to  
297 implement the provisions of this section pursuant to the  
298 provisions of section fifteen, article three, chapter  
299 twenty-nine-a of this code. The emergency rule is subject to  
300 the prior approval of the Legislative Oversight Commission  
301 on Health and Human Resources Accountability prior to  
302 filing with the Secretary of State.

303 (1) Other health-related matters which the department is  
304 authorized to supervise and for which the rule-making  
305 authority has not been otherwise assigned.

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-2. Definitions.**

1 Definitions of words and terms defined in articles five-f  
2 and twenty-nine-b of this chapter are incorporated in this  
3 section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the  
5 context:

6 (a) “Affected person” means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area  
10 served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care  
12 facilities within that geographic area;

13 (5) The health care facilities which provide services  
14 similar to the services of the facility under review and which  
15 will be significantly affected by the proposed project;

16 (6) The health care facilities which, before receipt by the  
17 state agency of the proposal being reviewed, have formally  
18 indicated an intention to provide similar services in the  
19 future;

20 (7) Third-party payors who reimburse health care  
21 facilities similar to those proposed for services;

22 (8) Any agency that establishes rates for health care  
23 facilities similar to those proposed; or

24 (9) Organizations representing health care providers.

25 (b) “Ambulatory health care facility” means a  
26 free-standing facility that provides health care to  
27 noninstitutionalized and nonhomebound persons on an  
28 outpatient basis. For purposes of this definition, a  
29 free-standing facility is not located on the campus of an  
30 existing health care facility. This definition does not include  
31 any facility engaged solely in the provision of lithotripsy  
32 services or the private office practice of any one or more  
33 health professionals licensed to practice in this state pursuant  
34 to the provisions of chapter thirty of this code: *Provided*,  
35 That this exemption from review may not be construed to  
36 include practices where major medical equipment otherwise  
37 subject to review under the provisions of this article is  
38 acquired, offered or developed: *Provided, however*, That this  
39 exemption from review may not be construed to include  
40 certain health services otherwise subject to review under the  
41 provisions of subdivision (1), subsection (a), section four of  
42 this article.

43 (c) “Ambulatory surgical facility” means a free-standing  
44 facility that provides surgical treatment to patients not  
45 requiring hospitalization. For purposes of this definition, a  
46 free-standing facility is not physically attached to a health  
47 care facility. This definition does not include the private



48 office practice of any one or more health professionals  
49 licensed to practice surgery in this state pursuant to the  
50 provisions of chapter thirty of this code: *Provided*, That this  
51 exemption from review may not be construed to include  
52 practices where major medical equipment otherwise subject  
53 to review under the provisions of this article is acquired,  
54 offered or developed: *Provided, however*, That this  
55 exemption from review may not be construed to include  
56 health services otherwise subject to review under the  
57 provisions of subdivision (1), subsection (a), section four of  
58 this article.

59 (d) “Applicant” means: (1) The governing body or the  
60 person proposing a new institutional health service who is, or  
61 will be, the health care facility licensee wherein the new  
62 institutional health service is proposed to be located; and (2)  
63 in the case of a proposed new institutional health service not  
64 to be located in a licensed health care facility, the governing  
65 body or the person proposing to provide the new institutional  
66 health service. Incorporators or promoters who will not  
67 constitute the governing body or persons responsible for the  
68 new institutional health service may not be an applicant.

69 (e) “Bed capacity” means the number of beds licensed to  
70 a health care facility or the number of adult and pediatric  
71 beds permanently staffed and maintained for immediate use  
72 by inpatients in patient rooms or wards in an unlicensed  
73 facility.

74 (f) “Campus” means the adjacent grounds and buildings,  
75 or grounds and buildings not separated by more than a public  
76 right-of-way, of a health care facility.

77 (g) “Capital expenditure” means:

78 (1) An expenditure made by or on behalf of a health care  
79 facility, which:

80 (A) (i) Under generally accepted accounting principles is  
81 not properly chargeable as an expense of operation and  
82 maintenance; or (ii) is made to obtain either by lease or  
83 comparable arrangement any facility or part thereof or any  
84 equipment for a facility or part; and

85 (B) (i) Exceeds the expenditure minimum; or (ii) is a  
86 substantial change to the bed capacity of the facility with  
87 respect to which the expenditure is made; or (iii) is a  
88 substantial change to the services of such facility;

89 (2) The donation of equipment or facilities to a health  
90 care facility, which if acquired directly by that facility would  
91 be subject to review;

92 (3) The transfer of equipment or facilities for less than  
93 fair market value if the transfer of the equipment or facilities  
94 at fair market value would be subject to review; or

95 (4) A series of expenditures, if the sum total exceeds the  
96 expenditure minimum and if determined by the state agency  
97 to be a single capital expenditure subject to review. In  
98 making this determination, the state agency shall consider:  
99 Whether the expenditures are for components of a system  
100 which is required to accomplish a single purpose; whether the  
101 expenditures are to be made over a two-year period and are  
102 directed towards the accomplishment of a single goal within  
103 the health care facility's long-range plan; or whether the  
104 expenditures are to be made within a two-year period within  
105 a single department such that they will constitute a significant  
106 modernization of the department.

107 (h) "Expenditure minimum" means \$2,700,000 for the  
108 calendar year 2009. The state agency shall adjust the  
109 expenditure minimum annually and publish an update of the  
110 amount on or before December 31 of each year. The  
111 expenditure minimum adjustment shall be based on the DRI

112 inflation index published in the *Global Insight DRI/WEFA*  
113 *Health Care Cost Review*, or its successor or appropriate  
114 replacement index. This amount shall include the cost of any  
115 studies, surveys, designs, plans, working drawings,  
116 specifications and other activities, including staff effort and  
117 consulting and other services essential to the acquisition,  
118 improvement, expansion or replacement of any plant or  
119 equipment.

120 (i) "Health", used as a term, includes physical and mental  
121 health.

122 (j) "Health care facility" means a publicly or privately  
123 owned facility, agency or entity that offers or provides health  
124 care services, whether a for-profit or nonprofit entity and  
125 whether or not licensed, or required to be licensed, in whole  
126 or in part, and includes, but is not limited to, hospitals; skilled  
127 nursing facilities; kidney disease treatment centers, including  
128 free-standing hemodialysis units; intermediate care facilities;  
129 ambulatory health care facilities; ambulatory surgical  
130 facilities; home health agencies; hospice agencies;  
131 rehabilitation facilities; health maintenance organizations;  
132 and community mental health and intellectual disability  
133 facilities. For purposes of this definition, "community mental  
134 health and intellectual disability facility" means a private  
135 facility which provides such comprehensive services and  
136 continuity of care as emergency, outpatient, partial  
137 hospitalization, inpatient or consultation and education for  
138 individuals with mental illness, intellectual disability or drug  
139 or alcohol addiction.

140 (k) "Health care provider" means a person, partnership,  
141 corporation, facility, hospital or institution licensed or  
142 certified or authorized by law to provide professional health  
143 care service in this state to an individual during that  
144 individual's medical, remedial or behavioral health care,  
145 treatment or confinement.

146 (l) “Health maintenance organization” means a public or  
147 private organization which:

148 (1) Is required to have a certificate of authority to operate  
149 in this state pursuant to section three, article twenty-five-a,  
150 chapter thirty-three of this code; or

151 (2) (A) Provides or otherwise makes available to enrolled  
152 participants health care services, including substantially the  
153 following basic health care services: Usual physician  
154 services, hospitalization, laboratory, x-ray, emergency and  
155 preventive services and out-of-area coverage;

156 (B) Is compensated except for copayments for the  
157 provision of the basic health care services listed in paragraph  
158 (A) of this subdivision to enrolled participants on a  
159 predetermined periodic rate basis without regard to the date  
160 the health care services are provided and which is fixed  
161 without regard to the frequency, extent or kind of health  
162 service actually provided; and

163 (C) Provides physicians’ services: (i) Directly through  
164 physicians who are either employees or partners of the  
165 organization; or (ii) through arrangements with individual  
166 physicians or one or more groups of physicians organized on  
167 a group practice or individual practice basis.

168 (m) “Health services” means clinically related preventive,  
169 diagnostic, treatment or rehabilitative services, including  
170 alcohol, drug abuse and mental health services.

171 (n) “Home health agency” means an organization  
172 primarily engaged in providing professional nursing services  
173 either directly or through contract arrangements and at least  
174 one of the following services: Home health aide services,  
175 other therapeutic services, physical therapy, speech therapy,  
176 occupational therapy, nutritional services or medical social

177 services to persons in their place of residence on a part-time  
178 or intermittent basis.

179 (o) "Hospice agency" means a private or public agency  
180 or organization licensed in West Virginia for the  
181 administration or provision of hospice care services to  
182 terminally ill persons in the persons' temporary or permanent  
183 residences by using an interdisciplinary team, including, at a  
184 minimum, persons qualified to perform nursing services;  
185 social work services; the general practice of medicine or  
186 osteopathy; and pastoral or spiritual counseling.

187 (p) "Hospital" means a facility licensed as such pursuant  
188 to the provisions of article five-b of this chapter, and any  
189 acute care facility operated by the state government, that  
190 primarily provides inpatient diagnostic, treatment or  
191 rehabilitative services to injured, disabled or sick persons  
192 under the supervision of physicians and includes psychiatric  
193 and tuberculosis hospitals.

194 (q) "Intermediate care facility" means an institution that  
195 provides health-related services to individuals with mental or  
196 physical conditions that require services above the level of  
197 room and board, but do not require the degree of services  
198 provided in a hospital or skilled-nursing facility.

199 (r) "Long-range plan" means a document formally  
200 adopted by the legally constituted governing body of an  
201 existing health care facility or by a person proposing a new  
202 institutional health service which contains the information  
203 required by the state agency in rules adopted pursuant to  
204 section eight of this article.

205 (s) "Major medical equipment" means a single unit of  
206 medical equipment or a single system of components with  
207 related functions which is used for the provision of medical  
208 and other health services and costs in excess of \$2,700,000 in  
209 the calendar year 2009. The state agency shall adjust the

210 dollar amount specified in this subsection annually and  
211 publish an update of the amount on or before December 31  
212 of each year. The adjustment of the dollar amount shall be  
213 based on the DRI inflation index published in the *Global*  
214 *Insight DRI/WEFA Health Care Cost Review* or its successor  
215 or appropriate replacement index. This term does not include  
216 medical equipment acquired by or on behalf of a clinical  
217 laboratory to provide clinical laboratory services if the  
218 clinical laboratory is independent of a physician's office and  
219 a hospital and it has been determined under Title XVIII of the  
220 Social Security Act to meet the requirements of paragraphs  
221 ten and eleven, Section 1861(s) of such act, Title 42 U.S.C.  
222 §1395x. In determining whether medical equipment is major  
223 medical equipment, the cost of studies, surveys, designs,  
224 plans, working drawings, specifications and other activities  
225 essential to the acquisition of such equipment shall be  
226 included. If the equipment is acquired for less than fair  
227 market value, the term "cost" includes the fair market value.

228 (t) "Medically underserved population" means the  
229 population of an area designated by the state agency as  
230 having a shortage of personal health services. The state  
231 agency may consider unusual local conditions that are a  
232 barrier to accessibility or availability of health services. The  
233 designation shall be in rules adopted by the state agency  
234 pursuant to section eight of this article, and the population so  
235 designated may include the state's medically underserved  
236 population designated by the federal Secretary of Health and  
237 Human Services under Section 330(b)(3) of the Public Health  
238 Service Act, as amended, Title 42 U.S.C. §254.

239 (u) "New institutional health service" means any service  
240 as described in section three of this article.

241 (v) "Nonhealth-related project" means a capital  
242 expenditure for the benefit of patients, visitors, staff or  
243 employees of a health care facility and not directly related to

244 preventive, diagnostic, treatment or rehabilitative services  
245 offered by the health care facility. This includes, but is not  
246 limited to, chapels, gift shops, news stands, computer and  
247 information technology systems, educational, conference and  
248 meeting facilities, but excluding medical school facilities,  
249 student housing, dining areas, administration and volunteer  
250 offices, modernization of structural components, boiler repair  
251 or replacement, vehicle maintenance and storage facilities,  
252 parking facilities, mechanical systems for heating, ventilation  
253 systems, air conditioning systems and loading docks.

254 (w) "Offer", when used in connection with health  
255 services, means that the health care facility or health  
256 maintenance organization holds itself out as capable of  
257 providing, or as having the means to provide, specified health  
258 services.

259 (x) "Person" means an individual, trust, estate,  
260 partnership, committee, corporation, association and other  
261 organizations such as joint-stock companies and insurance  
262 companies, a state or a political subdivision or  
263 instrumentality thereof or any legal entity recognized by the  
264 state.

265 (y) "Physician" means a doctor of medicine or osteopathy  
266 legally authorized to practice by the state.

267 (z) "Proposed new institutional health service" means any  
268 service as described in section three of this article.

269 (aa) "Psychiatric hospital" means an institution that  
270 primarily provides to inpatients, by or under the supervision  
271 of a physician, specialized services for the diagnosis,  
272 treatment and rehabilitation of mentally ill and emotionally  
273 disturbed persons.

274 (bb) "Rehabilitation facility" means an inpatient facility  
275 operated for the primary purpose of assisting in the

276 rehabilitation of disabled persons through an integrated  
277 program of medical and other services which are provided  
278 under competent professional supervision.

279 (cc) “Review agency” means an agency of the state,  
280 designated by the Governor as the agency for the review of  
281 state agency decisions.

282 (dd) “Skilled nursing facility” means an institution, or a  
283 distinct part of an institution, that primarily provides inpatient  
284 skilled nursing care and related services, or rehabilitation  
285 services, to injured, disabled or sick persons.

286 (ee) “State agency” means the Health Care Authority  
287 created, established and continued pursuant to article  
288 twenty-nine-b of this chapter.

289 (ff) “State health plan” means the document approved by  
290 the Governor after preparation by the former statewide health  
291 coordinating council or that document as approved by the  
292 Governor after amendment by the former health care  
293 planning council or the state agency.

294 (gg) “Substantial change to the bed capacity” of a health  
295 care facility means any change, associated with a capital  
296 expenditure, that increases or decreases the bed capacity or  
297 relocates beds from one physical facility or site to another,  
298 but does not include a change by which a health care facility  
299 reassigns existing beds as swing beds between acute care and  
300 long-term care categories: *Provided*, That a decrease in bed  
301 capacity in response to federal rural health initiatives is  
302 excluded from this definition.

303 (hh) “Substantial change to the health services” of a  
304 health care facility means: (1) The addition of a health  
305 service offered by or on behalf of the health care facility  
306 which was not offered by or on behalf of the facility within



307 the twelve-month period before the month in which the  
308 service is first offered; or (2) the termination of a health  
309 service offered by or on behalf of the facility: *Provided*, That  
310 “substantial change to the health services” does not include  
311 the providing of ambulance service, wellness centers or  
312 programs, adult day care or respite care by acute care  
313 facilities.

314 (ii) “To develop”, when used in connection with health  
315 services, means to undertake those activities which upon their  
316 completion will result in the offer of a new institutional  
317 health service or the incurring of a financial obligation in  
318 relation to the offering of such a service.

**§16-2D-5. Powers and duties of state agency.**

1 (a) The state agency shall administer the certificate of  
2 need program as provided by this article.

3 (b) The state agency is responsible for coordinating and  
4 developing the health planning research efforts of the state  
5 and for amending and modifying the state health plan which  
6 includes the certificate of need standards. The state agency  
7 shall review the state health plan, including the certificate of  
8 need standards and make any necessary amendments and  
9 modifications. The state agency shall also review the cost  
10 effectiveness of the certificate of need program. The state  
11 agency may form task forces to assist it in addressing these  
12 issues. The task forces shall be composed of representatives  
13 of consumers, business, providers, payers and state agencies.

14 (c) The state agency may seek advice and assistance of  
15 other persons, organizations and other state agencies in the  
16 performance of the state agency’s responsibilities under this  
17 article.

18 (d) For health services for which competition  
19 appropriately allocates supply consistent with the state health

20 plan, the state agency shall, in the performance of its  
21 functions under this article, give priority, where appropriate  
22 to advance the purposes of quality assurance, cost  
23 effectiveness and access, to actions which would strengthen  
24 the effect of competition on the supply of the services.

25 (e) For health services for which competition does not or  
26 will not appropriately allocate supply consistent with the state  
27 health plan, the state agency shall, in the exercise of its  
28 functions under this article, take actions, where appropriate  
29 to advance the purposes of quality assurance, cost  
30 effectiveness and access and the other purposes of this article,  
31 to allocate the supply of the services.

32 (f) Notwithstanding the provisions of section seven of  
33 this article, the state agency may charge a fee for the filing of  
34 any application, the filing of any notice in lieu of an  
35 application, the filing of any exemption determination request  
36 or the filing of any request for a declaratory ruling. The fees  
37 charged may vary according to the type of matter involved,  
38 the type of health service or facility involved or the amount  
39 of capital expenditure involved: *Provided*, That any fee  
40 charged pursuant to this subsection may not exceed a dollar  
41 amount to be established by procedural rule. The state  
42 agency shall evaluate and amend any procedural rule  
43 promulgated prior to the amendments to this subsection made  
44 during the 2009 regular session of the Legislature. The fees  
45 charged shall be deposited into a special fund known as the  
46 Certificate of Need Program Fund to be expended for the  
47 purposes of this article.

48 (g) A hospital, nursing home or other health care facility  
49 may not add any intermediate care or skilled nursing beds to  
50 its current licensed bed complement. This prohibition also  
51 applies to the conversion of acute care or other types of beds  
52 to intermediate care or skilled nursing beds: *Provided*, That  
53 hospitals eligible under the provisions of section four-a of

54 this article and subsection (i) of this section may convert  
55 acute care beds to skilled nursing beds in accordance with the  
56 provisions of these sections, upon approval by the state  
57 agency. Furthermore, a certificate of need may not be  
58 granted for the construction or addition of any intermediate  
59 care or skilled nursing beds except in the case of facilities  
60 designed to replace existing beds in unsafe existing facilities.  
61 A health care facility in receipt of a certificate of need for the  
62 construction or addition of intermediate care or skilled  
63 nursing beds which was approved prior to the effective date  
64 of this section shall incur an obligation for a capital  
65 expenditure within twelve months of the date of issuance of  
66 the certificate of need. Extensions may not be granted  
67 beyond the twelve-month period. The state agency shall  
68 establish a task force or utilize an existing task force to study  
69 the need for additional nursing facility beds in this state. The  
70 study shall include a review of the current moratorium on the  
71 development of nursing facility beds; the exemption for the  
72 conversion of acute care beds to skilled nursing facility beds;  
73 the development of a methodology to assess the need for  
74 additional nursing facility beds; and certification of new beds  
75 both by Medicare and Medicaid. The task force shall be  
76 composed of representatives of consumers, business,  
77 providers, payers and government agencies.

78 (h) No additional intermediate care facility for  
79 individuals with an intellectual disability (ICF/ID) beds may  
80 be granted a certificate of need, except that prohibition does  
81 not apply to ICF/ID beds approved under the Kanawha  
82 County Circuit Court order of August 3, 1989, civil action  
83 number MISC-81-585 issued in the case of E.H. v. Matin,  
84 168 W.V. 248, 284 S.E. 2d 232 (1981).

85 (i) Notwithstanding the provisions of subsection (g) of  
86 this section and further notwithstanding the provisions of  
87 subsection (b), section three of this article, an existing acute  
88 care hospital may apply to the Health Care Authority for a

89 certificate of need to convert acute care beds to skilled  
90 nursing beds: *Provided*, That the proposed skilled nursing  
91 beds are Medicare-certified only: *Provided, however*, That  
92 any hospital which converts acute care beds to Medicare-  
93 certified only skilled nursing beds shall not bill for any  
94 Medicaid reimbursement for any converted beds. In  
95 converting beds, the hospital shall convert a minimum of one  
96 acute care bed into one Medicare-certified only skilled  
97 nursing bed. The Health Care Authority may require a  
98 hospital to convert up to and including three acute care beds  
99 for each Medicare-certified only skilled nursing bed:  
100 *Provided further*, That a hospital designated or provisionally  
101 designated by the state agency as a rural primary care  
102 hospital may convert up to thirty beds to a distinct-part  
103 nursing facility, including skilled nursing beds and  
104 intermediate care beds, on a one-for-one basis if the rural  
105 primary care hospital is located in a county without a  
106 certified freestanding nursing facility and the hospital may  
107 bill for Medicaid reimbursement for the converted beds: *And*  
108 *provided further*, That if the hospital rejects the designation  
109 as a rural primary care hospital, then the hospital may not bill  
110 for Medicaid reimbursement. The Health Care Authority  
111 shall adopt rules to implement this subsection which require  
112 that:

113 (1) All acute care beds converted shall be permanently  
114 deleted from the hospital's acute care bed complement and  
115 the hospital may not thereafter add, by conversion or  
116 otherwise, acute care beds to its bed complement without  
117 satisfying the requirements of subsection (b), section three of  
118 this article for which purposes an addition, whether by  
119 conversion or otherwise, shall be considered a substantial  
120 change to the bed capacity of the hospital notwithstanding the  
121 definition of that term found in subsection (ff), section two of  
122 this article.

123 (2) The hospital shall meet all federal and state licensing  
124 certification and operational requirements applicable to  
125 nursing homes including a requirement that all skilled care  
126 beds created under this subsection shall be located in  
127 distinct-part, long-term care units.

128 (3) The hospital shall demonstrate a need for the project.

129 (4) The hospital shall use existing space for the  
130 Medicare-certified only skilled nursing beds. Under no  
131 circumstances shall the hospital construct, lease or acquire  
132 additional space for purposes of this section.

133 (5) The hospital shall notify the acute care patient, prior  
134 to discharge, of facilities with skilled nursing beds which are  
135 located in or near the patient's county of residence. Nothing  
136 in this subsection negatively affects the rights of inspection  
137 and certification which are otherwise required by federal law  
138 or regulations or by this code or duly adopted rules of an  
139 authorized state entity.

140 (j) (1) Notwithstanding the provisions of subsection (g)  
141 of this section, a retirement life care center with no skilled  
142 nursing beds may apply to the Health Care Authority for a  
143 certificate of need for up to sixty skilled nursing beds  
144 provided the proposed skilled beds are Medicare-certified  
145 only. On a statewide basis, a maximum of one hundred  
146 eighty skilled beds which are Medicare-certified only may be  
147 developed pursuant to this subsection. The state health plan  
148 is not applicable to projects submitted under this subsection.  
149 The Health Care Authority shall adopt rules to implement  
150 this subsection which shall include a requirement that:

151 (A) The one hundred eighty beds are to be distributed on  
152 a statewide basis;

153 (B) There be a minimum of twenty beds and a maximum  
154 of sixty beds in each approved unit;

155 (C) The unit developed by the retirement life care center  
156 meets all federal and state licensing certification and  
157 operational requirements applicable to nursing homes;

158 (D) The retirement center demonstrates a need for the  
159 project;

160 (E) The retirement center offers personal care, home  
161 health services and other lower levels of care to its residents;  
162 and

163 (F) The retirement center demonstrates both short- and  
164 long-term financial feasibility.

165 (2) Nothing in this subsection negatively affects the rights  
166 of inspection and certification which are otherwise required  
167 by federal law or regulations or by this code or duly adopted  
168 rules of an authorized state entity.

169 (k) The state agency may order a moratorium upon the  
170 offering or development of a new institutional health service  
171 when criteria and guidelines for evaluating the need for the  
172 new institutional health service have not yet been adopted or  
173 are obsolete. The state agency may also order a moratorium  
174 on the offering or development of a health service,  
175 notwithstanding the provisions of subdivision (5), subsection  
176 (b), section three of this article, when it determines that the  
177 proliferation of the service may cause an adverse impact on  
178 the cost of health care or the health status of the public. A  
179 moratorium shall be declared by a written order which shall  
180 detail the circumstances requiring the moratorium. Upon the  
181 adoption of criteria for evaluating the need for the health  
182 service affected by the moratorium, or one hundred eighty  
183 days from the declaration of a moratorium, whichever is less,  
184 the moratorium shall be declared to be over and applications  
185 for certificates of need are processed pursuant to section six  
186 of this article.

187 (1) (1) The state agency shall coordinate the collection of  
188 information needed to allow the state agency to develop  
189 recommended modifications to certificate of need standards  
190 as required in this article. When the state agency proposes  
191 amendments or modifications to the certificate of need  
192 standards, it shall file with the Secretary of State, for  
193 publication in the State Register, a notice of proposed action,  
194 including the text of all proposed amendments and  
195 modifications, and a date, time and place for receipt of  
196 general public comment. To comply with the public  
197 comment requirement of this section, the state agency may  
198 hold a public hearing or schedule a public comment period  
199 for the receipt of written statements or documents.

200 (2) When amending and modifying the certificate of need  
201 standards, the state agency shall identify relevant criteria  
202 contained in section six of this article or rules adopted  
203 pursuant to section eight of this article and apply those  
204 relevant criteria to the proposed new institutional health  
205 service in a manner that promotes the public policy goals and  
206 legislative findings contained in section one of this article. In  
207 doing so, the state agency may consult with or rely upon  
208 learned treatises in health planning, recommendations and  
209 practices of other health planning agencies and organizations,  
210 recommendations from consumers, recommendations from  
211 health care providers, recommendations from third-party  
212 payors, materials reflecting the standard of care, the state  
213 agency's own developed expertise in health planning, data  
214 accumulated by the state agency or other local, state or  
215 federal agency or organization and any other source deemed  
216 relevant to the certificate of need standards proposed for  
217 amendment or modification.

218 (3) All proposed amendments and modifications to the  
219 certificate of need standards, with a record of the public  
220 hearing or written statements and documents received  
221 during the public comment period, shall be presented to

222 the Governor. Within thirty days of receiving the proposed  
 223 amendments or modifications, the Governor shall either  
 224 approve or disapprove all or part of the amendments and  
 225 modifications and, for any portion of amendments or  
 226 modifications not approved, shall specify the reason or  
 227 reasons for nonapproval. Any portions of the amendments or  
 228 modifications not approved by the Governor may be revised  
 229 and resubmitted.

230 (4) The certificate of need standards adopted pursuant to  
 231 this section which are applicable to the provisions of this  
 232 article are not subject to article three, chapter twenty-nine-a  
 233 of this code. The state agency shall follow the provisions set  
 234 forth in this subsection for giving notice to the public of its  
 235 actions, holding hearings or receiving comments on the  
 236 certificate of need standards. The certificate of need  
 237 standards in effect on November 29, 2005, and all prior  
 238 versions promulgated and adopted in accordance with the  
 239 provisions of this section are and have been in full force and  
 240 effect from each of their respective dates of approval by the  
 241 Governor.

242 (m) The state agency may exempt from or expedite rate  
 243 review, certificate of need and annual assessment  
 244 requirements and issue grants and loans to financially  
 245 vulnerable health care facilities located in underserved areas  
 246 that the state agency and the Office of Community and Rural  
 247 Health Services determine are collaborating with other  
 248 providers in the service area to provide cost effective health  
 249 care services.

## **ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.**

### **§16-5F-2. Definitions.**

1 As used in this article:



2 (1) "Annual report" means an annual financial report for  
3 the covered facility's or related organization's fiscal year  
4 prepared by an accountant or the covered facility's or related  
5 organization's Auditor.

6 (2) "Board" means the West Virginia Health Care  
7 Authority.

8 (3) "Covered facility" means any hospital, skilled nursing  
9 facility, kidney disease treatment center, including a  
10 free-standing hemodialysis unit; intermediate care facility;  
11 ambulatory health care facility; ambulatory surgical facility;  
12 home health agency; hospice agency; rehabilitation facility;  
13 health maintenance organization; or community mental  
14 health or intellectual disability facility, whether under public  
15 or private ownership or as a profit or nonprofit organization  
16 and whether or not licensed or required to be licensed, in  
17 whole or in part, by the state: *Provided*, That nonprofit,  
18 community-based primary care centers providing primary  
19 care services without regard to ability to pay which provide  
20 the board with a year-end audited financial statement  
21 prepared in accordance with generally accepted auditing  
22 standards and with governmental auditing standards issued  
23 by the Comptroller General of the United States shall be  
24 deemed to have complied with the disclosure requirements of  
25 this section.

26 (4) "Related organization" means an organization,  
27 whether publicly owned, nonprofit, tax-exempt or for profit,  
28 related to a covered facility through common membership,  
29 governing bodies, trustees, officers, stock ownership, family  
30 members, partners or limited partners, including, but not  
31 limited to, subsidiaries, foundations, related corporations and  
32 joint ventures. For the purposes of this subdivision "family  
33 members" shall mean brothers and sisters whether by the  
whole or half blood, spouse, ancestors and lineal  
descendants.

36 (5) "Rates" means all rates, fees or charges imposed by  
37 any covered facility for health care services.

38 (6) "Records" includes accounts, books, charts, contracts,  
39 documents, files, maps, papers, profiles, reports, annual and  
40 otherwise, schedules and any other fiscal data, however  
41 recorded or stored.

**ARTICLE 50. MEDICATION ADMINISTRATION BY  
UNLICENSED PERSONNEL.**

**§16-50-2. Definitions.**

1 As used in this article, unless a different meaning appears  
2 from the context, the following definitions apply:

3 (a) "Administration of medication" means:

4 (1) Assisting a person in the ingestion, application or  
5 inhalation of medications, including prescription drugs, or in  
6 the use of universal precautions or rectal or vaginal insertion  
7 of medication, according to the legibly written or printed  
8 directions of the attending physician or authorized  
9 practitioner, or as written on the prescription label; and

10 (2) Making a written record of such assistance with regard  
11 to each medication administered, including the time, route  
12 and amount taken: *Provided*, That for purposes of this  
13 article, "administration" does not include judgment,  
14 evaluation, assessments, injections of medication, monitoring  
15 of medication or self-administration of medications,  
16 including prescription drugs and self-injection of medication  
17 by the resident.

18 (b) "Authorizing agency" means the department's Office  
19 of Health Facility Licensure and Certification.

20 (c) “Department” means the Department of Health and  
21 Human Resources.

22 (d) “Facility” means an ICF/ID, a personal care home,  
23 residential board and care home, behavioral health group  
24 home, private residence in which health care services are  
25 provided under the supervision of a registered nurse or an  
26 adult family care home that is licensed by or approved by the  
27 department.

28 (e) “Facility staff member” means an individual employed  
29 by a facility but does not include a health care professional  
30 acting within the scope of a professional license or certificate.

31 (f) “Health care professional” means a medical doctor or  
32 doctor of osteopathy, a podiatrist, registered nurse, practical  
33 nurse, registered nurse practitioner, physician’s assistant,  
34 dentist, optometrist or respiratory care professional licensed  
35 under chapter thirty of this code.

36 (g) “ICF/ID” means an intermediate care facility for  
37 individuals with an intellectual disability which is certified by  
38 the department.

39 (h) “Medication” means a drug, as defined in section one  
40 hundred one, article one, chapter sixty-a of this code, which  
41 has been prescribed by a duly authorized health care  
42 professional to be ingested through the mouth, applied to the  
43 outer skin, eye or ear, or applied through nose drops, vaginal  
44 or rectal suppositories.

45 (i) “Registered professional nurse” means a person who  
46 holds a valid license pursuant to article seven, chapter thirty  
47 of this code.

3 (j) “Resident” means a resident of a facility.

49 (k) "Secretary" means the Secretary of the Department of  
50 Health and Human Resources or his or her designee.

51 (l) "Self-administration of medication" means the act of a  
52 resident, who is independently capable of reading and  
53 understanding the labels of drugs ordered by a physician, in  
54 opening and accessing prepackaged drug containers,  
55 accurately identifying and taking the correct dosage of the  
56 drugs as ordered by the physician, at the correct time and  
57 under the correct circumstances.

58 (m) "Supervision of self-administration of medication"  
59 means a personal service which includes reminding residents  
60 to take medications, opening medication containers for  
61 residents, reading the medication label to residents, observing  
62 residents while they take medication, checking the self  
63 administered dosage against the label on the container and  
64 reassuring residents that they have obtained and are taking  
65 the dosage as prescribed.

**ARTICLE 22. DETECTION AND CONTROL OF  
PHENYLKETONURIA, GALACTOSEMIA,  
HYPOTHYROIDISM, AND CERTAIN  
OTHER DISEASES IN NEWBORN  
CHILDREN.**

**§16-22-1. Findings.**

1 The Legislature finds that phenylketonuria, galactosemia,  
2 hypothyroidism, and certain other diseases are usually  
3 associated with intellectual disability or other severe health  
4 hazards. Laboratory tests are readily available to aid in the  
5 detection of these diseases and hazards to the health of those  
6 suffering from these diseases may be lessened or prevented  
7 by early detection and treatment. Damage from these  
8 diseases, if untreated in the early months of life, is usually  
9 rapid and not appreciably affected by treatment.

**§16-22-2. Program to combat intellectual disability or other severe health hazards; rules; facilities for making tests.**

1 The state Bureau of Public Health is authorized to  
2 establish and carry out a program designed to combat  
3 intellectual disability or other severe health hazards in our  
4 state's population due to phenylketonuria, galactosemia,  
5 hypothyroidism, and certain other diseases specified by the  
6 state Public Health Commissioner, and may adopt reasonable  
7 rules and regulations necessary to carry out such a program.  
8 The Bureau of Public Health shall establish and maintain  
9 facilities at its state hygienic laboratory for testing specimens  
10 for the detection of phenylketonuria, galactosemia,  
11 hypothyroidism, and certain other diseases specified by the  
12 state Public Health Commissioner. Tests shall be made by  
13 such laboratory of specimens upon request by physicians,  
14 hospital medical personnel and other individuals attending  
15 newborn infants. The state Bureau of Public Health is  
16 authorized to establish additional laboratories throughout the  
17 state to perform tests for the detection of phenylketonuria,  
18 galactosemia, hypothyroidism, and certain other diseases  
19 specified by the state Public Health Commissioner.

**ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE  
AUTHORITY ACT.**

**§16-29A-3. Definitions.**

1 As used in this article, unless the context clearly requires  
2 a different meaning:

3 (1) "Authority" means the West Virginia Hospital  
4 Finance Authority created by section four of this article, the  
5 duties, powers, responsibilities and functions of which are  
6 specified in this article;

7 (2) "Board" means the West Virginia Hospital Finance  
8 Board created by section four of this article, which shall  
9 manage and control the authority;

10 (3) "Bond" means a revenue bond issued by the authority  
11 to effect the purposes of this article;

12 (4) "Construction" means and includes new construction,  
13 reconstruction, enlargement, improvement and providing  
14 furnishings or equipment;

15 (5) "Direct provider of health care" means a person or  
16 organization whose primary current activity is the provision  
17 of health care to individuals and includes a licensed or  
18 certified physician, osteopath, dentist, nurse, podiatrist or  
19 physician's assistant or an organization comprised of these  
20 health professionals or employing these health professionals;

21 (6) "Hospital" means a corporation, association,  
22 institution or establishment for the care of those who require  
23 medical treatment, which may be a public or private  
24 corporation or association, or state-owned or operated  
25 establishment and specifically includes nursing homes which  
26 are licensed under chapter sixteen of this code or those  
27 facilities certified under the Social Security Act as  
28 intermediate care facilities for individuals with an intellectual  
29 disability;

30 (7) "Hospital facilities" means any real or personal  
31 property suitable and intended for, or incidental or ancillary  
32 to, use by a hospital and includes: Outpatient clinics;  
33 laboratories; laundries; nurses', doctors' or interns'  
34 residences; administration buildings; facilities for research  
35 directly involved with hospital care; maintenance, storage or  
36 utility facilities; parking lots and garages; and all necessary,  
37 useful or related equipment, furnishings and appurtenances  
38 and all lands necessary or convenient as a site for the

39 foregoing and specifically includes any capital improvements  
40 to any of the foregoing. “Hospital facilities” specifically  
41 includes office facilities not less than eighty percent of which  
42 are intended for lease to direct providers of health care and  
43 which are geographically or functionally related to one or  
44 more other hospital facilities, if the authority determines that  
45 the financing of the office facilities is necessary to  
46 accomplish the purposes of this article;

47 (8) “Hospital loan” means a loan made by the authority  
48 to a hospital and specifically includes financings by the  
49 authority for hospital facilities pursuant to lease-purchase  
50 agreements, installment sale or other similar agreements;

51 (9) “Note” means a short-term promise to pay a specified  
52 amount of money, payable and secured as provided pursuant  
53 to this article and issued by the authority to effect the  
54 purposes of this article;

55 (10) “Project costs” means the total of the reasonable or  
56 necessary costs incurred for carrying out the works and  
57 undertakings for the acquisition or construction of hospital  
58 facilities under this article. “Project costs” includes, but is  
59 not limited to, all of the following costs: The costs of  
60 acquisition or construction of the hospital facilities; studies  
61 and surveys; plans, specifications, architectural and  
62 engineering services; legal, organization, marketing or other  
63 special services; financing, acquisition, demolition,  
64 construction, equipping and site development of new and  
65 rehabilitated buildings; rehabilitation, reconstruction, repair  
66 or remodeling of existing buildings; interest and carrying  
67 charges during construction and before full earnings are  
68 achieved and operating expenses before full earnings are  
69 achieved or a period of one year following the completion of  
70 construction, whichever occurs first; and a reasonable reserve  
71 for payment of principal of and interest on bonds or notes of  
72 the authority. “Project costs” shall also include reimbursement

73 of a hospital for the foregoing costs expended by a hospital  
74 from its own funds or from money borrowed by the hospital  
75 for such purposes before issuance and delivery of bonds or  
76 notes by the authority for the purpose of providing funds to  
77 pay the project costs. "Project costs" also specifically  
78 includes the refinancing of any existing debt of a hospital  
79 necessary in order to permit the hospital to borrow from the  
80 authority and give adequate security for the hospital loan.  
81 The determination of the authority with respect to the  
82 necessity of refinancing and adequate security for a hospital  
83 loan is conclusive;

84 (11) "Revenue" means any money or thing of value  
85 collected by, or paid to, the authority as principal of or  
86 interest, charges or other fees on hospital loans or any other  
87 collections on hospital loans made by the authority to  
88 hospitals to finance, in whole or in part, the acquisition or  
89 construction of any hospital facilities or other money or  
90 property which is received and may be expended for or  
91 pledged as revenues pursuant to this article;

92 (12) "Veterans skilled nursing facility" means a skilled  
93 nursing care facility constructed and operated to serve the  
94 needs of veterans of the Armed Forces of the United States  
95 who are citizens of this state.

## **ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

### **§16-30-7. Determination of incapacity.**

1 (a) For the purposes of this article, a person may not be  
2 presumed to be incapacitated merely by reason of advanced  
3 age or disability. With respect to a person who has a  
4 diagnosis of mental illness or intellectual disability, such a  
5 diagnosis is not a presumption that the person is  
6 incapacitated. A determination that a person is incapacitated



7 shall be made by the attending physician, a qualified  
8 physician, a qualified psychologist or an advanced nurse  
9 practitioner who has personally examined the person.

10 (b) The determination of incapacity shall be recorded  
11 contemporaneously in the person's medical record by the  
12 attending physician, a qualified physician, advanced nurse  
13 practitioner or a qualified psychologist. The recording shall  
14 state the basis for the determination of incapacity, including  
15 the cause, nature and expected duration of the person's  
16 incapacity, if these are known.

17 (c) If the person is conscious, the attending physician  
18 shall inform the person that he or she has been determined to  
19 be incapacitated and that a medical power of attorney  
20 representative or surrogate decisionmaker may be making  
21 decisions regarding life-prolonging intervention or mental  
22 health treatment for the person.

**§16-30-24. Need for a second opinion regarding incapacity for  
persons with psychiatric mental illness,  
intellectual disability or addiction.**

1 For persons with psychiatric mental illness, intellectual  
2 disability or addiction who have been determined by their  
3 attending physician or a qualified physician to be  
4 incapacitated, a second opinion by a qualified physician or  
5 qualified psychologist that the person is incapacitated is  
6 required before the attending physician is authorized to select  
7 a surrogate. The requirement for a second opinion does not  
8 apply in those instances in which the medical treatment to be  
9 rendered is not for the person's psychiatric mental illness.

**CHAPTER 27. MENTALLY ILL PERSONS.**

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§27-1-3. Intellectual disability.**

1 “Intellectual disability” means significantly subaverage  
2 intellectual functioning which manifests itself in a person  
3 during his or her developmental period and which is  
4 characterized by his or her inadequacy in adaptive behavior.  
5 Notwithstanding any provision to the contrary, if any service  
6 provision or reimbursement is affected by the changes in  
7 terminology adopted in the 2010 Regular Session of the  
8 Legislature, the terms “intellectual disability” or “individuals  
9 with an intellectual disability” shall assume their previous  
10 terminology. It is not the intent of the Legislature to expand  
11 the class of individuals affected by this terminology change.

**§27-1-6. State hospital.**

1 “State hospital” means any hospital, center or institution,  
2 or part of any hospital, center or institution, established,  
3 maintained and operated by the Department of Health, or by  
4 the Department of Health in conjunction with a political  
5 subdivision of the state, to provide inpatient or outpatient  
6 care and treatment for the mentally ill, intellectually disabled  
7 or addicted. The terms “hospital” and “state hospital” exclude  
8 correctional and regional jail facilities.

**§27-1-7. Administrator and clinical director.**

1 (a) The administrator of a state-operated treatment  
2 facility is its chief executive officer and has the authority to  
3 manage and administer the financial, business and personnel  
4 affairs of such facility. All other persons employed at the  
5 state-operated treatment facility are under the jurisdiction and  
6 authority of the administrator of the treatment facility who  
7 need not be a physician.

8 (b) The clinical director has the responsibility for  
9 decisions involving clinical and medical treatment of patients

10 in a state-operated mental health facility. The clinical  
11 director must be a physician duly licensed to practice  
12 medicine in this state who has completed training in an  
13 accredited program of post-graduate education in psychiatry.

14 (c) In any facility designated by the Secretary of the  
15 Department of Health and Human Resources as a facility for  
16 individuals with an intellectual disability in which programs  
17 and services are designed primarily to provide education,  
18 training and rehabilitation rather than medical or psychiatric  
19 treatment, the duties and responsibilities, other than those  
20 directly related to medical treatment services, assigned to the  
21 clinical director by this section or elsewhere in this chapter,  
22 are assigned to and become the responsibility of the  
23 administrator of that facility, or of a person with expertise in  
24 the field of intellectual disability, who need not be a  
25 physician, designated by the administrator.

**§27-1-9. Mental health facility.**

1 “Mental health facility” means any inpatient, residential  
2 or outpatient facility for the care and treatment of the  
3 mentally ill, intellectually disabled or addicted which is  
4 operated, or licensed to operate, by the Department of Health  
5 and Human Resources and includes state hospitals as defined  
6 in section six of this article. The term also includes veterans  
7 administration hospitals, but does not include any regional  
8 jail, juvenile or adult correctional facility, or juvenile  
9 detention facility.

**ARTICLE 1A. DEPARTMENT OF HEALTH.**

**§27-1A-1. Statement of policy.**

1 The purpose of this article is to improve the  
2 administration of the state hospitals, raise the standards of  
3 treatment of the mentally ill and intellectually disabled in the

4 state hospitals, encourage the further development of  
5 outpatient and diagnostic clinics, establish better research and  
6 training programs, and promote the development of mental  
7 health.

**§27-1A-4. Powers and duties of the secretary.**

1 In addition to the powers and duties set forth in any other  
2 provision of this code, the Secretary of the Department of  
3 Health and Human Resources has the following powers and  
4 duties:

5 (a) To develop and maintain a state plan which sets forth  
6 needs of the state in the areas of mental health and  
7 intellectual disability; goals and objectives for meeting those  
8 needs; plan of operation for achieving the stated goals and  
9 objectives, including organizational structure; and statement  
10 of requirements in personnel funds and authority for  
11 achieving the goals and objectives.

12 (b) To appoint deputies and assistants to supervise the  
13 departmental programs, including hospital and residential  
14 services, and such other assistants and employees as may be  
15 necessary for the efficient operation of the department and all  
16 its programs.

17 (c) To promulgate rules clearly specifying the respective  
18 duties and responsibilities of program directors and fiscal  
19 administrators, making a clear distinction between the  
20 respective functions of these officials.

21 (d) To delegate to any of his or her appointees, assistants  
22 or employees all powers and duties vested in the  
23 commissioner, including the power to execute contracts and  
24 agreements in the name of the department as provided in this  
25 article, but the commissioner shall be responsible for the acts  
26 of such appointees, assistants and employees.

27 (e) To supervise and coordinate the operation of the state  
28 hospitals named in article two of this chapter and any other  
29 state hospitals, centers or institutions hereafter created for the  
30 care and treatment of the mentally ill or intellectually  
31 disabled, or both.

32 (f) To transfer a patient from any state hospital to any  
33 other state hospital or clinic under his or her control and, by  
34 agreement with the state Division of Corrections, transfer a  
35 patient from a state hospital to an institution, other than  
36 correctional, under the supervision of the state Division of  
37 Corrections.

38 (g) To make periodic reports to the Governor and to the  
39 Legislature on the condition of the state hospitals, centers and  
40 institutions or on other matters within his or her authority,  
41 which shall include recommendations for improvement of  
42 any mental health facility and any other matters affecting the  
43 mental health of the people of the state.

44 The Secretary of the Department of Health and Human  
45 Resources has all of the authority vested in the divisions of  
46 the former Department of Mental Health, as hereinafter  
47 provided.

48 The Secretary of the Department of Health and Human  
49 Resources is hereby authorized and empowered to accept and  
50 use for the benefit of a state hospital, center or institution, or  
51 for any other mental health purpose specified in this chapter,  
52 any gift or devise of any property or thing which lawfully  
53 may be given. If such a gift or devise is for a specific  
54 purpose or for a particular state hospital, center or institution,  
55 it shall be used as specified. Any gift or devise of any  
56 property or thing which lawfully may be given and whatever  
57 profit may arise from its use or investment shall be deposited  
58 in a special revenue fund with the State Treasurer, and shall  
59 be used only as specified by the donor or donors.

**§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.**

1        There is a Division of Professional Services is hereby  
2 established in the Department of Mental Health. The  
3 supervisor of this division shall assist the director in the  
4 operation of the programs or services of the department and  
5 shall be a qualified psychiatrist.

6        The supervisor of this division has the following powers  
7 and duties:

8        (1) To develop professional standards, provide  
9 supervision of state hospitals, analyze hospital programs and  
10 inspect individual hospitals.

11        (2) To assist in recruiting professional staff.

12        (3) To take primary responsibility for the education and  
13 training of professional and subprofessional personnel.

14        (4) To carry on or stimulate research activities related to  
15 medical and psychiatric facilities of the department, and  
16 render specialized assistance to hospital superintendents.

17        (5) To establish liaison with appropriate state agencies  
18 and with private groups interested in mental health, including  
19 the state Bureau for Public Health, Division of Corrections,  
20 the Department of Education, the Board of Governors of  
21 West Virginia University, and the West Virginia Association  
22 for Mental Health, Incorporated.

23        (6) To license, supervise and inspect any hospital, center  
24 or institution, or part of any hospital, center or institution,  
25 maintained and operated by any political subdivision or by  
26 any person, persons, association or corporation to provide

27 inpatient care and treatment for the mentally ill, or  
28 individuals with an intellectual disability, or both.

29 (7) To perform any other duties assigned to the division  
30 by the Secretary of the Department of Health and Human  
31 Resources.

## **ARTICLE 2. MENTAL HEALTH FACILITIES.**

### **§27-2-1. State hospitals and other facilities; transfer of control and property from Department of Mental Health to Department of Health and Human Resources; civil service coverage.**

1 The state hospitals heretofore established at Weston,  
2 Huntington and Lakin, are continued and known respectively  
3 as the William R. Sharpe, Jr. Hospital, Mildred-Mitchell  
4 Bateman Hospital and Lakin Hospital. These state hospitals  
5 and centers are managed, directed and controlled by the  
6 Department of Health and Human Resources. Any person  
7 employed by the Department of Mental Health who on the  
8 effective date of this article is a classified civil service  
9 employee shall, within the limits contained in section two,  
10 article six of chapter twenty-nine of this code, remain in the  
11 civil service system as a covered employee. The Secretary of  
12 the Department of Health and Human Resources is  
13 authorized to bring the state hospitals into structural  
14 compliance with appropriate fire and health standards. All  
15 references in this code or elsewhere in law to the "West  
16 Virginia Training School" shall be taken and construed to  
17 mean and refer to the "Colin Anderson Center."

18 The control of the property, records, and financial and  
19 other affairs of state mental hospitals and other state mental  
20 health facilities is transferred from the Department of Mental  
21 Health to the Department of Health and Human Resources.  
22 secretary shall, in respect to the control and management of

23 the state hospitals and other state mental health facilities,  
24 perform the same duties and functions as were heretofore  
25 exercised or performed by the Director of Health. The title  
26 to all property of the state hospitals and other state facilities  
27 is transferred to and vested in the Department of Health and  
28 Human Resources.

29 Notwithstanding any other provisions of this code to the  
30 contrary, whenever in this code there is a reference to the  
31 Department of Mental Health, it shall be construed to mean  
32 and is a reference to the Secretary of the Department of  
33 Health and Human Resources.

## **ARTICLE 2A. MENTAL HEALTH - INTELLECTUAL DISABILITY CENTERS.**

### **§27-2A-1. Comprehensive community mental health-intellectual disability centers; establishment, operation and location; access to treatment.**

1 (a) The Department of Health and Human Resources is  
2 authorized and directed to establish, maintain and operate  
3 comprehensive community mental health centers and  
4 comprehensive intellectual disability facilities, at locations  
5 within the state that are determined by the secretary in  
6 accordance with the state's comprehensive mental health plan  
7 and the state's comprehensive intellectual disability plan.  
8 Such facilities may be integrated with a general health care  
9 or other facility or remain separate as the Secretary of the  
10 Department of Health and Human Resources may by rules  
11 prescribe: *Provided*, That nothing contained herein may be  
12 construed to allow the Department of Health and Human  
13 Resources to assume the operation of comprehensive regional  
14 mental health centers or comprehensive intellectual disability  
15 facilities which have been heretofore established according  
16 to law and which, as of the effective date of this article, are  
17 being operated by local nonprofit organizations.



18 (b) Any new mental health centers and comprehensive  
19 mental retardation facilities herein provided may be operated  
20 and controlled by the Department of Health and Human  
21 Resources or operated, maintained and controlled by local  
22 nonprofit organizations and licensed according to rules  
23 promulgated by the Secretary of the Department of Health  
24 and Human Resources. All comprehensive regional mental  
25 health and intellectual disability facilities licensed in the state  
26 shall:

27 (1) Have a written plan for the provision of diagnostic,  
28 treatment, supportive and aftercare services, and written  
29 policies and procedures for implementing these services;

30 (2) Have sufficient employees appropriately qualified to  
31 provide these services;

32 (3) Maintain accurate medical and other records for all  
33 patients receiving services;

34 (4) Render outpatient services in the aftercare of any  
35 patient discharged from an inpatient hospital, consistent with  
36 the needs of the individual. No person who can be treated as  
37 an outpatient at a community mental health center may be  
38 admitted involuntarily into a state hospital.

39 (5) Have a chief administrative officer directly  
40 responsible to a legally constituted board of directors of a  
41 comprehensive mental health or intellectual disability facility  
42 operated by a local nonprofit organization, or to the Secretary  
43 of the Department of Health and Human Resources if the  
44 comprehensive mental health or intellectual disability center  
45 or facility is operated by the Department of Health and  
46 Human Resources; and

47 (6) Have a written plan for the referral of patients for  
48 evaluation and treatment for services not provided.

49 The state's share of costs of operating the facilities may  
50 be provided from funds appropriated for this purpose within  
51 the budget of the Department of Health and Human  
52 Resources. The secretary of that department shall administer  
53 these funds among all comprehensive mental health and  
54 intellectual disability facilities that are required to best  
55 provide comprehensive community mental health care and  
56 services to the citizens of the state.

57 After July 1, but not later than August 1 of each year, the  
58 chief administrative officer of each comprehensive regional  
59 mental health center and intellectual disability facility shall  
60 submit a report to the Secretary of the Department of Health  
61 and Human Resources and to the Legislative Auditor  
62 containing a listing of:

- 63 (1) All funds received by the center or facility;
- 64 (2) All funds expended by the center or facility;
- 65 (3) All funds obligated by the center or facility;
- 66 (4) All services provided by the center or facility;
- 67 (5) The number of persons served by the center or  
68 facility; and
- 69 (6) Other information as the Secretary of the Department  
70 of Health and Human Resources prescribes by regulation.

## **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

### **§27-5-9. Rights of patients.**

- 1 (a) No person may be deprived of any civil right solely  
2 by reason of his or her receipt of services for mental illness,  
3 intellectual disability or addiction, nor does the receipt of the

4 services modify or vary any civil right of the person,  
5 including, but not limited to, civil service status and  
6 appointment, the right to register for and to vote at elections,  
7 the right to acquire and to dispose of property, the right to  
8 execute instruments or rights relating to the granting,  
9 forfeiture or denial of a license, permit, privilege or benefit  
10 pursuant to any law, but a person who has been adjudged  
11 incompetent pursuant to article eleven of this chapter and  
12 who has not been restored to legal competency may be  
13 deprived of such rights. Involuntary commitment pursuant  
14 to this article does not of itself relieve the patient of legal  
15 capacity.

16 (b) Each patient of a mental health facility receiving  
17 services from the facility shall receive care and treatment that  
18 is suited to his or her needs and administered in a skillful,  
19 safe and humane manner with full respect for his or her  
20 dignity and personal integrity.

21 (c) Every patient has the following rights regardless of  
22 adjudication of incompetency:

23 (1) Treatment by trained personnel;

24 (2) Careful and periodic psychiatric reevaluation no less  
25 frequently than once every three months;

26 (3) Periodic physical examination by a physician no less  
27 frequently than once every six months; and

28 (4) Treatment based on appropriate examination and  
29 diagnosis by a staff member operating within the scope of his  
30 or her professional license.

31 (d) The chief medical officer shall cause to be developed  
32 within the clinical record of each patient a written treatment  
33 plan based on initial medical and psychiatric examination not

34 later than seven days after he or she is admitted for treatment.  
35 The treatment plan shall be updated periodically, consistent  
36 with reevaluation of the patient. Failure to accord the patient  
37 the requisite periodic examinations or treatment plan and  
38 reevaluations entitles the patient to release.

39 (e) A clinical record shall be maintained at a mental  
40 health facility for each patient treated by the facility. The  
41 record shall contain information on all matters relating to the  
42 admission, legal status, care and treatment of the patient and  
43 shall include all pertinent documents relating to the patient.  
44 Specifically, the record shall contain results of periodic  
45 examinations, individualized treatment programs, evaluations  
46 and reevaluations, orders for treatment, orders for application  
47 for mechanical restraint and accident reports, all signed by  
48 the personnel involved.

49 (f) Every patient, upon his or her admission to a hospital  
50 and at any other reasonable time, shall be given a copy of the  
51 rights afforded by this section.

52 (g) The Secretary of the Department of Health and  
53 Human Resources shall propose rules for legislative approval  
54 in accordance with the provisions of article three, chapter  
55 twenty-nine-a of this code to protect the personal rights of  
56 patients not inconsistent with this section.

## **ARTICLE 9. LICENSING OF HOSPITALS.**

### **§27-9-1. License from director of health; regulations.**

1 No hospital, center or institution, or part of any hospital,  
2 center or institution, to provide inpatient, outpatient or other  
3 service designed to contribute to the care and treatment of the  
4 mentally ill or intellectually disabled, or prevention of such  
5 disorders, may be established, maintained or operated by any  
6 political subdivision or by any person, persons, association or

7 corporation unless a license therefor is first obtained from the  
8 Secretary of the Department of Health and Human  
9 Resources. The application for such license shall be  
10 accompanied by a plan of the premises to be occupied, and  
11 such other data and facts as the commissioner may require.  
12 The secretary may make such terms and regulations in regard  
13 to the conduct of any licensed hospital, center or institution,  
14 or part of any licensed hospital, center or institution, as he or  
15 she thinks proper and necessary. The secretary, or any  
16 person authorized by the secretary has authority to investigate  
17 and inspect any licensed hospital, center or institution, or part  
18 of any licensed hospital, center or institution; and the  
19 secretary may revoke the license of any hospital, center or  
20 institution, or part of any hospital, center or institution, for  
21 good cause after reasonable notice to the superintendent or  
22 other person in charge of the hospital, center or institution.

## **ARTICLE 12. OFFENSES.**

### **§27-12-1. Malicious making of medical certificate or complaint as to mental condition.**

1 Any physician who signs a certificate respecting the  
2 mental condition of any person without having made the  
3 examination as provided by this chapter, or makes any  
4 statement in any such certificate maliciously for the purpose  
5 of having such person declared mentally ill, intellectually  
6 disabled or an inebriate, and any person who maliciously  
7 makes application to any circuit court or mental hygiene  
8 commission for the purpose of having another person  
9 declared mentally ill, intellectually disabled, or an inebriate,  
10 is guilty of a misdemeanor, and, upon conviction thereof,  
11 shall be fined not exceeding \$500, or imprisoned not  
12 exceeding one year, or both fined and imprisoned at the  
13 discretion of the court.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 15. STATE COMMISSION ON INTELLECTUAL DISABILITY.**

**§29-15-1. Creation and composition.**

1        There is created the State Commission on Intellectual  
2        Disability hereinafter referred to as the commission. .

3        Pursuant to subsection (f), section one, article two,  
4        chapter five-f of this code, the commission created by this  
5        section is now incorporated into and administered as part of  
6        the Department of Health and Human Resources. All  
7        references to the commission in this article shall be construed  
8        to mean the Department of Health and Human Resources.

**§29-15-5. Purposes.**

1        The Department of Health and Human Resources shall  
2        take action to carry out the following purposes:

3        (a) Plan for and take other steps leading to  
4        comprehensive state and community action to combat  
5        intellectual disability.

6        (b) Determine what action is needed to combat  
7        intellectual disability in the state and the resources available  
8        for this purpose.

9        (c) Develop public awareness of the intellectual disability  
10        problem and of the need for combating it.

11        (d) Coordinate state and local activities relating to the  
12        various aspects of intellectual disability and its prevention,  
13        treatment, or amelioration.

14 (e) Consult with and advise the Governor and Legislature  
15 on all aspects of intellectual disability.

16 (f) Consult with and advise state agencies, boards or  
17 departments with intellectual disability responsibilities  
18 relative to the effective discharge of such responsibilities.

**§29-15-6. State agency for federal intellectual disability program.**

1 The Department of Health and Human Resources is  
2 designated and established as the sole state agency for  
3 receiving appropriations under and carrying out the purposes  
4 of section five of Public Law 88-156, eighty-eighth Congress  
5 approved October 24, 1963, and any law amending, revising,  
6 supplementing or superseding section five of said Public Law  
7 88-156.

8 The department constitutes the designated state agency for  
9 handling all programs of the federal government relating to  
10 intellectual disability requiring action within the state which  
11 are not the specific responsibility of another state agency  
12 under the provisions of federal law, rules or regulations, or  
13 which have not been specifically entrusted to another state  
14 agency by the Legislature.

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND  
CONSERVATORSHIP ACT.**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.**

**§44A-1-1. Short title and legislative findings.**

1 This chapter is known and may be cited as the "West  
2 Virginia Guardianship and Conservatorship Act."

3 The Legislature finds that section six, article eight of the  
4 Constitution of the State of West Virginia gives it the  
5 discretionary authority to pass legislation which "...provides  
6 that all matters of probate, the appointment and qualification  
7 of personal representatives, guardians, committees and  
8 curators, and the settlements of their accounts..." be under the  
9 exclusive jurisdiction of circuit courts. The Legislature  
10 further finds and declares that the use of the word "all" does  
11 not require an interpretation that the Legislature must place  
12 every aspect of such matters with circuit courts, but, that  
13 because of the discretionary authority given, the Legislature  
14 may transfer, from time to time, only those matters which it  
15 believes would be better served under the jurisdiction of  
16 circuit courts.

17 The Legislature further finds and declares that legal  
18 proceedings requiring a tribunal to determine whether  
19 persons should be appointed to manage the personal or  
20 financial affairs of individuals deemed mentally incompetent,  
21 intellectually disabled, mentally handicapped or missing  
22 involve considerations of constitutionally protected rights  
23 which can best be resolved within the circuit courts of this  
24 state.

**§44A-1-2. Determinations and appointments under prior law.**

1 (a) Any person determined to be "mentally incompetent",  
2 an "intellectually disabled" or "mentally handicapped" and  
3 for such reason deemed to be in need of a guardian or  
4 committee pursuant to any order entered and in effect before  
5 the effective date of this chapter is deemed to be a "protected  
6 person" within the meaning of this chapter, after its effective  
7 date, unless any such determination be revoked or otherwise  
8 modified.

9 (b) Any person heretofore appointed to serve as a  
10 committee for an incompetent person and any person



11 appointed to serve as a guardian for an individual with an  
12 intellectual disability or for a mentally handicapped person,  
13 is, as of the effective date of this chapter, deemed to be: (1)  
14 A guardian, within the meaning of this chapter, if the order  
15 appointing such person provides that the person so appointed  
16 has responsibility only for the personal affairs of a mentally  
17 incompetent, intellectually disabled or mentally handicapped  
18 person; (2) a conservator, within the meaning of this chapter,  
19 if the order appointing such person provides that the person  
20 so appointed had responsibility only for managing the estate  
21 and financial affairs of a mentally incompetent intellectually  
22 disabled or mentally handicapped person; or (3) a guardian  
23 and a conservator, within the meaning of this chapter, if the  
24 order appointing such person does not set forth limitations of  
25 responsibility for both the personal affairs and the financial  
26 affairs of a mentally incompetent intellectually disabled, or  
27 mentally handicapped person.

28 (c) After the effective date of this chapter, the circuit  
29 courts have exclusive jurisdiction of all matters involving  
30 determinations of mental incompetency, intellectual disability  
31 or mental handicap, including the jurisdiction of any  
32 proceedings pending as of that effective date. All orders  
33 entered before the effective date of this chapter in those cases  
34 shall remain in full force and effect until terminated, revoked  
35 or modified as provided herein.

36 (d) All persons heretofore appointed to serve as a  
37 committee or as a guardian retain their authority, powers and  
38 duties in that capacity, except to the extent that their  
39 authority, powers and duties as guardian or conservator under  
40 the provisions of this chapter are more specifically  
41 enumerated, in which event the committee or guardian has  
42 the authority, powers and duties so enumerated.

43 Wherever in the Constitution, the Code of West Virginia,  
44 acts of the Legislature or elsewhere in law a reference is

45 made to a committee for an incompetent person, such  
46 reference shall be read, construed and understood to mean  
47 guardian and/or conservator as defined in this chapter.

48 (e) The provisions of this chapter providing for the  
49 presentation of reports by guardians and the presentation of  
50 accountings by conservators may not be retroactively applied,  
51 and applicable law in effect before the effective date of this  
52 chapter controls as to any reports or accountings to be made  
53 or filed for any period before the effective date of this  
54 chapter.

55 (f) As used in this section, "prior law" refers to article  
56 eleven, chapter twenty-seven of this code, relating to the  
57 appointment of committees for mentally incompetent  
58 persons, and to article ten-a, chapter forty-four, relating to the  
59 appointment of guardians for individuals with an intellectual  
60 disability and mentally handicapped persons, as those articles  
61 were in effect before the effective date of this chapter.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 4A. WEST VIRGINIA FAMILY SUPPORT PROGRAM.**

#### **§49-4A-6. Regional and state family support councils.**

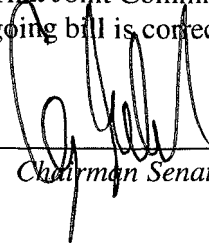
1 (a) Each regional family support agency shall establish a  
2 regional family support council comprised of at least seven  
3 members, of whom at least a majority shall be persons with  
4 developmental disabilities or their parents or primary  
5 caregivers. Each regional family support council shall meet  
6 at least quarterly to advise the regional family support agency  
7 on matters related to local implementation of the family  
8 support program and to communicate information and  
9 recommendations regarding the family support program to  
10 the state Family Support Council.

11 (b) The Secretary of the Department of Health and  
12 Human Resources shall appoint a state Family Support  
13 Council comprised of at least twenty-two members, of whom  
14 at least a majority shall be persons with developmental  
15 disabilities or their parents or primary caregivers. A  
16 representative elected by each regional council shall serve on  
17 the state council. The state council shall also include a  
18 representative from each of the following agencies: The state  
19 Developmental Disabilities Planning Council, the state  
20 Protection and Advocacy Agency, the University Affiliated  
21 Center for Developmental Disabilities, the Office of Special  
22 Education, the Association of Community Mental Health/  
23 Intellectual Disability Programs and the Early Intervention  
24 Interagency Coordinating Council.

25 (c) The state council shall meet at least quarterly. The  
26 state council will participate in the development of program  
27 policies and procedures, annual contracts and perform such  
28 other duties as are necessary for statewide implementation of  
29 the family support program.

30 (d) Members of the state and regional councils who are  
31 a member of the family or the primary caregiver of a  
32 developmentally disabled person shall be reimbursed for  
33 travel and lodging expenses incurred in attending official  
34 meetings of their councils. Child care expenses related to the  
35 developmentally disabled person shall also be reimbursed.  
36 Members of regional councils who are eligible for expense  
37 reimbursement shall be reimbursed by their respective  
38 regional family support agencies.


That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

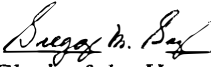
  
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Chairman Senate Committee

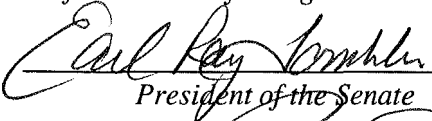
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

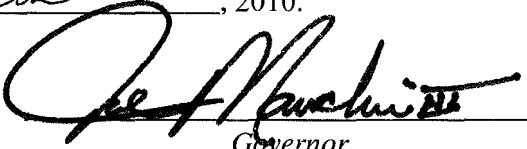
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within ~~is approved~~ this the 30<sup>th</sup>  
day of March, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2010

Time 10:05 am