

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4014**

BY DELEGATES SUMMERS, R. ROMINE, ELLINGTON,  
WALTERS, ROHRBACH, MAYNARD, HOUSEHOLDER,  
C. MILLER, COOPER, DEAN AND AMBLER

[Originating in the Committee on Finance;

February 21, 2018.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §5-30-1, §5-30-2, §5-30-3, §5-30-4, §5-30-5, §5-30-6, §5-30-7, and §5-30-8;  
3 to amend said code by adding thereto a new article, designated §5-30A-1, §5-30A-2, and  
4 §5-30A-3; to amend said code by adding thereto a new article, designated §5-30B-1, §5-  
5 30B-2, §5-30B-3, §5-30B-4, §5-30B-5, §5-30B-6, §5-30B-7, §5-30B-8, and §5-30B-9; to  
6 amend said code by adding thereto a new article, designated §5-30C-1, §5-30C-2, §5-  
7 30C-3, §5-30C-4, §5-30C-5, §5-30C-6, §5-30C-7, §5-30C-8, and §5-30C-9; to amend and  
8 reenact §5F-1-2 and §5F-1-3a of said code; to amend and reenact §5F-2-1 and §5F-2-2  
9 of said code; to amend and reenact §5F-3-2 of said code; to amend and reenact §6-7-2a  
10 of said code; to amend and reenact §8-19-18 of said code; by adding thereto a new article,  
11 designated §9-10-1 and §9-10-2; to amend and reenact §15-12-2a and §15-12-2b of said  
12 code; to amend and reenact §16-1-2 of said code; to amend and reenact §16-3-1 of said  
13 code; to amend and reenact §16-5T-2 of said code; to amend and reenact §17-5-4 of said  
14 code; to amend and reenact §24-2-5 of said code; by adding thereto a new article,  
15 designated §27-10-1, §27-10-2, §27-10-3, §27-10-4, §27-10-5, §27-10-6, §27-10-7, and  
16 §27-10-8; by adding thereto a new article, designated §27-10A-1, §27-10A-2, and §27-  
17 10A-3; to amend and reenact §30-6-31 of said code; to amend and reenact §31-15A-2  
18 and §31-15A-3 of said code, all relating to reorganization of the West Virginia Department  
19 of Health and Human Resources; continuing the Office of Inspector General; setting out  
20 qualifications for the Inspector General; setting out powers and duties of the Inspector  
21 General; continuing the Office of Health Facility Licensure and Certification; setting out  
22 powers and duties of the Office of Health Facility Licensure and Certification; requiring  
23 certain licenses from the Office of Health Facility Licensure and Certification; continuing  
24 the Medicaid Fraud Control Unit; setting out powers and duties of the Medicaid Fraud  
25 Control Unit; setting out certain criminal offenses and civil remedies; requiring the creation  
26 of certain programs by the Inspector General; setting forth the requirements and

27 procedures for certain programs; defining certain terms; enumerating certain executive  
28 departments; setting compensation for certain cabinet secretaries; creating the  
29 Department of Healthcare Facilities; defining the organization, powers and duties of the  
30 Department of Healthcare Facilities and its secretary; setting forth the qualifications for  
31 certain cabinet secretaries; transferring control of certain facilities to the Department of  
32 Healthcare Facilities; setting forth the administration of certain facilities; requiring the  
33 secretary of the Department of Healthcare Facilities to propose certain rules; making  
34 various technical corrections and removing outdated language and reference to obsolete  
35 entities.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 30. OFFICE OF INSPECTOR GENERAL.**

**§5-30-1. Creation of the Office of Inspector General.**

1 Effective July 1, 2018, the Office of Inspector General established pursuant to §9-6-2 of  
2 this code is continued as its own department. The Office of Inspector General shall investigate  
3 fraud and abuse in state programs for purposes of bringing criminal actions based upon these  
4 investigations.

**§5-30-2. Appointment of Inspector General; qualifications; oath; compensation.**

1 (a) There is continued the position of Inspector General. The Inspector General shall:  
2 (1) Be appointed by the Governor and subject to the provisions of §29-6-1 et seq. of this  
3 code;

4           (2) Serve on a full-time basis and shall not engage in any other profession or occupation,  
5 including the holding of a political office in the state either by election or appointment, while serving  
6 as Inspector General; and

7           (3) Be an attorney licensed to practice in this state.

8           (b) Before entering upon the discharge of the duties as Inspector General, the Inspector  
9 General shall take and subscribe to the oath of office prescribed in section five, article IV of the  
10 Constitution of West Virginia.

11          (c) The Inspector General shall receive:

12          (1) A reasonable and competitive compensation package to be established by the  
13 Governor; and

14          (2) Reimbursement for expenses under the standard state travel regulations.

15          (d) The Inspector General and all employees of the Office of Inspector General shall be  
16 governed by the classified service provisions of §29-6-1 et seq. of this code and rules promulgated  
17 pursuant thereto.

**§5-30-3. Powers and duties of the Inspector General.**

1           In addition to the powers and duties set forth in any other provision of this code, the  
2 Inspector General has the following powers and duties:

3           (1) To conduct and supervise investigations for the purpose of providing quality control  
4 and fraud investigation and management for the programs of the Department of Health and  
5 Human Resources and the Department of Health Care Facilities.

6           (2) Investigating fraud and intra-agency employee misconduct for the above referenced  
7 departments.

8           (3) Coordination with any other office or entity within the Department of Healthcare  
9 Facilities and the Department of Health and Human Resources necessary for quality control and  
10 investigation and fraud management;

11          (4) Holding public hearings, as provided by this code;

- 12           (5) Data collection, as provided by this code;
- 13           (6) To develop and maintain a plan which:
- 14           (A) Sets forth needs of the state in providing investigations into fraud, misuse and waste;
- 15           (B) Provide procedures and requirements for licensing of healthcare facilities;
- 16           (C) Sets forth goals and objectives for meeting those needs; and
- 17           (D) Contains plans of operation for achieving the stated goals and objectives, including
- 18 organizational structure and statement of requirements in personnel funds and authority for
- 19 achieving the goals and objectives.
- 20           (7) To appoint deputies and assistants to supervise the programs of the Office of Inspector
- 21 General and such other assistants and employees as may be necessary for the efficient operation
- 22 of the office and all its programs;
- 23           (8) To delegate to any of his or her appointees, assistants or employees all powers and
- 24 duties vested in the Inspector General. The Inspector General shall be responsible for the acts
- 25 of such appointees, assistants and employees;
- 26           (9) To refer criminal matters to the various county prosecuting attorneys and/or the
- 27 Attorney General necessary for the filing and prosecution of criminal actions of cases of fraud and
- 28 abuse relating to medical and public assistance as provided in §5-30-8 of this code;
- 29           (10) May administer oaths or affirmations and issue subpoenas for witnesses and
- 30 documents relevant to the investigation, including information concerning the existence,
- 31 description, nature, custody, condition and location of any book, record, documents or other
- 32 tangible thing and the identity and location of persons having knowledge of relevant facts or any
- 33 matter reasonably calculated to lead to the discovery of admissible evidence;
- 34           (11) Shall share information upon the request concerning human resources investigations;
- 35           (12) Perform all other duties and functions as required by this code and are reasonably
- 36 necessary or essential to affect the express objectives and purpose of this article; and

37           (13) To make periodic reports to the Attorney General, Governor and to the Legislature as  
38 required by this chapter.

**§5-30-4. Organization and employees.**

1           (a) The Inspector General shall organize the work of the office in such offices or other  
2 organizational units as he or she may determine to be necessary for effective and efficient  
3 operation.

4           (b) The Inspector General shall employ a sufficient number of employees so as to provide  
5 for the effective and efficient operation of the office.

6           (c) The Inspector General, if he or she deems such action necessary, may hire legal  
7 counsel for the office, notwithstanding the provisions of §5-3-2 of this code or any other code  
8 provision to the contrary, or may request the Attorney General to appoint counsel who shall  
9 perform such duties as may be required by the office. The Attorney General, in pursuance of such  
10 request, may select and appoint counsel to serve at the will and pleasure of the Attorney General,  
11 and shall be paid out of any funds allocated and appropriated to the office.

**§5-30-5. Supervisory responsibilities of the Inspector General.**

1           The Inspector General shall have control and supervision of the office and shall be  
2 responsible for the work of each of its organizational units. Each organizational unit shall be  
3 headed by an employee of the office appointed by the Inspector General who shall be responsible  
4 to the Inspector General for the work of his or her organizational unit.

**§5-30-6. General powers and duties of the Office of Inspector General.**

1           In carrying out the policies and procedures for enforcing the provisions of this chapter, the  
2 Inspector General shall have the following power and authority:

3           (1) To establish policies and procedures for governing the administration of the office and  
4 the conducting of necessary investigations into fraud, misuse and waste;

5           (2) To formulate standard fiscal procedures and make recommendations for improvement  
6 of the office;

7 (3) To provide for a procedure for supplies and equipment for the office; and

8 (4) To perform any other duties assigned by the Governor.

**§5-30-7. Organization of Investigation and Fraud Management Division.**

1 (a) The Inspector General shall organize and operate an Investigation and Fraud  
2 Management Division. If the Inspector General has credible information that indicates a person  
3 has engaged in an act or activity related to any program, bureau, benefit or intra-agency employee  
4 misconduct of the following departments which is subject to prosecution, it may conduct an  
5 investigation to determine if the act has been committed. These departments shall include the  
6 Department of Health Care Facilities and the Department of Health and Human Resources.

7 (b) To the extent necessary to the investigation, the Inspector General or an employee of  
8 the Office of the Inspector General designated by the Inspector General may administer oaths or  
9 affirmations and issue subpoenas for witnesses and documents relevant to the investigation,  
10 including information concerning the existence, description, nature, custody, condition and  
11 location of any book, record, document or other tangible thing and the identity and location of  
12 persons having knowledge of relevant facts or any matter reasonably calculated to lead to the  
13 discovery of admissible evidence.

14 (c) When the Investigation and Fraud Management Division has probable cause to believe  
15 that a person has engaged in an act or activity which is subject to prosecution relating to bureaus,  
16 programs, benefits or intra-agency employee misconduct of the departments listed in subsection  
17 (a) of this section, the Inspector General or an employee of the Office of the Inspector General  
18 designated by the Inspector General may request search warrants and present and swear or  
19 affirm criminal complaints.

20 (d) If documents necessary to an investigation of the Investigation and Fraud Management  
21 Division appear to be located outside the state, the documents shall be made available by the  
22 person or entity within the jurisdiction of the state having control over such documents either at a  
23 convenient location within the state or, upon payment of necessary expenses to the department

24 for transportation and inspection, at the place outside the state where these documents are  
25 maintained.

26 (e) Upon failure of a person to comply with a subpoena or a subpoena for the production  
27 of evidence or failure of a person to give testimony without lawful excuse and upon reasonable  
28 notice to all persons affected thereby, the Investigation and Fraud Management Division may  
29 apply to the circuit court of the county in which compliance is sought for appropriate orders to  
30 compel obedience with the provisions of this section.

31 (f) The Investigation and Fraud Management Division may not make public the name or  
32 identity of a person whose acts or conduct is investigated pursuant to this article or the facts  
33 disclosed in an investigation except as the same may be used in any legal action or enforcement  
34 proceeding brought pursuant to this code or federal law, if approved by the Inspector General.

**§5-30-8. Referral for prosecution.**

1 (a) Following an investigation of fraud and abuse among the various entities of state  
2 government which provide medical and public assistance and if credible information exists that  
3 indicates a person has engaged in an act or activity related to any program, bureau, benefit or  
4 intra-agency employee misconduct of the Department of Health Care Facilities and the  
5 Department of Health and Human Resources the Inspector General shall refer matter to the  
6 prosecuting attorney of the appropriate county with jurisdiction over the matter. The referral shall  
7 include all evidence and information gathered during the investigation.

8 (b) The county prosecuting attorney shall have thirty days from the date of receipt of the  
9 referral to notify the Inspector General of whether they intend to prosecute the matter or of their  
10 refusal to proceed. Should the county prosecutor decline to prosecute the matter, the Inspector  
11 General may refer the matter to the Attorney General.

12 (c) In addition to all other powers and duties granted the Attorney General in §5-3-1 et  
13 seq. of this code and elsewhere in this code, the Attorney General is granted concurrent  
14 jurisdiction with the county prosecuting attorney to criminally prosecute matters related to fraud

15 and abuse within the medical and public assistance programs operated by the state. The Attorney  
16 General shall only have the power to criminally prosecute any matter referred to that office by the  
17 Office of Inspector General.

18 (d) Upon receipt of a referral from the Office of Inspector General, the Attorney General  
19 shall review the matter and determine whether or not to proceed with prosecution. He or she may  
20 request further investigation by the Office of Inspector General should it be determined that  
21 additional information is necessary for to proceed.

22 (e) The Inspector General shall provide all information on any matter referred for  
23 prosecution to either the county prosecuting attorney or the Attorney General and shall cooperate  
24 fully in the prosecution of all matters based upon a referral from the Office of Inspector General.

25 (f) All money collected from any settlement or recovery as a result of any prosecution  
26 related to a referral from the Office of Inspector General shall be deposited in a special account  
27 in the State Treasury to be known as the "Inspector General Recovery Fund". Expenditures from  
28 the fund shall be for the purposes of funding the Office of Inspector General and are not authorized  
29 from collections but are to be made only in accordance with appropriation by the Legislature and  
30 in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the  
31 provisions of §11B-2-1 et seq. of this code: *Provided*, That for the fiscal year ending June 30,  
32 2018, expenditures are authorized from collection rather than pursuant to appropriation by the  
33 Legislature.

34 (g) Nothing in this section requires a county prosecuting attorney or the Attorney General  
35 to prosecute all matters referred to the office by the Office of Inspector General.

**ARTICLE 30A. OFFICE OF HEALTH FACILITY LICENSURE AND CERTIFICATION.**

**§5-30A-1. Creation of Office of Health Facility Licensure and Certification.**

1 Effective July 1, 2018, the Office of Health Facility Licensure and Certification is continued  
2 within the Office of Inspector General.

**§5-30A-2. Powers and duties of the Office of Health Facility Licensure and Certification.**

1           (a) The primary function of the Office of Health Facility Licensure and Certification is the  
2 investigation, inspection, regulation and licensing, where appropriate, of the following healthcare  
3 facilities and entities to ensure compliance with state regulation and licensing rules and federal  
4 certification requirements:

5           (1) Alzheimer's and Dementia Special Care Units and Programs licensed pursuant to the  
6 provisions of §16-5R-1 et seq. of this code;

7           (2) Assisted living residences licensed pursuant to the provisions of §16-5D-1 et seq. a of  
8 this code;

9           (3) Behavioral health facilities and centers, including but not limited to intermediate care  
10 facilities for individuals with intellectual disabilities, licensed pursuant to the provisions of §27-13-  
11 1 et seq. and §27-17-1 et seq. of this code;

12           (4) Birthing centers licensed pursuant to the provisions of §16-2C-1 et seq. of this code;

13           (5) Chronic pain management clinics licensed pursuant to the provisions of §16-5H-1 et  
14 seq. of this code;

15           (6) Hospice facilities licensed pursuant to the provisions of §16-5I-1 et seq. of this code;

16           (7) Hospitals and similar facilities licensed pursuant to the provisions of §16-5B-1 et seq.  
17 of this code;

18           (8) Legally unlicensed health care homes regulated pursuant to the provisions of §16-5E-  
19 1 et seq. of this code;

20           (9) Medical adult day care centers regulated pursuant to the provisions of §16-5B-1 et seq.  
21 of this code and §16-1-4 of this code;

22           (10) Medication administration by unlicensed personnel regulated pursuant to the  
23 provisions of §16-5O-1 et seq. of this code;

24           (11) Medication-Assisted treatment facilities licensed pursuant to the provisions of §16-  
25 5Y-1 et seq. of this code;

26 (12) Nurse aide abuse registry regulated pursuant to the provisions of chapter 9 and 16 of  
27 this code;

28 (13) Nursing homes licensed pursuant to the provisions of §16-5C-1 et seq. of this code;

29 (14) Nonprofit corporations for conservator services licensed pursuant to the provisions of  
30 §44A-1-1 et seq. of this code;

31 (15) Residential care communities licensed pursuant to the provisions of §16-5N-1 et seq.  
32 of this code; and

33 (16) Any other health-related facility which the department is authorized to supervise and  
34 for which specific rulemaking authority has not been granted.

35 (b) Other duties of the Office of Health Facility Licensure and Certification may be assigned  
36 by the Inspector General.

**§5-30A-3. License from Office of Inspector General; regulations.**

1 (a) No hospital, center or institution, or part of any hospital, center or institution, to provide  
2 inpatient, outpatient or other service designed to contribute to the care and treatment of the  
3 mentally ill or intellectually disabled, or prevention of such disorders, may be established,  
4 maintained or operated by any political subdivision or by any person, persons, association or  
5 corporation unless a license therefore is first obtained from the Office of Health Facility Licensure  
6 and Certification.

7 (b) The application for such license shall be accompanied by a plan of the premises to be  
8 occupied, and such other data and facts as the Office of Health Facility Licensure and Certification  
9 may require. The Office of Health Facility Licensure and Certification may make such terms and  
10 regulations in regard to the conduct of any licensed hospital, center or institution, or part of any  
11 licensed hospital, center or institution, as he or she thinks proper and necessary.

12 (c) The Office of Health Facility Licensure and Certification has authority to investigate  
13 and inspect any licensed hospital, center or institution, or part of any licensed hospital, center or  
14 institution, and the Office of Health Facility Licensure and Certification may revoke the license of

15 any hospital, center or institution, or part of any hospital, center or institution, for good cause after  
16 reasonable notice to the Chief Executive Officer or other person in charge of the hospital, center  
17 or institution.

**ARTICLE 30B. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**

**§5-30B-1. Medicaid Fraud Control Unit; powers and duties.**

1 The Medicaid Fraud Control Unit shall be continued and shall have the following powers  
2 and duties:

3 (1) The investigation and referral for prosecution of all violations of applicable state and  
4 federal laws pertaining to the provision of goods or services under the medical programs of the  
5 state including the Medicaid program.

6 (2) The investigation of abuse, neglect or financial exploitation of residents in board and  
7 care facilities and patients in health care facilities which receive payments under the medical  
8 programs of the state.

9 (3) To coordinate and cooperate with other state programs designed to detect and deter  
10 fraud and abuse in the medical programs of the state.

11 (4) To cooperate with the federal government in all programs designed to detect and deter  
12 fraud and abuse in the medical programs of the state.

13 (5) To cooperate with the federal government to detect and deter fraud and abuse in the  
14 medical programs of the state.

15 (6) To employ and train personnel to achieve the purposes of this article and to employ  
16 legal counsel, investigators, auditors and clerical support personnel and other personnel as are  
17 deemed necessary from time to time to accomplish the purposes herein.

**§5-30B-2. Investigations; procedure.**

1 (a) When the unit has credible information that indicates a person has engaged in an act  
2 or activity which is subject to prosecution under this article, the unit may make an investigation to

3 determine if the act has been committed and, to the extent necessary for that purpose, the  
4 Inspector General, or an employee of the unit designated by the Inspector General, may  
5 administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to  
6 the investigation, including information concerning the existence, description, nature, custody,  
7 condition and location of any book, record, documents or other tangible thing and the identity and  
8 location of persons having knowledge of relevant facts or any matter reasonably calculated to  
9 lead to the discovery of admissible evidence.

10 (b) When the unit has probable cause to believe that a person has engaged in an act or  
11 activity which is subject to prosecution pursuant to this article, or §61-2-29 of this code, either  
12 before, during, or after an investigation pursuant to this section, the Inspector General, or an  
13 employee of the unit designated by the Inspector General, may request search warrants and  
14 present and swear or affirm criminal complaints.

15 (c) If documents necessary to an investigation of the unit shall appear to be located outside  
16 the state, such documents shall be made available by the person or entity within the jurisdiction  
17 of the state having control over such documents either at a convenient location within the state  
18 or, upon payment of reasonable and necessary expenses to the unit for transportation and  
19 inspection, at the place outside the state where such documents are maintained.

20 (d) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure  
21 of a person to give testimony without lawful excuse and upon reasonable notice to all persons  
22 affected thereby, the unit may apply to the circuit court of the county in which compliance is sought  
23 for appropriate orders to compel obedience with the provisions of this section.

24 (e) The unit shall not make public the name or identity of a person whose acts or conduct  
25 is investigated pursuant to this section or the facts disclosed in the investigation except as the  
26 same may be used in any legal action or enforcement proceeding brought pursuant to this article  
27 or any other provision of this code.

**§5-30B-3. Agency lawyers assisting prosecutors.**

1 Attorneys employed and assigned to the Medicaid Fraud Control Unit created by the  
2 provisions of this article shall cooperate in investigations to deter fraud and abuse which are  
3 conducted by the Inspector General created pursuant to the provisions of this chapter and shall  
4 assist the Attorney General and prosecuting attorneys in the prosecution of criminal violations of  
5 this article as provided §5-30-8.

**§5-30B-4. Applications for medical assistance; false statements or representations; criminal penalties.**

1 (a) A person shall not knowingly make or cause to be made a false statement or false  
2 representation of any material fact in an application for medical assistance under the medical  
3 programs of the department.

4 (b) A person shall not knowingly make or cause to be made a false statement or false  
5 representation of any material fact necessary to determine the rights of any other person to  
6 medical assistance under the medical programs of the department.

7 (c) A person shall not knowingly and intentionally conceal or fail to disclose any fact with  
8 the intent to obtain medical assistance under the medical programs of the department to which  
9 the person or any other person is not entitled.

10 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty  
11 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than  
12 one nor more than ten years, or shall be fined not to exceed \$10,000 or both fined and imprisoned.

**§5-30B-5. Bribery; false claims; conspiracy; criminal penalties.**

1 (a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including  
2 any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of  
3 moneys from the Medical Services Fund established pursuant to this chapter, which is not  
4 authorized by applicable laws or rules and regulations.

5 (b) A person shall not make or present or cause to be made or presented to the department  
6 a claim under the medical programs of the department knowing the claim to be false, fraudulent  
7 or fictitious.

8 (c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid  
9 another to obtain the payment or allowance of a false, fraudulent or fictitious claim under the  
10 medical programs of the department.

11 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty  
12 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than  
13 one nor more than ten years or shall be fined not to exceed \$10,000, or both fined and imprisoned.

**§5-30B-6. Venue for criminal offenses.**

1 In addition to other venues permitted by state law, a criminal prosecution pursuant to this  
2 article may be commenced in the circuit court of Kanawha County or of any county in which:

3 (1) The defendant is conducting business; or

4 (2) Any of the conduct constituting a violation of any provision of this article has occurred.

5 (a) Any person, firm, corporation or other entity which willfully, by means of a false  
6 statement or representation, or by concealment of any material fact, or by other fraudulent  
7 scheme, devise or artifice on behalf of himself, herself, it's or others, obtains or attempts to obtain  
8 benefits or payments or allowances under the medical programs of the department to which he  
9 or she is not entitled, or, in a greater amount than that to which he or she is entitled, shall be liable  
10 to the department in an amount equal to three times the amount of such benefits, payments or  
11 allowances to which he or she is not entitled, and shall be liable for the payment of reasonable  
12 attorney fees and all other fees and costs of litigation.

13 (b) No criminal action or indictment need be brought against any person, firm, corporation  
14 or other entity as a condition for establishing civil liability hereunder.

15 (c) A civil action pursuant to this section may be prosecuted and maintained on behalf of  
16 the department by the Attorney General and the Attorney General's assistants or a prosecuting

17 attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed  
18 by the department to provide such representation.

**§5-30B-7. Liability of employees of the department.**

1 There is no civil liability on the part of, and no cause of action shall arise against the  
2 Inspector General, the department, its employees or its agents for any action taken by them in  
3 good faith and in the lawful performance of their powers and duties pursuant to this article.

**§5-30B-8. Licensing of vehicles for use by the Medicaid fraud control unit.**

1 For purposes of the responsibilities assigned the unit pursuant to this article, personnel of  
2 the unit shall be permitted to operate vehicles owned or leased for the state displaying Class A  
3 registration plates.

**§5-30B-9. Remedies and penalties not exclusive.**

1 The remedies and penalties provided in this article governing the operation of the medical  
2 programs of the department are in addition to those remedies and penalties provided elsewhere  
3 by law.

**ARTICLE 30C. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND  
EMPLOYMENT SCREENING ACT.**

**§5-30C-1. Definitions.**

1 As used in this article:

2 (1) "Applicant" means an individual who is being considered for employment or  
3 engagement with a covered provider or covered contractor.

4 (2) "Background check" means a prescreening of registries specified by the secretary by  
5 rule and a fingerprint-based search of state and federal criminal history record information.

6 (3) "Covered contractor" means an individual or entity, including their employees and  
7 subcontractors, that contracts with a covered provider to perform services that include any direct  
8 access services.

9           (4) “Covered provider” means the following facilities or providers:

10           (i) A skilled nursing facility;

11           (ii) A nursing facility;

12           (iii) A home health agency;

13           (iv) A provider of hospice care;

14           (v) A long-term care hospital;

15           (vi) A provider of personal care services;

16           (vii) A provider of adult day care;

17           (viii) A residential care provider that arranges for, or directly provides, long-term care  
18 services, including an assisted living facility;

19           (ix) An intermediate care facility for individuals with intellectual disabilities; and

20           (x) Any other facility or provider required to participate in the West Virginia Clearance for  
21 Access: Registry and Employment Screening program as determined by the secretary by  
22 legislative rule.

23           (5) “Direct access” means physical contact with a resident, member, beneficiary or client  
24 of a covered provider, or access to their property, personally identifiable information, protected  
25 health information or financial information.

26           (6) “Direct access personnel” means an individual who has direct access by virtue of  
27 ownership, employment, engagement or agreement with a covered provider or covered  
28 contractor. Direct access personnel does not include volunteers or students performing irregular  
29 or supervised functions or contractors performing repairs, deliveries, installations or similar  
30 services for the covered provider. The secretary shall determine by legislative rule whether the  
31 position in question involves direct access.

32           (7) “Disqualifying offense” means:

33           (A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

34 (B) A conviction of any other crime specified by the secretary in rule, which shall include  
35 crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses and  
36 financial crimes.

37 (8) "Negative finding" means a finding in the prescreening that excludes an applicant from  
38 direct access personnel positions.

39 (9) "Notice of ineligibility" means a notice pursuant to section three of this article that the  
40 secretary's review of the applicant's criminal history record information reveals a disqualifying  
41 offense.

42 (10) "Prescreening" means a mandatory search of databases and registries specified by  
43 the secretary in legislative rule for exclusions and licensure status prior to the submission of  
44 fingerprints for a criminal history record information check.

45 (11) "Rap back" means the notification to the department when an individual who has  
46 undergone a fingerprint-based, state or federal criminal history record information check has a  
47 subsequent state or federal criminal history event.

48 (12) "State Police" means the West Virginia State Police Criminal Identification Bureau.

**§5-30C-2. Background check program for covered providers and covered contractors.**

1 (a) The Inspector General shall create and implement a background check program to  
2 facilitate the processing and analysis of the criminal history and background of applicants to  
3 covered providers and covered contractors with direct access. This program shall be called the  
4 West Virginia Clearance for Access: Registry and Employment Screening.

5 (b) The purpose of the program is to protect West Virginia's vulnerable populations by  
6 requiring registry and criminal background checks for all direct access personnel of covered  
7 providers and covered contractors.

8 (c) The program shall include:

9 (1) A centralized Internet-based system of registries to allow covered providers and  
10 covered contractors to perform a mandatory prescreening of applicants;

11 (2) Fingerprint-based state and federal criminal background checks on all direct access  
12 personnel; and

13 (3) An integrated Rap Back Program with the State Police to allow retention of fingerprints  
14 and updates of state and federal criminal information on all direct access personnel until such  
15 time as the individual is no longer employed or engaged by the covered provider or covered  
16 contractor.

17 (d) The department shall notify applicants subject to a criminal history record check that  
18 their fingerprints shall be retained by the State Police Criminal Identification Bureau and the  
19 Federal Bureau of Investigation.

**§5-30C-3. Prescreening and criminal background checks.**

1 (a) Except as otherwise permitted in this article, the covered provider or covered contractor  
2 may not employ or engage an applicant prior to completing the background check process.

3 (b) If the applicant has a negative finding on any required prescreening registry or  
4 database, the employer shall notify the individual of such finding.

5 (c) If the applicant has a negative finding on any required prescreening registry or  
6 database, that individual may not immediately be engaged by a covered provider or covered  
7 contractor. However, that individual or the employer may apply for a variance pursuant to section  
8 five of this article.

9 (d) If the applicant does not have a negative finding in the prescreening process, the  
10 applicant shall submit to fingerprinting for a state and federal criminal history record information  
11 check.

12 (e) The State Police shall notify the Inspector General of the results of the criminal history  
13 record information check.

14 (f) If the Inspector General's review of the criminal history record information reveals that  
15 the applicant does not have a disqualifying offense, the Inspector General shall provide written  
16 notice to the covered provider or covered contractor that the individual may be engaged.

**§5-30C-4. Notice of ineligibility; prohibited participation as direct access personnel.**

1        (a) If the Inspector General's review of the applicant's criminal history record information  
2 reveals a disqualifying offense, the Inspector General shall provide written notice to the covered  
3 provider or covered contractor advising that the applicant is ineligible for work. The Inspector  
4 General may not disseminate the criminal history record information.

5        (b) The covered provider or covered contractor may not engage an applicant with a  
6 disqualifying offense as direct access personnel. If the applicant has been provisionally employed  
7 pursuant to section six of this article, the employer shall terminate the provisional employment  
8 upon receipt of the notice.

**§5-30C-5. Variance; appeals.**

1        (a) If the prescreening process reveals a negative finding, or if the Inspector General  
2 issues a notice of ineligibility, the applicant, or the employer on the applicant's behalf, may file a  
3 written request for a variance with the Inspector General not later than thirty days after the date  
4 of the notice required by sections three or four of this article.

5        (b) The Inspector General may grant a variance if:

6        (1) Mitigating circumstances surrounding the negative finding or disqualifying offense is  
7 provided; and

8        (2) The Inspector General finds that the individual will not pose a danger or threat to  
9 residents, members and their property.

10       (c) The Inspector General shall establish in legislative rule factors that qualify as mitigating  
11 circumstances.

12       (d) The Inspector General shall mail to the applicant and the covered provider or covered  
13 contractor a written decision within ninety days of receipt of the request indicating whether a  
14 variance has been granted or denied.

15       (e) If an applicant believes that their criminal history record information within this state is  
16 incorrect or incomplete, they may challenge the accuracy of such information by writing to the

17 State Police for a personal review. However, if the discrepancies are at the charge or final  
18 disposition level, the applicant must address this with the court or arresting agency that submitted  
19 the record to the State Police.

20 (f) If an applicant believes that their criminal history record information outside this state  
21 is incorrect or incomplete, they may appeal the accuracy of such information by contacting the  
22 Federal Bureau of Investigation for instructions.

23 (g) If any changes, corrections, or updates are made in the criminal history record  
24 information, the State Police shall notify the Inspector General that the applicant has appealed  
25 the accuracy of the criminal history records and provide the Inspector General with the updated  
26 results of the criminal history record information check, which the Inspector General shall review  
27 de novo in accordance with the provisions of this article.

**§5-30C-6. Provisional employment pending completion of background check.**

1 (a) A covered provider or covered contractor may permit an applicant to work on a  
2 provisional basis for not more than sixty days pending notification from the Inspector General  
3 regarding the results of the criminal background check if:

4 (1) The applicant is subject to direct on-site supervision, as specified in rule by the  
5 Inspector General, during the course of the provisional period; and

6 (2) In a signed statement the applicant:

7 (A) Affirms that he or she has not committed a disqualifying offense;

8 (B) Acknowledges that a disqualifying offense reported in the required criminal history  
9 record information check shall constitute good cause for termination; and

10 (C) Acknowledges that the covered provider or covered contractor may terminate the  
11 individual if a disqualifying offense is reported in the background check.

12 (b) Provisional employees who have requested a variance shall not be required to sign  
13 such a statement. A covered provider or covered contractor may continue to employ an applicant

14 if an applicant applies for a variance of his or her fitness determination until the variance is  
15 resolved.

**§5-30C-7. Clearance for subsequent employment.**

1 (a) An applicant is not required to submit to fingerprinting and a criminal background check  
2 if:

3 (1) The individual previously submitted to fingerprinting and a full criminal background  
4 check as required by this article;

5 (2) The prior criminal background check confirmed that the individual did not have a  
6 disqualifying offense or the individual received prior approval from the Inspector General to work  
7 for or with the same type of covered provider or covered contractor; and

8 (3) The Rap Back Program has not identified any criminal activity that constitutes a  
9 disqualifying offense.

10 (b) The Inspector General shall provide notice of prior clearance for direct access status  
11 upon request by a subsequent covered provider or covered contractor.

**§5-30C-8. Fees.**

1 In order to enforce the requirements and intent of this article, the following fees may be  
2 charged:

3 (1) The State Police may assess a fee to applicants, covered providers or covered  
4 contractors for conducting the criminal background check and for collecting and retaining  
5 fingerprints for Rap Back as authorized under this article.

6 (2) The Inspector General may assess a fee to applicants, covered providers or covered  
7 contractors for the maintenance of the Internet-based system required by this article. The  
8 assessment shall be deposited into a special revenue account within the State Treasurer's office  
9 to be known as the Criminal Background Administration Account. Expenditures from the account  
10 shall be made by the Inspector General for purposes set forth in this article and are authorized

11 from collections. The account shall be administered by the Inspector General and may not be  
12 deemed a part of the general revenue of the state.

**§5-30C-9. Rules; penalties; confidentiality; immunity.**

1 (a) The Inspector General shall propose rules for legislative approval in accordance with  
2 article three, chapter twenty-nine-a of this code to implement the provisions of this article. The  
3 Inspector General may promulgate emergency rules, if justified, pursuant to section fifteen, article  
4 three, chapter twenty-nine-a of this code as may be required.

5 (b) Failure of a covered provider or covered contractor to ensure proper completion of the  
6 background check process for each individual employed as direct access personnel may result in  
7 the imposition of monetary civil penalties. In addition, engaging individuals knowing that they are  
8 ineligible to work may subject the employer to monetary civil penalties.

9 (c) The Inspector General shall treat and maintain any criminal background search  
10 information obtained under this article as confidential. The Inspector General shall limit the use of  
11 records solely to the purposes authorized in this article. The criminal history record information in  
12 the custody of the Inspector General is not subject to subpoena, other than one issued in a  
13 criminal action or investigation; is confidential by law and privileged; and is not subject to discovery  
14 or admissible in evidence in any private civil action.

15 (d) The Inspector General, the department and its employees are immune from liability,  
16 civil or criminal, that might otherwise be incurred or imposed for good faith conduct in determining  
17 eligibility or granting variances permitted by this article.

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF  
STATE GOVERNMENT.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§5F-1-2. Executive departments created; offices of secretary created.**

1 (a) There are created, within the executive branch of the state government, the following  
2 departments:

- 3 (1) Department of Administration;
- 4 (2) Department of Education and the Arts;
- 5 (3) Department of Environmental Protection;
- 6 (4) Department of Health and Human Resources;
- 7 (5) Effective July 1, 2018, Department of Healthcare Facilities;
- 8 (6) Effective July 1, 2018, Office of the Inspector General;
- 9 ~~(5)~~ (7) Department of Military Affairs and Public Safety;
- 10 ~~(6)~~ (8) Department of Revenue;
- 11 ~~(7)~~ (9) Department of Transportation;
- 12 ~~(8)~~ (10) Department of Commerce; and
- 13 ~~(9)~~ Effective July 1, 2014 (11) Department of Veterans' Assistance.

14 (b) Each department will be headed by a secretary appointed by the Governor with the  
15 advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

16 (c) Effective July 1, 2018, unless the context indicates otherwise, any reference in this  
17 code to the Secretary of the Department of Health and Human Resources shall be and refer to  
18 the secretary of the department which has control over the functions referenced in any section,  
19 article of chapter of this code which had previously been granted to the Secretary of the  
20 Department of Health and Human Resources.

21 (d) Effective July 1, 2018, unless the context indicates otherwise any reference to any  
22 powers, duties, functions or responsibility set forth in this code of the Secretary of the Department  
23 of Health and Human Resources shall transfer and become the powers, duties, functions and  
24 responsibility of the secretary which has either expressly been granted that power, duty, function  
25 or responsibility in any section, article or chapter of this code that power, duty, function or  
26 responsibility would logically be within the Department of Health Care Facilities and over which  
27 the appropriate secretary has control.

**§5F-1-3a. Executive Compensation Commission.**

1           There is ~~hereby created~~ continued an Executive Compensation Commission composed  
2 of three members, one of whom shall be the Secretary of Administration, one of whom shall be  
3 appointed by the Governor from the names of two or more nominees submitted by the President  
4 of the Senate, and one of whom shall be appointed by the Governor from the names of two or  
5 more nominees submitted by the Speaker of the House of Delegates. The names of such  
6 nominees shall be submitted to the Governor by not later than June 1, 2000, and the appointment  
7 of such members shall be made by the Governor by not later than July 1, 2000. The members  
8 appointed by the Governor shall have had significant business management experience at the  
9 time of their appointment and shall serve without compensation other than reimbursement for  
10 their reasonable expenses necessarily incurred in the performance of their commission duties.  
11 For the 2001 regular session of the Legislature and every four years thereafter, the commission  
12 shall review the compensation for cabinet secretaries and other appointed officers of this state,  
13 including, but not limited to, the following: Commissioner, Division of Highways; ~~commissioner,~~  
14 ~~Bureau of Employment Programs;~~ ~~director, Division of Environmental Protection;~~ Executive  
15 Director, WorkForce West Virginia; commissioner, Bureau of Senior Services; director of tourism;  
16 commissioner, division of tax; ~~administrator, division of health;~~ commissioner, Division of  
17 Corrections; director, Division of Natural Resources; superintendent, state police; administrator,  
18 lottery division; director, Public Employees Insurance Agency; administrator, Alcohol Beverage  
19 Control Commission; commissioner, Division of Motor Vehicles; director, Division of Personnel;  
20 Adjutant General; the Executive Director of the Health Care Authority; director, Division of  
21 Rehabilitation Services; executive director, educational broadcasting authority; executive  
22 secretary, Library Commission; chairman and members of the Public Service Commission;  
23 director of emergency services; ~~administrator, division of human services;~~ executive director,  
24 Human Rights Commission; ~~director, division of Veterans Affairs;~~ director, office of miner's health  
25 safety and training; commissioner, Division of Banking; commissioner, division of insurance;

26 commissioner, Division of Culture and History; commissioner, Division of Labor; director,  
27 Prosecuting Attorneys Institute; director, Board of Risk and Insurance Management;  
28 commissioner, oil and gas conservation commission; director, geological and economic survey;  
29 executive director, water development authority; executive director, Public Defender Services;  
30 director, state rail authority; chairman and members of the Parole Board; members, employment  
31 security review board; members, workers' compensation appeal board; chairman, Racing  
32 Commission; executive director, women's commission; and director, hospital finance authority.

33       Following this review, but not later than the twenty-first day of such regular session, the  
34 commission shall submit an executive compensation report to the Legislature to include specific  
35 recommendations for adjusting the compensation for the officers described in this section. The  
36 recommendation may be in the form of a bill to be introduced in each house to amend this section  
37 to incorporate the recommended adjustments.

## **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

### **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

1       (a) The following agencies and boards, including all of the allied, advisory, affiliated or  
2 related entities and funds associated with any agency or board, are incorporated in and  
3 administered as a part of the Department of Administration:

- 4       ~~(1) Building Commission provided in §5-6-1 et seq. of this code;~~  
5       ~~(2)~~ (1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;  
6       ~~(3)~~ (2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;  
7       ~~(4)~~ (3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;  
8       ~~(5)~~ (4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of  
9 this code;  
10       ~~(6)~~ (5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;  
11       ~~(7)~~ (6) Boundary Commission provided in §29-23-1 *et seq.* of this code;  
12       ~~(8)~~ (7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

- 13           ~~(9)~~ (8) Division of Personnel provided in §29-6-1 *et seq.* of this code;
- 14           ~~(40)~~ (9) The West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;
- 15           ~~(44)~~ (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code;
- 16    and
- 17           ~~(42)~~ (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.
- 18           (b) The following agencies and boards, including all of the allied, advisory, affiliated or
- 19    related entities and funds associated with any agency or board, are incorporated in and
- 20    administered as a part of the Department of Commerce:
- 21           (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:
- 22           (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of
- 23    this code; and
- 24           (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.*
- 25    of this code.
- 26           (2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code.
- 27    The following boards are transferred to the Office of Miners' Health, Safety and Training for
- 28    purposes of administrative support and liaison with the Office of the Governor:
- 29           (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
- 30    Committee provided in §22A-6-1 *et seq.* of this code;
- 31           (B) Board of Miner Training, Education and Certification provided in §22A-7-1 *et seq.* of
- 32    this code; and
- 33           (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.
- 34           (3) The West Virginia Development Office provided in §5B-2-1 *et seq.* of this code;
- 35           (4) Division of Natural Resources and Natural Resources Commission provided in §20-1-
- 36    1 *et seq.* of this code;
- 37           (5) Division of Forestry provided in §19-1A-1 *et seq.* of this code;
- 38           (6) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code; and

39 (7) Workforce West Virginia provided in chapter 21A of this code, which includes:

40 (A) Division of Unemployment Compensation;

41 (B) Division of Employment Service;

42 (C) Division of Workforce Development; and

43 (D) Division of Research, Information and Analysis.

44 (8) ~~Division Office~~ of Energy, within the Development Office, provided in §5B-2F-1 *et seq.*

45 of this code.

46 (9) ~~Division of Tourism~~ West Virginia Tourism Office and Tourism Commission provided  
47 in §5B-2I-1 *et seq.* of this code;

48 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is  
49 continued as an independent agency within the executive branch.

50 (d) The Water Development Authority and the Water Development Authority Board  
51 provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the  
52 executive branch.

53 (e) The following agencies and boards, including all of the allied, advisory and affiliated  
54 entities, are transferred to the Department of Environmental Protection for purposes of  
55 administrative support and liaison with the office of the Governor:

56 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

57 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

58 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of  
59 this code;

60 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

61 (5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

62 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

63 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

64 (f) The following agencies and boards, including all of the allied, advisory, affiliated or  
65 related entities and funds associated with any agency or board, are incorporated in and  
66 administered as a part of the Department of Education and the Arts:

- 67 (1) Library Commission provided in §10-1-1 *et seq.* of this code;  
68 (2) Division of Culture and History provided in §29-1-1 *et seq.* of this code; and  
69 (3) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

70 (g) The Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code is part  
71 of the Department of Education and the Arts for the purposes of administrative support and liaison  
72 with the office of the Governor.

73 (h) Effective July 1, 2018, the following agencies and boards, including all of the allied,  
74 advisory, affiliated or related entities and funds associated with any agency or board, are  
75 incorporated in and administered as a part of the Department of Health and Human Resources:

- 76 ~~(1) Human Rights Commission provided in article eleven, chapter five of this code;~~  
77 ~~(2) Division of Human Services provided in article two, chapter nine of this code;~~  
78 ~~(3) Bureau for Public Health provided in article one, chapter sixteen of this code;~~  
79 ~~(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory~~  
80 ~~Council provided in article four-c, chapter sixteen of this code;~~  
81 ~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;~~  
82 ~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of~~  
83 ~~this code;~~  
84 ~~(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and~~  
85 ~~(8) (1) The Bureau for Child Support Enforcement Division provided in §48-1-1 *et seq.* of~~  
86 ~~this code;~~  
87 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;  
88 (3) Bureau for Medical Services provided in §9-1-1 *et seq.* of this code;  
89 (4) Bureau for Behavioral Health provided in §27-2-1 *et seq.* of this code;

90 (5) Bureau for Child and Family Services provided in §49-1-1 et seq. of this code;

91 (6) The Office of Drug Control Policy provided in §16-5T-1 et seq. of this code;

92 (7) Health Care Authority provided in §16-29B-1 et seq. of this code;

93 (8) Commission on Intellectual Disability provided in §29-15-1 et seq. of this code;

94 (9) Human Rights Commission provided in §5-11-1 et seq. of this code;

95 (10) Women's Commission provided in §29-20-1 et seq. of this code;

96 (11) Children's Health Insurance Program provided in §5-16B-1 et seq. of this code.

97 (i) Effective July 1, 2018, the following state owned and operated facilities, including all of

98 the allied, advisory, affiliated or related entities and funds associated with any facility, are

99 incorporated in and administered as a part of the Department of Healthcare Facilities:

100 (1) The Welch Community Hospital;

101 (2) William R. Sharpe, Jr. Hospital;

102 (3) Mildred-Mitchell Bateman Hospital;

103 (4) Hopemont Hospital;

104 (5) John Manchin Health Care Center;

105 (6) Lakin Hospital;

106 (7) Jackie Withrow Hospital; and

107 (8) The West Virginia Children's Home.

108 (j) Effective July 1, 2018, the following agencies and boards, including all of the allied,

109 advisory, affiliated or related entities and funds associated with any facility, are incorporated in

110 and administered as a part of the Office of the Inspector General:

111 (1) The Office of Health Facility Licensure as set forth in §5-30A-1 et seq.;

112 (2) The Medicaid Fraud Unit as set forth in §5-30B-1 et seq.; and

113 (3) Clearance for Access: Registry and Employment Screening Act as set forth in §5-30C-

114 1 et seq. of this code.

115           (†) (k) The following agencies and boards, including all of the allied, advisory, affiliated or  
116 related entities and funds associated with any agency or board, are incorporated in and  
117 administered as a part of the Department of Military Affairs and Public Safety:

- 118           (1) Adjutant General's Department provided in §15-1A-1 *et seq.* of this code;
- 119           (2) State Armory Board provided in §15-6-1 *et seq.* of this code;
- 120           (3) Military Awards Board provided in §15-1G-1 *et seq.* of this code;
- 121           (4) West Virginia State Police provided in §15-2-1 *et seq.* of this code;
- 122           (5) Division of Homeland Security and Emergency Management and Disaster Recovery  
123 Board provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided  
124 in §15-5A-1 *et seq.* of this code;
- 125           (6) Sheriffs' Bureau provided in §15-8-1 *et seq.* of this code;
- 126           (7) Division of Justice and Community Services provided in §15-9A-1 *et seq.* of this code;
- 127           (8) Division of Corrections provided in chapter 25 of this code;
- 128           (9) Fire Commission provided in §29-3-1 *et seq.* of this code;
- 129           (10) Regional Jail and Correctional Facility Authority provided in §31-20-1 *et seq.* of this  
130 code; and
- 131           (11) Board of Probation and Parole provided in §62-12-1 *et seq.* of this code.

132           (†) (l) The following agencies and boards, including all of the allied, advisory, affiliated or  
133 related entities and funds associated with any agency or board, are incorporated in and  
134 administered as a part of the Department of Revenue:

- 135           (1) Tax Division provided in chapter 11 of this code;
- 136           (2) Racing Commission provided in §19-23-1 *et seq.* of this code;
- 137           (3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;
- 138           (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;
- 139           (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of  
140 this code and §60-2-1 *et seq.* of this code;

141 (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this  
142 code;

143 (7) Lending and Credit Rate Board provided in chapter 47A of this code;

144 (8) Division of ~~Banking~~ Financial Institutions provided in §31A-2-1 *et seq.* of this code;

145 (9) The State Budget Office provided in ~~article two of this chapter~~ §11B-2-1 *et seq.* of this  
146 code;

147 (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

148 (11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

149 (12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

150 ~~(k)~~ (m) The following agencies and boards, including all of the allied, advisory, affiliated or  
151 related entities and funds associated with any agency or board, are incorporated in and  
152 administered as a part of the Department of Transportation:

153 (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

154 (2) Parkways, ~~Economic Development and Tourism~~ Authority provided in §17-16A-1 *et*  
155 *seq.* of this code;

156 (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

157 (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

158 (5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

159 (6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

160 (7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

161 ~~(j)~~ (n) ~~Effective July 1, 2011,~~ The Veterans' Council provided in §9A-1-1 *et seq.* of this  
162 code, including all of the allied, advisory, affiliated or related entities and funds associated with it,  
163 is incorporated in and administered as a part of the Department of Veterans' Assistance.

164 ~~(m)~~ (o) Except for powers, authority and duties that have been delegated to the secretaries  
165 of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the

166 powers, authority and duties of each administrator and agency are not affected by the enactment  
167 of this chapter.

168 ~~(n)~~ (p) Except for powers, authority and duties that have been delegated to the secretaries  
169 of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority and  
170 duties of boards and the membership, terms and qualifications of members of the boards are not  
171 affected by the enactment of this chapter. All boards that are appellate bodies or are independent  
172 decision makers shall not have their appellate or independent decision-making status affected by  
173 the enactment of this chapter.

174 ~~(o)~~ (q) Any department previously transferred to and incorporated in a department by prior  
175 enactment of this section means a division of the appropriate department. Wherever reference is  
176 made to any department transferred to and incorporated in a department created in §5F-1-2 of  
177 this code, the reference means a division of the appropriate department and any reference to a  
178 division of a department so transferred and incorporated means a section of the appropriate  
179 division of the department.

180 ~~(p)~~ (r) When an agency, board or commission is transferred under a bureau or agency  
181 other than a department headed by a secretary pursuant to this section, that transfer is solely for  
182 purposes of administrative support and liaison with the Office of the Governor, a department  
183 secretary or a bureau. Nothing in this section extends the powers of department secretaries under  
184 §5F-2-2 of this code to any person other than a department secretary and nothing limits or  
185 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this  
186 code.

**§ 5F-2-2. Power and authority of secretary of each department.**

1 (a) Notwithstanding any other provision of this code to the contrary, the secretary of each  
2 department shall have plenary power and authority within and for the department to:

3 (1) Employ and discharge within the office of the secretary employees as may be  
4 necessary to carry out the functions of the secretary, which employees shall serve at the will and  
5 pleasure of the secretary;

6 (2) Cause the various agencies and boards to be operated effectively, efficiently and  
7 economically and develop goals, objectives, policies and plans that are necessary or desirable  
8 for the effective, efficient and economical operation of the department;

9 (3) Eliminate or consolidate positions, other than positions of administrators or positions  
10 of board members and name a person to fill more than one position;

11 (4) Transfer permanent state employees between departments in accordance with the  
12 provisions of §5F-2-7 of this code;

13 (5) Delegate, assign, transfer or combine responsibilities or duties to or among employees,  
14 other than administrators or board members;

15 (6) Reorganize internal functions or operations;

16 (7) Formulate comprehensive budgets for consideration by the Governor and transfer  
17 within the department funds appropriated to the various agencies of the department which are not  
18 expended due to cost savings resulting from the implementation of the provisions of this chapter:

19 *Provided*, That no more than twenty-five percent of the funds appropriated to any one agency or  
20 board may be transferred to other agencies or boards within the department: *Provided, however*,

21 That no funds may be transferred from a special revenue account, dedicated account, capital  
22 expenditure account or any other account or funds specifically exempted by the Legislature from

23 transfer, except that the use of appropriations from the state Road Fund transferred to the office  
24 of the Secretary of the Department of Transportation is not a use other than the purpose for which

25 the funds were dedicated and is permitted: *Provided further*, That if the Legislature by subsequent  
26 enactment consolidates agencies, boards or functions, the appropriate secretary may transfer the

27 funds formerly appropriated to the agency, board or function in order to implement consolidation.

28 The authority to transfer funds under this section shall expire on June 30, 2010;

29           (8) Enter into contracts or agreements requiring the expenditure of public funds and  
30 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the  
31 powers granted to the secretary to enter into contracts or agreements and to make expenditures  
32 or obligations of public funds under this provision shall not exceed or be interpreted as authority  
33 to exceed the powers granted by the Legislature to the various commissioners, directors or board  
34 members of the various departments, agencies or boards that comprise and are incorporated into  
35 each secretary's department under this chapter;

36           (9) Acquire by lease or purchase property of whatever kind or character and convey or  
37 dispose of any property of whatever kind or character as authorized by law: *Provided*, That the  
38 powers granted to the secretary to lease, purchase, convey or dispose of such property shall be  
39 exercised in accordance with the provisions of §5A-3-1 *et seq.*, §5A-10-1 *et seq.* and §5A-11-1 *et*  
40 *seq.* of this code: *Provided, however*, That the powers granted to the secretary to lease, purchase,  
41 convey or dispose of such property shall not exceed or be interpreted as authority to exceed the  
42 powers granted by the Legislature to the various commissioners, directors or board members of  
43 the various departments, agencies or boards that comprise and are incorporated into each  
44 secretary's department under this chapter;

45           (10) Conduct internal audits;

46           (11) Supervise internal management;

47           (12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make  
48 effective the powers, authority and duties granted and imposed by the provisions of this chapter  
49 in accordance with the provisions of chapter 29A of this code;

50           (13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2  
51 of this code, by any administrator, agency or board within the department. Without written  
52 consent, no proposal for a rule shall have any force or effect;

53           (14) Delegate to administrators the duties of the secretary as the secretary may deem  
54 appropriate, from time to time, to facilitate execution of the powers, authority and duties delegated  
55 to the secretary; and

56           (15) Take any other action involving or relating to internal management not otherwise  
57 prohibited by law.

58           (b) The secretaries of the departments hereby created shall engage in a comprehensive  
59 review of the practices, policies and operations of the agencies and boards within their  
60 departments to determine the feasibility of cost reductions and increased efficiency which may be  
61 achieved therein, including, but not limited to, the following:

62           (1) The elimination, reduction and restriction of the state's vehicle or other transportation  
63 fleet;

64           (2) The elimination, reduction and restriction of state government publications, including  
65 annual reports, informational materials and promotional materials;

66           (3) The termination or rectification of terms contained in lease agreements between the  
67 state and private sector for offices, equipment and services;

68           (4) The adoption of appropriate systems for accounting, including consideration of an  
69 accrual basis financial accounting and reporting system;

70           (5) The adoption of revised procurement practices to facilitate cost-effective purchasing  
71 procedures, including consideration of means by which domestic businesses may be assisted to  
72 compete for state government purchases; and

73           (6) The computerization of the functions of the state agencies and boards.

74           (c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the  
75 powers granted to the secretaries herein shall be exercised by the secretary if to do so would  
76 violate or be inconsistent with the provisions of any federal law or regulation, any federal-state

77 program or federally delegated program or jeopardize the approval, existence or funding of any  
78 program.

79 (d) The layoff and recall rights of employees within the classified service of the state as  
80 provided in §29-6-10(5) and §29-6-10(6), of this code shall be limited to the organizational unit  
81 within the agency or board and within the occupational group established by the classification and  
82 compensation plan for the classified service of the agency or board in which the employee was  
83 employed prior to the agency or board's transfer or incorporation into the department: *Provided,*  
84 That the employee shall possess the qualifications established for the job class. The duration of  
85 recall rights provided in this subsection shall be limited to two years or the length of tenure,  
86 whichever is less. Except as provided in this subsection, nothing contained in this section shall  
87 be construed to abridge the rights of employees within the classified service of the state as  
88 provided in §29-6-10 and §29-6-10a of this code.

89 ~~(e) Notwithstanding any other provision of this code to the contrary, the secretary of each~~  
90 ~~department with authority over programs which have an impact on the delivery of health care~~  
91 ~~services in the state or are payors for health care services or are payors for prescription drugs,~~  
92 ~~including, but not limited to, the Public Employees Insurance Agency, the Department of Health~~  
93 ~~and Human Resources, the Bureau of Senior Services, the Children's Health Insurance Program,~~  
94 ~~the Health Care Authority, the Office of the Insurance Commissioner, the Division of Corrections,~~  
95 ~~the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state~~  
96 ~~colleges and universities, public hospitals, state or local institutions including nursing homes and~~  
97 ~~veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau~~  
98 ~~for Medical Services and other programs, which have an impact on the delivery of health care~~  
99 ~~services or are payors for health care services or are payors for prescription drugs, in West~~  
100 ~~Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning~~  
101 ~~established pursuant to article twenty-nine-h, chapter sixteen of this code for the purpose of~~

102 ~~improving the health care delivery services in West Virginia for any program over which they have~~  
103 ~~authority.~~

**ARTICLE 3. FUTURE REORGANIZATION; SEVERABILITY.**

**§5F-3-2. Operative dates.**

1 The provisions of this chapter shall become operative as to any department created in  
2 §5F-1-2 of this code ~~upon the appointment of the secretary of such department~~ on July 1, 2018.

**CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

**ARTICLE 7. COMPENSATION AND ALLOWANCES.**

**§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers  
and salaries of officers.**

1 (a) Each of the following appointive state officers named in this subsection shall be  
2 appointed by the Governor, by and with the advice and consent of the Senate. Each of the  
3 appointive state officers serves at the will and pleasure of the Governor for the term for which the  
4 Governor was elected and until the respective state officers' successors have been appointed  
5 and qualified. Each of the appointive state officers are subject to the existing qualifications for  
6 holding each respective office and each has and is hereby granted all of the powers and authority  
7 and shall perform all of the functions and services heretofore vested in and performed by virtue  
8 of existing law respecting each office.

9 The annual salary of each named appointive state officer is as follows:

10 Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections,  
11 \$80,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police,  
12 \$85,000; Commissioner, Division of ~~Banking~~ Financial Institutions, \$75,000; Commissioner,  
13 Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission,  
14 \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights  
15 Commission, \$55,000; Commissioner, Division of Labor, \$70,000; ~~prior to July 1, 2011, Director,~~  
16 ~~Division of Veterans Affairs, \$65,000;~~ Chairperson, Board of Parole, \$55,000; members, Board of

17 Parole, \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner,  
18 Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary  
19 as follows: Health and Human Resources, ~~\$95,000: *Provided, That effective July 1, 2013, the*~~  
20 ~~Secretary of the Department of Health and Human Resources shall be paid up to \$175,000;~~  
21 Healthcare Facilities, up to \$95,000; Transportation, \$95,000: *Provided, however,* That if the  
22 same person is serving as both the Secretary of Transportation and the Commissioner of  
23 Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety,  
24 \$95,000; Administration, \$95,000; ~~Education and the Arts, \$95,000~~; Commerce, \$95,000;  
25 Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further,* That  
26 any officer specified in this subsection whose salary is increased by more than \$5,000 as a result  
27 of the amendment and reenactment of this section during the 2011 regular session of the  
28 Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning  
29 July 1, 2011, up to the maximum salary provided in this subsection.

30 (b) Each of the state officers named in this subsection shall continue to be appointed in  
31 the manner prescribed in this code and shall be paid an annual salary as follows:

32 Director, Board of Risk and Insurance Management, \$80,000; Director, Division of  
33 Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director,  
34 Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director,  
35 Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute,  
36 \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of  
37 Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital  
38 Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service  
39 Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of  
40 Forestry, \$75,000; Director, Division of Juvenile Services, \$80,000; Executive Director, Regional  
41 Jail and Correctional Facility Authority, \$80,000 and Executive Director of the Health Care  
42 Authority, \$80,000.

43 (c) Each of the following appointive state officers named in this subsection shall be  
44 appointed by the Governor, by and with the advice and consent of the Senate. Each of the  
45 appointive state officers serves at the will and pleasure of the Governor for the term for which the  
46 Governor was elected and until the respective state officers' successors have been appointed  
47 and qualified. Each of the appointive state officers are subject to the existing qualifications for  
48 holding each respective office and each has and is hereby granted all of the powers and authority  
49 and shall perform all of the functions and services heretofore vested in and performed by virtue  
50 of existing law respecting each office.

51 The annual salary of each named appointive state officer shall be as follows:

52 Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director,  
53 Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency  
54 Management, \$65,000; and Adjutant General, \$125,000.

55 (d) No increase in the salary of any appointive state officer pursuant to this section may  
56 be paid until and unless the appointive state officer has first filed with the State Auditor and the  
57 Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General,  
58 certifying that his or her spending unit is in compliance with any general law providing for a salary  
59 increase for his or her employees. The Attorney General shall prepare and distribute the form to  
60 the affected spending units.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.**

#### **§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.**

1 This article shall, without reference to any other statute or charter provision, be deemed  
2 full authority for the acquisition, construction, establishment, extension, equipment, additions,  
3 betterment, improvement, repair, maintenance and operation of or to a waterworks or electric

4 power system or for the construction of any additions, betterments, improvements, repairs,  
5 maintenance or operation of or to an existing electric power system as herein provided and for  
6 the issuance and sale of the bonds or the alternative methods of financing by this article  
7 authorized, and shall be construed as an additional and alternative method therefor and for the  
8 financing thereof, and no petition, referendum or election or other or further proceeding with  
9 respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of  
10 financing under the provisions of this article and no publication of any resolution, ordinance, order,  
11 notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or  
12 the alternative methods of financing shall be required, except as prescribed by this article, any  
13 provisions of other statutes of the state to the contrary notwithstanding: *Provided*, That all  
14 functions, powers and duties of the ~~state division of health~~ Department of Health and Human  
15 Resources shall remain unaffected by this article. This article shall be construed as cumulative  
16 authority for any undertaking herein authorized, and shall not be construed to repeal any existing  
17 laws with respect thereto.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 10. DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

#### **RESTRUCTURING.**

##### **§9-10-1. Legislative findings.**

1 (a) The Legislature finds that it is necessary to reorganize the West Virginia Department  
2 of Health and Human Resources. The department was first created as the state department of  
3 public assistance by chapter one, Acts of the Legislature, first extraordinary session, 1936, and  
4 later reconstituted as the state department of welfare by chapter one hundred ten, Acts of the  
5 Legislature, regular session, 1961.

6 (b) The Legislature finds that the state provides a number of assistance programs which  
7 are established with the purpose of helping the citizens of the state who through the misfortunes  
8 of life are in need of assistance and encouragement. These services consist of monetary and

9 economic assistance, medical assistance, services available to families and children in distress  
10 and regulation of healthcare and medical services.

11 (c) The department was created to provide these services, however, the department and  
12 its bureaus has grown to a size that inhibits transparency to the legislature. This growth has  
13 resulted in the delivery of services to the residents of this state that need evaluated to determine  
14 their effectiveness and continued appropriation.

**§9-10-2. Reorganization; effective date; transition plans.**

1 (a) Effective July 1, 2018, the Department of Healthcare Facilities; and the Office of the  
2 Inspector General are removed from the organization of the Department of Health and Human  
3 Resources. Each department shall have the entities prescribed to it as set forth in §5F-2-1 et  
4 seq. and elsewhere in this code. The employees of the Department of Healthcare Facilities and  
5 the Office of the Inspector General are transferred to and are under the control of the newly  
6 created departments.

7 (b) The Secretary of the Department of Health and Human Resources shall develop a plan  
8 with the Secretary of the Department of Health Care Facilities to support the administrative  
9 functions of the Department of Health Care Facilities. These administrative services include:  
10 fiscal, legal, personnel, purchasing, information technology, and any other services as determined  
11 by the Secretaries to try not duplicate services.

12 (c) The Department of Health and Human Resources shall report biannually to the  
13 Legislative Oversight Commission on Health and Human Resources Accountability on the status  
14 of the internal reorganization transition.

**CHAPTER 15. PUBLIC SAFETY.**

**ARTICLE 12. SEX OFFENDER REGISTRATION ACT.**

**§15-12-2a. Court determination of sexually violent predator.**

1 (a) The circuit court that has sentenced a person for the commission of a sexually violent  
2 offense or that has entered a judgment of acquittal of a charge of committing a sexually violent

3 offense in which the defendant has been found not guilty by reason of mental illness, mental  
4 retardation or addiction shall make a determination whether:

5 (1) A person is a sexually violent predator; or

6 (2) A person is not a sexually violent predator.

7 (b) A hearing to make a determination as provided in subsection (a) of this section is a  
8 summary proceeding, triable before the court without a jury.

9 (c) A proceeding seeking to establish that a person is a sexually violent predator is initiated  
10 by the filing of a written pleading by the prosecuting attorney. The pleading shall describe the  
11 record of the judgment of the court on the person's conviction or finding of not guilty by reason of  
12 mental illness, mental retardation or addiction of a sexually violent offense and shall set forth a  
13 short and plain statement of the prosecutor's claim that the person suffers from a mental  
14 abnormality or personality disorder that makes the person likely to engage in predatory sexually  
15 violent offenses.

16 (d) Prior to making a determination pursuant to the provisions of this section, the  
17 sentencing court may order a psychiatric or other clinical examination and, after examination, may  
18 further order a period of observation in an appropriate facility within this state designated by the  
19 court after consultation with the ~~Director of the Division of Health~~ Secretary of the Department of  
20 Health and Human Resources.

21 (e) Prior to making a determination pursuant to the provisions of this section, the  
22 sentencing court shall request and receive a report by the board established pursuant to §15-12-  
23 2b of this code. The report shall set forth the findings and recommendation of the board on the  
24 issue of whether the person is a sexually violent predator.

25 (f) At a hearing to determine whether a person is a sexually violent predator, the person  
26 shall be present and shall have the right to be represented by counsel, introduce evidence and  
27 cross-examine witnesses. The offender shall have access to a summary of the medical evidence  
28 to be presented by the state. The offender shall have the right to an examination by an

29 independent expert of his or her choice and testimony from the expert as a medical witness on  
30 his or her behalf. At the termination of the hearing the court shall make a finding of fact upon a  
31 preponderance of the evidence as to whether the person is a sexually violent predator.

32 (g) If a person is determined by the circuit court to be a sexually violent predator, the clerk  
33 of the court shall forward a copy of the order to the State Police in the manner promulgated in  
34 accordance with the provisions of §29A-3-1 *et seq.* of this code.

**§15-12-2b. Creation of sex offender registration advisory board.**

1 (a) There is hereby created within the Department of Military Affairs and Public Safety a  
2 sex offender registration advisory board consisting of a minimum of five members appointed by  
3 the secretary of the Department of Military Affairs and Public Safety. At least two of the members  
4 shall be experts in the field of the behavior and treatment of sexual offenders, and each shall be  
5 a physician, psychologist or social worker in the employ of this state appointed by the secretary  
6 in consultation with the ~~Director of the Division of Health~~ Secretary of the Department of Health  
7 and Human Resources. The remaining members shall be victims rights advocates and  
8 representatives of law-enforcement agencies. Members of the board shall be reimbursed their  
9 reasonable expenses pursuant to the rules promulgated by the Department of Administration for  
10 the reimbursement of expenses of state officials and employees and shall receive no other  
11 compensation for their services. The board shall utilize the staff of the division or office within the  
12 Department of Military Affairs and Public Safety designated by the secretary thereof in carrying  
13 out its duties and responsibilities as set forth in this article.

14 (b) The board shall assist the circuit courts of this state in determining whether persons  
15 convicted of sexually violent offenses are sexually violent predators.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

**§16-1-2. Definitions.**

1 As used in this article:

2 (1) "Basic public health services" means those services that are necessary to protect the  
3 health of the public. The three areas of basic public health services are communicable and  
4 reportable disease prevention and control, community health promotion and environmental health  
5 protection;

6 (2) "Bureau" means the Bureau for Public Health in the department;

7 (3) "Combined local board of health" means one form of organization for a local board of  
8 health and means a board of health serving any two or more counties or any county or counties  
9 and one or more municipalities within or partially within the county or counties;

10 (4) "Commissioner" means the commissioner of the bureau; who is the state health officer;

11 (5) "County board of health" means one form of organization for a local board of health  
12 and means a local board of health serving a single county;

13 (6) "Department" means the West Virginia Department of Health and Human Resources;

14 (7) "Director" or "director of health" means the state health officer. Administratively within  
15 the department, the bureau through its commissioner carries out the public health functions of the  
16 department, unless otherwise assigned by the secretary;

17 (8) "Essential public health services" means the core public health activities necessary to  
18 promote health and prevent disease, injury and disability for the citizens of the state. The services  
19 include:

20 (A) Monitoring health status to identify community health problems;

21 (B) Diagnosing and investigating health problems and health hazards in the community;

22 (C) Informing, educating and empowering people about health issues;

23 (D) Mobilizing community partnerships to identify and solve health problems;

24 (E) Developing policies and plans that support individual and community health efforts;

25 (F) Enforcing laws and rules that protect health and ensure safety;

26 (G) Uniting people with needed personal health services and assuring the provision of  
27 health care when it is otherwise not available;

- 28 (H) Promoting a competent public health and personal health care workforce;
- 29 (I) Evaluating the effectiveness, accessibility and quality of personal and population-based  
30 health services; and
- 31 (J) Researching for new insights and innovative solutions to health problems;
- 32 (9) "Licensing boards" means those boards charged with regulating an occupation,  
33 business or profession and on which the commissioner serves as a member;
- 34 (10) "Local board of health", "local board" or "board" means a board of health serving one  
35 or more counties or one or more municipalities or a combination thereof;
- 36 (11) "Local health department" means the staff of the local board of health;
- 37 (12) "Local health officer" means the physician with a current West Virginia license to  
38 practice medicine who supervises and directs the activities, services, staff and facilities of the  
39 local health department and is appointed by the local board of health with approval by the  
40 commissioner;
- 41 (13) "Municipal board of health" means one form of organization for a local board of health  
42 and means a board of health serving a single municipality;
- 43 (14) "Performance-based standards" means generally accepted, objective standards such  
44 as rules or guidelines against which public health performance can be measured;
- 45 (15) "Potential source of significant contamination" means a facility or activity that stores,  
46 uses or produces substances or compounds with potential for significant contaminating impact if  
47 released into the source water of a public water supply;
- 48 (16) "Program plan" or "plan of operation" means the annual plan for each local board of  
49 health that must be submitted to the commissioner for approval;
- 50 (17) "Public groundwater supply source" means a primary source of water supply for a  
51 public water system which is directly drawn from a well, underground stream, underground  
52 reservoir, underground mine or other primary source of water supplies which is found underneath  
53 the surface of the state;

54 (18) "Public surface water supply source" means a primary source of water supply for a  
55 public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or  
56 other primary sources of water supplies which are found on the surface of the state;

57 (19) "Public surface water influenced groundwater supply source" means a source of water  
58 supply for a public water system which is directly drawn from an underground well, underground  
59 river or stream, underground reservoir or underground mine, and the quantity and quality of the  
60 water in that underground supply source is heavily influenced, directly or indirectly, by the quantity  
61 and quality of surface water in the immediate area;

62 (20) "Public water system" means:

63 (A) Any water supply or system which regularly supplies or offers to supply water for  
64 human consumption through pipes or other constructed conveyances, if serving at least an  
65 average of twenty-five individuals per day for at least sixty days per year, or which has at least  
66 fifteen service connections, and shall include:

67 (i) Any collection, treatment, storage and distribution facilities under the control of the  
68 owner or operator of the system and used primarily in connection with the system; and

69 (ii) Any collection or pretreatment storage facilities not under such control which are used  
70 primarily in connection with the system;

71 (B) A public water system does not include a system which meets all of the following  
72 conditions:

73 (i) Consists only of distribution and storage facilities and does not have any collection and  
74 treatment facilities;

75 (ii) Obtains all of its water from, but is not owned or operated by, a public water system  
76 which otherwise meets the definition;

77 (iii) Does not sell water to any person; and

78 (iv) Is not a carrier conveying passengers in interstate commerce;

79 (21) "Public water utility" means a public water system which is regulated by the West  
80 Virginia Public Service Commission pursuant to the provisions of chapter twenty-four of this code;

81 (22) "Secretary" means the secretary of the department.

82 (23) "Service area" means the territorial jurisdiction of a local board of health;

83 (24) "State Advisory Council on Public Health" means the advisory body charged by this  
84 article with providing advice to the commissioner with respect to the provision of adequate public  
85 health services for all areas in the state;

86 (25) "State Board of Health" means the secretary, notwithstanding any other provision of  
87 this code to the contrary, whenever and wherever in this code there is a reference to the State  
88 Board of Health;

89 (26) "Zone of critical concern" for a public surface water supply is a corridor along streams  
90 within a watershed that warrant more detailed scrutiny due to its proximity to the surface water  
91 intake and the intake's susceptibility to potential contaminants within that corridor. The zone of  
92 critical concern is determined using a mathematical model that accounts for stream flows, gradient  
93 and area topography. The length of the zone of critical concern is based on a five-hour time-of-  
94 travel of water in the streams to the water intake, plus an additional one-fourth mile below the  
95 water intake. The width of the zone of critical concern is one thousand feet measured horizontally  
96 from each bank of the principal stream and five hundred feet measured horizontally from each  
97 bank of the tributaries draining into the principal stream.

**ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER  
INFECTIOUS DISEASES.**

**§16-3-1. State director of health authority to quarantine and to enforce regulations; to  
control infectious or contagious diseases.**

1 The state director of health is empowered to establish and strictly maintain quarantine at  
2 such places as he or she may deem proper and forbid and prevent the assembling of the people

3 in any place, when the state director of health or any county or municipal health officer deems  
4 that the public health and safety so demand, and the state board of health may adopt rules and  
5 regulations to obstruct and prevent the introduction or spread of smallpox or other communicable  
6 or infectious diseases into or within the state, and the state director of health shall have the power  
7 to enforce these regulations by detention and arrest, if necessary. The state director of health  
8 shall have power to enter into any town, city, factory, railroad train, steamboat or other place  
9 whatsoever, and enter upon and inspect private property for the purpose of investigating the  
10 sanitary and hygienic conditions and the presence of cases of infectious diseases, and may, at  
11 his or her discretion, take charge of any epidemic or endemic conditions, and enforce such  
12 regulations as the ~~state board of health~~ ~~Should this be~~ Secretary of the Department of Health and  
13 Human Resources ~~Should this be~~ ~~Secretary of the Department of Health and~~ ~~Should this be~~  
14 ~~Secretary of the Department of Health and~~ may prescribe. All expenses incurred in controlling  
15 any endemic or epidemic conditions shall be paid by the county or municipality in which such  
16 epidemic occurs.

**ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.**

**§16-5T-2. Office of Drug Control Policy.**

1 (a) The Office of Drug Control Policy is ~~created~~ continued within the Department of Health  
2 and Human Resources under the direction of the Secretary and ~~supervision~~ assistance of the  
3 State Health Officer.

4 (b) The Office of Drug Control Policy shall create a state drug control policy in coordination  
5 with the bureaus of the Department and other state agencies. This policy shall include all  
6 programs which are related to the prevention, treatment and reduction of substance abuse use  
7 disorder.

8 (c) The Office of Drug Control Policy shall:

9 (1) Develop a strategic plan to reduce the prevalence of drug and alcohol abuse and  
10 smoking by at least ten percent by July 1, 2018;

11           (2) Monitor, coordinate and oversee the collection of data and issues related to drug,  
12 alcohol and tobacco access, substance use disorder policies and smoking cessation and  
13 prevention and their impact on state and local programs;

14           (3) Make policy recommendations to executive branch agencies that work with alcohol  
15 and substance use disorder issues, and smoking cessation and prevention to ensure the greatest  
16 efficiency and consistency in practices will be applied to all efforts undertaken by the  
17 administration;

18           (4) Identify existing resources and prevention activities in each community that advocate  
19 or implement emerging best practice and evidence-based programs for the full substance use  
20 disorder continuum of drug and alcohol abuse education and prevention, including smoking  
21 cessation or prevention, early intervention, treatment and recovery;

22           (5) Encourage coordination among public and private, state and local, agencies,  
23 organizations and service providers and monitor related programs;

24           (6) Act as the referral source of information, using existing information clearinghouse  
25 resources within the Department of Health and Human Resources, relating to emerging best  
26 practice and evidence-based substance use disorder prevention, cessation, treatment and  
27 recovery programs, and youth tobacco access, smoking cessation and prevention. The Office of  
28 Drug Control Policy will identify gaps in information referral sources;

29           (7) Apply for grant opportunities for existing programs;

30           (8) Observe programs in other states;

31           (9) Make recommendations and provide training, technical assistance and consultation to  
32 local service providers;

33           (10) Review existing research on programs related to substance use disorder prevention  
34 and treatment and smoking cessation and prevention and provide for an examination of the  
35 prescribing and treatment history, including court-ordered treatment or treatment within the  
36 criminal justice system, of persons in the state who suffered fatal or nonfatal opiate overdoses;

37           (11) Establish a mechanism to coordinate the distribution of funds to support any local  
38 prevention, treatment and education program based on the strategic plan that could encourage  
39 smoking cessation and prevention through efficient, effective and research-based strategies;

40           (12) Establish a mechanism to coordinate the distribution of funds to support a local  
41 program based on the strategic plan that could encourage substance use prevention, early  
42 intervention, treatment and recovery through efficient, effective and research-based strategies;

43           (13) Oversee a school-based initiative that links schools with community-based agencies  
44 and health departments to implement school-based antidrug and anti-tobacco programs;

45           (14) Coordinate media campaigns designed to demonstrate the negative impact of  
46 substance use disorder, smoking and the increased risk of tobacco addiction and the  
47 development of other diseases;

48           (15) Review Drug Enforcement Agency and the West Virginia scheduling of controlled  
49 substances and recommend changes that should be made based on data analysis;

50           (16) Develop recommendations to improve communication between health care providers  
51 and their patients about the risks and benefits of opioid therapy for acute pain, improve the safety  
52 and effectiveness of pain treatment and reduce the risks associated with long-term opioid therapy,  
53 including opioid use disorder and overdose;

54           (17) Develop and implement a program, in accordance with the provisions of section three  
55 of this article, to collect data on fatal and nonfatal drug overdoses, caused by abuse and misuse  
56 of prescription and illicit drugs from law enforcement agencies, emergency medical services,  
57 health care facilities and the Office of the Chief Medical Examiner;

58           (18) Develop and implement a program that requires the collection of data on the  
59 dispensing and use of an opioid antagonist from law enforcement agencies, emergency medical  
60 services, health care facilities, the Office of the Chief Medical Examiner and other entities as  
61 required by the office;

62 (19) Develop a program that provides assessment of persons who have been  
63 administered an opioid antagonist; and

64 (20) Report semi-annually to the Joint Committee on Health on the status of the Office of  
65 Drug Control Policy.

66 (d) Notwithstanding any other provision of this code to the contrary, and to facilitate the  
67 collection of data and issues, the Office of Drug Control Policy may exchange necessary data and  
68 information with the bureaus within the Department, the Department of Military Affairs and Public  
69 Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center,  
70 and the Board of Pharmacy. The data and information may include: data from the Controlled  
71 Substance Monitoring Program; the all-payer claims database; the criminal offender record  
72 information database; and the court activity record information;

73 (e) Prior to July 1, 2018, the office shall develop a plan to expand the number of treatment  
74 beds in locations throughout the state which the office determines to be the highest priority for  
75 serving the needs of the citizens of the state.

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 5. STATE CONVICT ROAD FORCE.**

#### **§17-5-4. Housing, feeding and transportation of prisoners.**

1 ~~The state board of health~~ Should this be Secretary of the Department of Health and Human  
2 Resources, the warden and the state road commissioner shall promptly formulate rules and  
3 regulations governing the camps essential to the housing of the prisoners, and the state road  
4 commissioner shall provide suitable quarters, not inconsistent with such rules and regulations, for  
5 such convict road force, to be constructed, when practicable, with prison labor. He or she shall  
6 supply such force with all necessary food, cooking utensils, beds and bedding, and provide means  
7 of transportation for such road force and camp equipment, when necessary, from place to place,  
8 or to and from work of such convicts.

## CHAPTER 24. PUBLIC SERVICE COMMISSION.

### ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

#### **§24-2-5. Supervision of public utilities licensed by municipalities, county courts or otherwise; right to enter premises, inspect and correct meters.**

1           The commission shall have general supervision of all public utilities having authority under  
2 any charter or franchise of any city, town or municipality, county court, or tribunal in lieu thereof,  
3 or otherwise, to lay down and maintain wires, pipes, conduits, ducts or other fixtures in, over or  
4 under streets, highways or public places for the purpose of furnishing and distributing gas, or for  
5 furnishing and transmitting electricity for light, heat or power, or maintaining underground  
6 conduits, or ducts for electrical conductors, or for telegraph or telephone purposes, and for the  
7 purpose of furnishing water, either for domestic or power purposes, and shall have general  
8 supervision of oil and gas pipelines, and shall have general supervision over any utility engaged  
9 in the transportation of coal and its derivatives and all mixtures and combinations thereof with any  
10 substance by pipelines.

11           The commission may ascertain the quality and quantity of water, or the quality and quantity  
12 of gas or electricity supplied by such utilities and examine the methods employed, and shall have  
13 power to order such improvements as will best promote the public interests. In ascertaining and  
14 regulating the quality of water, the commission shall use the quality standards established by the  
15 ~~state board of health~~ Should this be Secretary of the Department of Health and Human Resources  
16 by regulations governing public water supplies.

17           The commission shall have power, through its members, inspectors, or employees to enter  
18 in, upon and to inspect the property, buildings, plants, fixtures, powerhouses and offices of any  
19 such utilities or municipalities, and shall have power to examine the books and affairs to be  
20 investigated by it. The commission shall, when and as necessary, appoint inspectors of gas,  
21 electric and water meters. And, when such inspectors are required to act, it shall be their duty to

22 inspect, examine, prove and ascertain the accuracy of any gas, electric, or water meters used or  
23 intended to be used for measuring or ascertaining the quantity of gas, electricity or water furnished  
24 to, by or for the use of any person, firm or corporation, and, when found to be correct, or made  
25 correct, the inspector shall stamp or mark each of such meters with some suitable device, which  
26 device shall be recorded in the office of the commission. No public utility shall furnish or put in  
27 use any gas, electric or water meter which shall not have been inspected, proved and stamped  
28 or marked by an inspector of the commission: *Provided*, That in cases of emergency, gas, electric  
29 or water meters may be installed and used before being inspected, but notice thereof shall be  
30 immediately given to the Public Service Commission by the public utility installing the same, and  
31 such meters shall be inspected, proved and stamped or marked, as soon thereafter as  
32 practicable. Every gas, electric and water utility shall provide and keep in and upon its premises  
33 suitable and proper apparatus, to be approved and stamped or marked by the commission, for  
34 testing and proving the accuracy of gas, electric and water meters furnished for use by it and by  
35 which apparatus every meter may and shall be tested on the written request of the consumer to  
36 whom the same shall be furnished, and in his or her presence if he or she so desires.

37         If any person, firm or corporation to or by whom a meter has been furnished shall request  
38 the commission in writing to inspect such meter, the commission shall have the same inspected  
39 and tested. If the same on being tested shall be found to be two percent from being correct, or  
40 shall be found to be to the prejudice of the user, the inspector shall order the owner of such meter  
41 forthwith to remove the same and to place instead thereof a correct meter. The expense of such  
42 inspecting and testing shall be borne by the owner if such meter be found to be incorrect by two  
43 percent or more. If the meter, on being so tested, shall be found to be correct or within two percent  
44 of being correct, the expense of such inspection and testing shall be borne by the user. A uniform  
45 charge and rule shall be fixed by the commission for this service: *Provided*, That nothing in this  
46 chapter shall prevent the commission from changing and modifying the method of inspecting

47 meters and adopting such rules and regulations therefor as to the commission may seem just and  
48 proper.

## **CHAPTER 27. MENTALLY ILL PERSONS.**

### **ARTICLE 10. DEPARTMENT OF HEALTHCARE FACILITIES.**

#### **§27-10-1. Creation of department.**

1 (a) There is created the Department of Healthcare Facilities. In creating this department,  
2 the Legislature intends to continue on a reorganized basis state owned and operated hospitals  
3 and behavioral health facilities. These changes are effective July 1, 2018.

4 (b) The rules of the Secretary of the Department of Health and Human Resources related  
5 to the operation of any state owned and operated hospitals and behavioral health facilities bureau  
6 and any other provisions of this article shall remain in effect until they are amended or rescinded  
7 by the Secretary of the Department of Healthcare Facilities.

8 (c) For the purposes of this article the terms:

9 (1) "Department" means the Department of Healthcare Facilities; and

10 (2) "Secretary" means the Secretary of the Department of Healthcare Facilities.

#### **§27-10-2. State facilities.**

1 These following state hospitals and centers are managed, directed and controlled by the  
2 Department of Healthcare Facilities who shall oversee their operation. These facilities shall  
3 continue and be known respectively as the Welch Community Hospital, William R. Sharpe, Jr.  
4 Hospital, Mildred-Mitchell Bateman Hospital, Hopemont Hospital, John Manchin Health Care  
5 Center, Lakin Hospital, and Jackie Withrow Hospital.

#### **§27-10-3. Responsibility and powers of department; information and data to be supplied by other agencies.**

1 The department is charged with:

2           (1) Supervision and coordination of the operation of the state hospitals as provided in this  
3 article and of any other state hospitals, centers or institutions created for the care and treatment  
4 of persons with behavioral health conditions, persons who are intellectually disabled, or both.

5           (2) The transfer of patients from any state hospital to any other state hospital or clinic  
6 under the control of the secretary and, by agreement with the state Division of Corrections,  
7 transfer a patient from a state hospital to an institution, other than correctional, under the  
8 supervision of the state Division of Corrections.

9           (3) Making periodic reports to the secretary, Governor and to the Legislature on the  
10 condition of the state hospitals, centers and institutions or on other matters within the authority of  
11 the department, which shall include recommendations for improvement of any behavioral health  
12 facility and any other matters affecting the mental health of the people of the state.

**§27-10-4. Secretary of the department; qualifications.**

1           (a) The administrative head of the department is the secretary, who shall be appointed  
2 and compensated, as provided by §6-7-1 et seq. of this code.

3           (b) Before entering upon the duties of his or her office, the secretary shall take and  
4 subscribe to the oath of office prescribed by section five, article four of the state Constitution.

5           (c) The secretary may not be a candidate for, or hold, any other public office or public  
6 employment or be a member or officer of any political party committee, or serve as an election  
7 official, or engage in any political activity, other than to vote, in an election. Any violation by the  
8 secretary of the provisions of this subsection shall automatically vacate his or her appointment as  
9 secretary.

**§27-10-5. Organization of department.**

1           Consistent with the provisions of §5F-2-1 of this code, the secretary may organize the  
2 department into such other offices, divisions, agencies and other administrative units as he or she  
3 sees as necessary.

**§27-10-6. Acceptance of federal-state assistance and federal assistance.**

1       The state and the department assent to the purposes of federal-state assistance and  
2 federal assistance, accepts federal appropriations and other forms of assistance made under or  
3 pursuant thereto, and authorizes the receipt of such appropriations into the state Treasury and  
4 the receipt of other forms of assistance by the department for expenditure, disbursement, and  
5 distribution by the department in accordance with the provisions of this chapter and the conditions  
6 imposed by applicable federal laws, rules and regulations.

**§27-10-7. Powers and duties of secretary.**

1       Within limits of state appropriations and federal grants and subject to provisions of state  
2 and federal laws and regulations, the secretary, in addition to all other powers, duties and  
3 responsibilities granted and assigned to that office in this chapter, in §5F-2-2, and elsewhere by  
4 law, is authorized to:

5       (1) Promulgate, amend, revise and rescind department rules respecting the organization  
6 and government of the department and the execution and administration of those powers, duties  
7 and responsibilities granted and assigned by this chapter and elsewhere by law to the department  
8 and the secretary.

9       (2) For the protection of patients and residents in state hospitals, centers, or institutions,  
10 the department shall be required to establish legislative rules governing the custody, use and  
11 preservation of the records, papers, files and communications of the department.

12       (3) Sign and execute in the name of the state by the Department of Healthcare Facilities  
13 any contract or agreement with the federal government or its agencies, other states, political  
14 subdivisions of this state, corporations, associations, partnerships or individuals: *Provided*, That  
15 the provisions of §5A-3-1 *et seq.* of this code are followed.

16       (4) Delegate to the personnel of the department all powers and duties vested in the  
17 secretary, except the power and authority to sign contracts and agreements.

18       (5) Provide a citizen or group of citizens an opportunity to file objections and to be heard  
19 upon objections to the grant of any class of medical assistance.

20 (6) (A) Serve, by certified mail or personal service, an administrative subpoena on any  
21 person, corporation, partnership, financial institution, labor organization or state agency for an  
22 appearance or for production of documents necessary for administration programs. In the case  
23 of disobedience to the subpoena, the secretary may invoke the aid of any circuit court in requiring  
24 the appearance or production of records and documents.

25 (B) Apply to the circuit court of any county in which any hearing is to be held, or the circuit  
26 court in which the subpoena or subpoena duces tecum is to be served, or the judge of either such  
27 court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel the  
28 attendance of witnesses or the production of documents, before any hearing or administrative  
29 tribunal convened to consider suspension or termination of any person or corporation from  
30 providing services administered by the department.

31 (7) Accept and use for the benefit of a state hospital, center or institution, or for any other  
32 mental health purpose specified in this chapter, any gift or devise of any property or thing which  
33 lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state  
34 hospital, center or institution, it shall be used as specified. Any gift or devise of any property or  
35 thing which lawfully may be given and whatever profit may arise from its use or investment shall  
36 be deposited in a special revenue fund with the State Treasurer, and shall be used only as  
37 specified by the donor or donors.

38 (8) To establish policies and procedures for governing the administration and business  
39 management of the state hospitals;

40 (9) To formulate standard fiscal procedures and make recommendations for improvement  
41 of state hospitals;

42 (10) To maintain the land, buildings and equipment of state hospitals;

43 (11) To provide for a procedure for supplies and equipment of state hospitals;

44 (12) Is not subject to the purchasing requirements of §5A-3-1 et seq. of this code;

45 (13) Is not subject to the certificate of need requirements provided in §16-2D-1 et seq. of  
46 this code;

47 (14) Coordinate with the Department of Health and Human Resources and other state  
48 entities to ensure a more comprehensive and coordinated approach to mental health facilities use  
49 and referral from the criminal justice system;

50 (15) Make such reports in such form and containing such information as may be required  
51 by applicable federal laws and rules respecting federal-state assistance and federal assistance;  
52 and

53 (16) Invoke any legal, equitable or special remedies for the enforcement of the provisions  
54 of this article.

55 (b) The Secretary may not obtain by purchase or lease grounds, buildings, office or other  
56 space, or facilities unless approved by the Real Estate Division as provided in §5A-1-1 et seq.

**§27-10-8. Attorney General and prosecuting attorneys to render legal services to secretary.**

1 The Attorney General, the Attorney General's assistants, and the prosecuting attorneys of  
2 the various counties shall render to the secretary as set forth in this article, without additional  
3 compensation, the legal services as the secretary and the commissioners shall require of them in  
4 the discharge of their duties. this section does not prohibit the department from developing plans  
5 for cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a  
6 manner as to permit the state and its citizens to obtain maximum fiscal benefits under federal  
7 laws, rules and regulations.

**ARTICLE 10A. STATE HOSPITALS AND BEHAVIORAL HEALTH FACILITIES.**

**§27-10A-1. State hospitals and other facilities; transfer of control and property from Department of Health and Human Resources to Department of Healthcare Facilities.**

1 (a) The state hospitals are continued and known respectively as the Welch Community  
2 Hospital, William R. Sharpe, Jr. Hospital, Mildred-Mitchell Bateman Hospital, Hopemont Hospital,

3 John Manchin Health Care Center, Lakin Hospital, and Jackie Withrow Hospital. These state  
4 hospitals and centers are managed, directed and controlled by the department.

5 (b) The Secretary of the Department of Healthcare Facilities is authorized to bring and  
6 maintain the state hospitals into structural compliance with appropriate fire and health standards.

7 (c) The control of the property, records, and financial and other affairs of state hospitals  
8 and other state behavioral health facilities is transferred from the Department of Health and  
9 Human Resources to the Department of Healthcare Facilities. The secretary shall, in respect to  
10 the control and management of the state hospitals and other state behavioral health facilities,  
11 perform the same duties and functions as were heretofore exercised or performed by the  
12 Secretary of the Department of Health and Human Resources. The title to all property of the state  
13 hospitals and other state facilities is transferred to and vested in the Department of Healthcare  
14 Facilities.

15 (d) Notwithstanding any other provisions of this code to the contrary, whenever in this  
16 code there is a reference to the Department of Mental Health or the Secretary of the Department  
17 of Health and Human Resources it shall be construed to mean and is a reference to the  
18 Department of Healthcare Facilities.

**§27-10A-2. Chief executive officers; qualifications; salaries of officers and employees.**

1 (a) The chief executive officer of a state hospital shall be appointed by, and serve at the  
2 will and pleasure of the secretary. He or she shall be a college graduate and have a minimum  
3 of two years' experience in business administration, health services administration, hospital  
4 administration or other relevant experience. Consideration shall be given to persons with broad  
5 knowledge of accounting, purchasing and personnel practices as related to the rendition of health  
6 and health related services.

7 (b) All persons employed within a state hospital shall be paid a salary as determined by  
8 the secretary. All employees are entitled to full state benefits.

**§27-10A-3. Rulemaking as to patients.**

1           (a) The secretary shall propose rules for legislative approval in accordance with the  
2 provision of §29A-3-1 et seq. of this code regarding to the admission of patients to behavioral  
3 health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of  
4 such facilities and the release, trial visit and discharge of patients therefrom.

5           (b) These rules shall provide, at a minimum:

6           (1) That no patient under eighteen years of age in any state hospital shall be housed in  
7 any area also occupied by any patient over eighteen years of age;

8           (2) That any patient adjudged by the chief medical officer of the facility to have a likelihood  
9 of seriously harming others shall be confined in a secure area of a health facility; and

10           (3) Electronic and printed forms to be used for commitment to and discharge from the  
11 state hospitals.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.**

**§30-6-31. Inapplicability of article.**

1           The provisions of this article do not apply to or interfere with:

2           (1) The duties of an officer of any local ~~or state~~ board of health who, in compliance with  
3 local ~~or state~~ board of health rules, may be charged with the duty of preparation for burial of a  
4 human body when death was caused by a virulent, communicable disease;

5           (2) The duties of an officer of a medical college, county medical society, anatomical  
6 association or other recognized person carrying out his or her responsibilities of dealing with  
7 indigent dead human bodies who are held subject for anatomical study; or

8           (3) The customs or rites of any religious sect in the burial of its dead: *Provided*, That  
9 embalming shall only be performed by a licensed embalmer.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

#### §31-15A-2. Definitions.

1 For purposes of this article:

2 (a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, or other  
3 obligation issued by the water development authority pursuant to this article, including bonds to  
4 refund such bonds and notes to renew such notes, and notes in anticipation of and payable from  
5 the proceeds of such bonds.

6 (b) "Code" means the Code of West Virginia, 1931, as amended;

7 (c) "Cost" means, as applied to any project to be financed, in whole or in part, with  
8 infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning,  
9 acquisition, improvement and construction of the project; the cost of preliminary design and  
10 analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility  
11 studies, assessments, applications, approvals, submissions or clearances; the cost of preparation  
12 of plans and specifications and other engineering services; the cost of acquisition of all land,  
13 rights-of-way, property rights, easements, franchise rights and any other interests required for the  
14 acquisition, repair, improvement or construction of the project; the cost of demolishing or removing  
15 any buildings or structures on land so acquired, including the cost of acquiring any lands to which  
16 buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of  
17 earth, demolishing or removing any buildings or structures; the cost of constructing any buildings  
18 or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery,  
19 furnishings and equipment; loan or origination fees and all finance charges and interest incurred  
20 prior to and during the construction and for no more than six months after completion of  
21 construction; the cost of all legal services and expenses; the cost of all plans, specifications,

22 surveys and estimates of cost; all working capital and other expenses necessary or incident to  
23 determining the feasibility or practicability of acquiring, repairing, improving or constructing any  
24 project; the cost of placing any project in operation; and all other costs and expenses of any kind  
25 or nature incurred or to be incurred by the project sponsor developing the project that are  
26 reasonable and necessary for carrying out all works and undertakings necessary or incident to  
27 the accomplishment of any project: *Provided*, That costs shall not include any amounts related to  
28 the ongoing operations of the owner or operator, depreciation thereof or any other cost which the  
29 council or the water development authority has not determined to be consistent with the purposes  
30 and objectives of this article;

31 (d) "Council" means the West Virginia Infrastructure and Jobs Development Council  
32 created in §31-15A-3 of this code;

33 (e) "Department of Health and Human Resources" means the department created in  
34 chapter 9 of this code, or any successor to all or any substantial part of its powers and duties;

35 ~~(e)~~ (f) "Division of Environmental Protection" means the ~~Division~~ Department of  
36 Environmental Protection established under §22-1-1 *et seq.* of this code, or any successor to all  
37 or any substantial part of its powers and duties;

38 ~~(f) "Division of health" means the division of health created in §16-1-1 et seq. of this code,~~  
39 ~~or any successor to all or any substantial part of its powers and duties;~~

40 (g) "Economic Development Authority" means the Economic Development Authority  
41 established under §31-15-1 *et seq.* of this code, or any successor to all or any substantial part of  
42 its powers and duties;

43 (h) "Emergency project" means a project which the council has determined: (1) Is essential  
44 to the immediate economic development of an area of the state; and (2) will not likely be  
45 developed in that area if construction of the project is not commenced immediately;

46 (i) "Governmental agency" means any county; municipality; watershed improvement  
47 district; assessment district; soil conservation district; sanitary district; public service district;

48 drainage district; regional governmental authority and any other state governmental agency,  
49 entity, political subdivision or public corporation or agency authorized to acquire, construct or  
50 operate water or wastewater facilities or infrastructure projects;

51 (j) "Housing development fund" means the West Virginia Housing Development Fund  
52 established under §31-18-1 *et seq.* of this code, or any successor to all or any substantial part of  
53 its powers and duties;

54 (k) "Infrastructure Fund" means the West Virginia Infrastructure Fund created and  
55 established in §31-15A-9 of this code;

56 (l) "Infrastructure project" means a project in the state which the council determines is  
57 likely to foster and enhance economic growth and development in the area of the state in which  
58 the project is developed, for commercial, industrial, community improvement or preservation or  
59 other proper purposes, including, without limitation, tourism and recreational housing, land, air or  
60 water transportation facilities and bridges, industrial or commercial projects and facilities, mail  
61 order, warehouses, wholesale and retail sales facilities and other real and personal properties,  
62 including facilities owned or leased by this state or any other project sponsor, and includes,  
63 without limitation: (1) The process of acquiring, holding, operating, planning, financing, demolition,  
64 construction, improving, expanding, renovation, leasing or otherwise disposing of the project or  
65 any part thereof or interest therein; and (2) preparing land for construction and making, installing  
66 or constructing improvements on the land, including water or wastewater facilities or any part  
67 thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads,  
68 bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and  
69 drainage and flood control facilities, whether on or off the site;

70 (m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all  
71 amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from  
72 any source for the use of all or any part of any project completed pursuant to this article; and any

73 other amounts received by the State Treasurer, council or the water development authority for  
74 the purposes of this article;

75 (n) "Need of the project sponsors" means there is a public need for a project. The council  
76 shall construe a population increase evidenced by the last two decennial censuses in a county in  
77 which a project is proposed, as a factor supporting the conclusion that a need exists for projects  
78 in that county.

79 (o) "Project" means any wastewater facility, water facility project or any combination  
80 thereof, constructed or operated or to be constructed or operated by a project sponsor;

81 (p) "Project sponsor" means any governmental agency or person, or any combination  
82 thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct,  
83 improve or otherwise develop a project;

84 (q) "Public Service Commission" means the Public Service Commission of West Virginia  
85 created and established under §24-1-3 of this code, or any successor to all or any substantial part  
86 of its powers and duties;

87 (r) "Person" means any individual, corporation, partnership, association, limited liability  
88 company or any other form of business organization;

89 (s) "Public utility" means any person or persons, or association of persons, however  
90 associated, whether incorporated or not, including, without limitation, any governmental agency,  
91 operating a wastewater facility or water facility as a public service, which is regulated by the Public  
92 Service Commission as a public utility under chapter 24 of this code or which is required to file its  
93 tariff with the Public Service Commission;

94 (t) "State Development Office" means the West Virginia Development Office established  
95 under §5B-2-1 *et seq.* of this code, or any successor to all or any substantial part of its powers  
96 and duties;

97 (u) "State infrastructure agency" means the ~~division of health, Division~~ Department of  
98 Health and Human Resources, Department of Environmental Protection, Housing Development

99 Fund, Public Service Commission, State Development Office, Water Development Authority,  
100 Economic Development Authority and any other state agency, division, body, authority,  
101 commission, instrumentality or entity which now or in the future receives applications for the  
102 funding of, and provides funding or technical assistance to, the planning, acquisition, construction  
103 or improvement of a project;

104 (v) "Wastewater facility" means all facilities, land and equipment used for or in connection  
105 with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater,  
106 including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes  
107 or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent  
108 impoundment of wastewater, both surface and underground; and sanitary sewers or other  
109 collection systems, whether on the surface or underground, designed to transport wastewater  
110 together with the equipment and furnishings therefor or thereof and their appurtenances and  
111 systems, whether on the surface or underground including force mains and pumping facilities  
112 therefor;

113 (w) "Water development authority" means the West Virginia water development authority  
114 continued pursuant to the provisions of §22C-1-1 *et seq.* of this code, or any successor to all or  
115 any substantial part of its powers and duties; and

116 (x) "Water facility" means all facilities, land and equipment used for or in connection with  
117 the collection and/or storage of water, both surface and underground, transportation of water,  
118 storage of water, treatment of water and distribution of water all for the purpose of providing  
119 potable, sanitary water suitable for human consumption and use.

**§31-15A-3. West Virginia Infrastructure and Jobs Development Council continued;  
members of council; staff of council.**

1 (a) The West Virginia Infrastructure and Jobs Development Council is continued. The  
2 council is a governmental instrumentality of the state. The exercise by the council of the powers

3 conferred by this article and the carrying out of its purpose and duties shall be considered and  
4 held to be, and are determined to be, essential governmental functions and for a public purpose.

5 (b) The council shall consist of thirteen members, including:

6 (1) The Governor or designee;

7 (2) The Executive Director of the Housing Development Fund or his or her designee;

8 (3) The ~~Director~~ Secretary of the ~~Division~~ Department of Environmental Protection or his  
9 or her designee;

10 (4) The Director of the Economic Development Authority or his or her designee;

11 (5) The Director of the Water Development Authority or his or her designee;

12 (6) The ~~Director of the Division of Health~~ Secretary of the Department of Health and  
13 Human Resources or his or her designee;

14 (7) The Chairman of the Public Service Commission or his or her designee; and

15 (8) Six members representing the general public: *Provided*, That there shall be at least  
16 one member representing the general public from each congressional district. No more than one  
17 member representing the general public may be a resident of the same county.

18 (c) The Governor shall appoint the public members of the council who shall serve three-  
19 year staggered terms.

20 (d) The Commissioner of the Division of Highways, the Executive Director of the State Rail  
21 Authority, two members of the West Virginia Senate, two members of the West Virginia House of  
22 Delegates, the Chancellor of the Higher Education Policy Commission and the Chancellor of the  
23 West Virginia Council for Community and Technical College Education serve as advisory  
24 members of the council. The advisory members shall be ex officio, nonvoting members of the  
25 council.

26 (e) The Governor shall appoint the legislative members of the council: *Provided*, That no  
27 more than three of the legislative members may be of the same political party.

28 (f) The Governor or designee shall serve as chairman and the council shall annually  
29 appoint a vice chairperson and shall appoint a secretary, who need not be a member of the council  
30 and who shall keep records of its proceedings. Seven members of the council shall constitute a  
31 quorum and the affirmative vote of at least the majority of those members present shall be  
32 necessary for any action taken by vote of the council. A vacancy in the membership of the council  
33 does not impair the rights of a quorum by such vote to exercise all the rights and perform all the  
34 duties of the council.

35 (g) A member of the council who serves by virtue of his or her office does not receive  
36 compensation or reimbursement of expenses for serving as a member. The public members are  
37 reimbursed for actual expenses incurred in the service of the council in a manner consistent with  
38 guidelines of the travel management office of the Department of Administration.

39 (h) The council meets at least monthly to review projects and infrastructure projects  
40 requesting funding assistance and otherwise to conduct its business and may meet more  
41 frequently if necessary. Notwithstanding any other provision of this article to the contrary, the  
42 Economic Development Authority is not subject to council review with regard to any action taken  
43 pursuant to the authority established in §31-15-1 *et seq.* of this code. The Governor's Civil  
44 Contingent Fund is not subject to council review with regard to projects or infrastructure projects  
45 funded through the Governor's Civil Contingent Fund.

46 (i) The Water Development Authority shall provide office space for the council and each  
47 governmental agency represented on the council shall provide staff support for the council in the  
48 manner determined appropriate by the council.

49 (j) The council shall invite to each meeting one or more representatives of the United  
50 States Department of Agriculture, Rural Economic Community Development, the United States  
51 Economic Development Agency and the United States Army Corps of Engineers or any  
52 successors thereto. The council shall invite other appropriate parties as is necessary to effectuate  
53 the purposes of this article.