WEST virginia Legislature

2023 regular session

Committee Substitute

for

House Bill 3247

By Delegates Linville, Rohrbach, Summers, Mazzocchi, Kump and Tully

[Originating in the Committee on Health and Human Resources; Reported on February 21, 2023]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-31; to amend and reenact §16-2D-8, §16-2D-9, and §16-2D-11; to amend said code by adding thereto a new article designated, §16-5W-1, §16-5W-2, §16-5W-3, §16-5W-4, §16-5W-5, §16-5W-6 and §16-5W-7; to repeal §27-8-2b and §27-8-3 of said code; to repeal §27-9-1 of said code; to repeal §27-13-1 and §27-13-2 of said code; and to repeal §27-17-1, §27-17-2, §27-17-3, and §27-17-4 of said code; all relating to regulation of behavioral health services; requiring the Bureau of Medical Services to development a reimbursement model relating to in home services of Intellectually and Developmentally Disabled Intermediate Care waivers; requiring the bureau to use a performance based contract; defining terms; removing services from the moratorium; removing services from certificate of need; adding services to certificate of need; providing exceptions from certificate of need; permitting the Health Care Authority to redistribute bed capacity; requiring access to consumers; requiring access to records; regulating behavioral health centers; providing rulemaking authority; establishing a mental health ombudsman; providing authority to the ombudsman; providing an exemption of consumer information from the Freedom of Information Act; requiring reporting; and permitting a civil penalty.

Be it enacted by the Legislature of West Virginia:

§9-5-31. Medicaid - Intellectually and Developmentally Disabled Intermediate Care Facilities.

(a) The Bureau for Medical Services shall develop a tiered reimbursement model to ensure adequate provider availability by county for in home services of Intellectually and Developmentally Disabled waiver. The model shall be presented to LOCHHRA by December 1, 2023.

(b) The bureau shall contract with Intellectually and Developmentally Disabled Intermediate Care Facilities placements regionally, which shall be performance based. The bureau shall develop performance-based metrics and provide notice of the same for review and comment at least 90 days prior to negotiating or entering any such contracts

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

**§16-2D-2. Definitions.**

As used in this article:

(1) “Affected person” means:

(A) The applicant;

(B) An agency or organization representing consumers;

(C) An individual residing within the geographic area but within this state served or to be served by the applicant;

(D) An individual who regularly uses the health care facilities within that geographic area;

(E) A health care facility located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(F) A health care facility located within this state which, before receipt by the authority of the proposal being reviewed, has formally indicated an intention to provide similar services within this state in the future;

(G) Third-party payors who reimburse health care facilities within this state; or

(H) An organization representing health care providers;

(2) “Ambulatory health care facility” means a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis;

(3) “Ambulatory surgical facility” means a facility not physically attached to a health care facility that provides surgical treatment to patients not requiring hospitalization;

(4) “Applicant” means a person applying for a certificate of need, exemption or determination of review;

(5) “Authority” means the West Virginia Health Care Authority as provided in article twenty-nine-b of this chapter;

(6) “Bed capacity” means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility;

(7) “Behavioral health services” means services provided for the care and treatment of persons with mental illness or developmental disabilities;

(8) “Birthing center” means a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy;

(9) “Campus” means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility;

(10) “Capital expenditure” means:

(A) (i) An expenditure made by or on behalf of a health care facility, which:

(I) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or

(II) Is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(ii) (I) Exceeds the expenditure minimum;

(II) Is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or

(III) Is a substantial change to the services of such facility;

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

(C) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the authority to be a single capital expenditure subject to review. In making this determination, the authority shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(11) “Charges” means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(12) “Community mental health and intellectual disability facility” means a facility which provides comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability;

(13) “Diagnostic imaging” means the use of radiology, ultrasound, mammography;

(14) “Drug and Alcohol Rehabilitation Services” means a medically or psychotherapeutically supervised process for assisting individuals through the processes of withdrawal from dependency on psychoactive substances;

(15) “Expenditure minimum” means the cost of acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting at and above $5 million;

(16) “Health care facility” means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part;

(17) “Health care provider” means a person authorized by law to provide professional health services in this state to an individual;

(18) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services;

(19) “Home health agency” means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services:

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

(F) Medical social services to persons in their place of residence on a part-time or intermittent basis.

(20) “Hospice” means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of a licensed hospice program which provides palliative and supportive medical and other health services to terminally ill individuals and their families.

(21) “Hospital” means a facility licensed pursuant to the provisions of article five-b of this chapter and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians.

(22) “Intermediate care facility” means an ~~institution~~ setting that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(23) “Like equipment” means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health service or a proposed health service.

(24) “Major medical equipment” means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician’s office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term “cost” includes the fair market value.

(25) “Medically underserved population” means the population of an area designated by the authority as having a shortage of a specific health service.

(26) “Nonhealth-related project” means a capital expenditure for the benefit of patients, visitors, staff or employees of a health care facility and not directly related to health services offered by the health care facility.

(27) “Offer” means the health care facility holds itself out as capable of providing, or as having the means to provide, specified health services.

(28) “Opioid treatment program” means as that term is defined in article five-y of chapter sixteen.

(29) “Person” means an individual, trust, estate, partnership, limited liability corporation, committee, corporation, governing body, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(30) “Personal care agency” means an entity that provides personal care services approved by the Bureau of Medical Services.

(31) “Personal care services” means personal hygiene; dressing; feeding; nutrition; environmental support and health-related tasks provided by a personal care agency.

(32) “Physician” means an individual who is licensed to practice allopathic medicine by the board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathic Medicine.

(33) “Proposed health service” means any service as described in section eight of this article.

(34) “Purchaser” means an individual who is directly or indirectly responsible for payment of patient care services rendered by a health care provider, but does not include third-party payers.

(35) “Rates” means charges imposed by a health care facility for health services.

(36) “Records” means accounts, books and other data related to health service costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy.

(37) “Rehabilitation facility” means an inpatient facility licensed in West Virginia operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services.

(38) “Related organization” means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care facility through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subdivision “family members” means parents, children, brothers and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

(39) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources;

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

(41) “Specialized intermediate care facility” means a Centers for Medicare and Medicaid Services approved intermediate care facility that is a transitional setting that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(42) “Standard’’ means a health service guideline developed by the authority and instituted under section six.

~~(42)~~ (43) “State health plan” means a document prepared by the authority that sets forth a strategy for future health service needs in this state.

~~(43)~~ (44) “Substantial change to the bed capacity” of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds.

~~(44)~~ (45) “Substantial change to the health services” means:

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service was first offered; or

(B) The termination of a health service offered by or on behalf of the facility but does not include the termination of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

~~(45)~~ (46) “Telehealth” means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration.

~~(46)~~ (47) “Third-party payor” means an individual, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

~~(47)~~ (48) “To develop” means to undertake those activities which upon their completion will result in the offer of a proposed health service or the incurring of a financial obligation in relation to the offering of such a service.

§16-2D-8. Proposed health services that require a certificate of need.

(a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following proposed health services may not be acquired, offered, or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, acquisition, or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset;

(B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(C) In the case of donated property, on the date on which the gift is completed under state law.

(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(6) The addition of ventilator services by a hospital;

(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;

(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved health service for which a certificate of need is in effect;

(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and

(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered.

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

(1) Constructing, developing, acquiring, or establishing a birthing center;

(2) Providing radiation therapy;

(3) Providing computed tomography;

(4) Providing positron emission tomography;

(5) Providing cardiac surgery;

(6) Providing fixed magnetic resonance imaging;

(7) Providing comprehensive medical rehabilitation;

(8) Establishing an ambulatory care center;

(9) Establishing an ambulatory surgical center;

(10) Providing diagnostic imaging;

(11) Providing cardiac catheterization services;

(12) Constructing, developing, acquiring, or establishing kidney disease treatment centers, including freestanding hemodialysis units;

(13) Providing megavoltage radiation therapy;

(14) Providing surgical services;

(15) Establishing operating rooms;

(16) Adding acute care beds;

(17) Providing intellectual developmental disabilities services;

(18) Providing organ and tissue transplants;

(19) Establishing an intermediate care facility for individuals with intellectual disabilities: *Provided,* That when an existing intermediate care facility for individuals with intellectual disabilities voluntarily or involuntarily closes, reduction in bed capacity, those beds shall revert to the Health Care Authority to be redistributed to another location or provider that has not received any immediate jeopardy citations related to the health, safety, welfare, or clinical treatment of a consumer in the past 12 months.

(20) Providing inpatient services;

(21) Providing hospice services;

(22) Establishing a home health agency; and

(23) Providing personal care services. ~~and~~

~~(24) (A) Establishing no more than six four-bed transitional intermediate care facilities:~~ *~~Provided~~*~~, That none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.~~

~~(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move, and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home- and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.~~

~~(C) The department shall work to find the most integrated placement based upon an individualized assessment. Individuals already on the IDD waiver will not be considered for placement in the 24 new intermediate care beds.~~

~~(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department’s transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home- and community-based waiver status and/or utilizing other community-based options and securing the most integrated setting for each individual.~~

~~(E) Any savings resulting from individuals moving from more expensive institutional care or out-of-state placements shall be reinvested into home- and community-based services for individuals with intellectual developmental disabilities.~~

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

§16-2D-9. Health services that cannot be developed.

Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a certificate of need but the authority may not issue a certificate of need to:

(1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in §16-2D-11(c)(23) of this code;

(2) A person developing, constructing, or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to meet the changing health care delivery system; and

(3) ~~Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code; and~~

~~(4)~~ An opioid treatment program.

§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application; and

(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.

(b) Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to $750,000 that is installed in a private office practice where at minimum seventy-five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician’s primary place of business and if a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy-five percent, shall be reduced to seventy-five percent: *Provided,* That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state on April 8,2017.

(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or

(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.

(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and

(ii) Provide a proposed health service area.

(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;

(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:

(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(ii) Result in a substantial change to the bed capacity of the facility; or

(iii) Result in a substantial change to the health services of the facility.

(C) For purposes of this subdivision, the term “solely for research” includes patient care provided on an occasional and irregular basis and not as part of a research program;

(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided,* That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.

(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;

(6) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;

(7) The addition of forensic beds in a health care facility;

(8) A behavioral health service selected by the department ~~of Health and Human Resources~~ in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;

(9) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;

(10) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility’s current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

(11) Renovations to a skilled nursing facility;

(12) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

(13) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider’s home;

(14) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;

(15) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

(16) To develop and operate a skilled nursing facility with no more than thirty-six beds in a county that currently is without a skilled nursing facility;

(17) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;

(18) The establishing of a heath care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

(19) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;

(20) Providing behavioral health facilities and services;

(21) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

(22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The department ~~of Health and Human Resources~~ may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

(23) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;

(24) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;

(25) Assisted living facilities and services;

(26) The creation, construction, acquisition or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration; ~~and~~

(27) The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to $750,000 by a hospital; and,

(28) The creation, construction, acquisition or expansion of a specialized intermediate care facility.

Article 5W. Regulation of behavioral health.

§16-5W-1. Definitions.

The following terms are defined for this article:

“Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial wellbeing. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

“Addiction” means a disease characterized by the individual’s pursuing reward, relief, or both, by substance use or other behaviors. Addiction is characterized by impairment in behavioral control, craving, inability to consistently abstain, and diminished recognition of significant problems with one’s behaviors and interpersonal relationships; likely to involve cycles of relapse and remission.

“Advocate” means a person or entity who has the authority via contract with the department or authority via state or federal statutory authority or court ruling to monitor and redress the care and treatment of persons with developmental, behavioral, and/or intellectual disabilities at behavioral health centers.

“Behavioral Health Center” means a provider, entity, or facility that provides behavioral health services, supports, or both.

"Behavioral disability" means a disability of a person which: (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical dependency; and (2) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency.

“Behavioral Health Services” means a direct service provided as an inpatient, residential or outpatient service to an individual with mental health, addictive, behavioral, or adaptive challenges that is intended to improve or maintain functioning in the community. The service is designed to provide treatment, habilitation, or rehabilitation.

"Developmental disability" means a chronic disability of a person which: (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency; and (4) reflects the person’s need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Group residential facility" means a facility which is owned, leased or operated by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than twelve individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of Health and Human Resources; and (4) complies with the state Fire Commission for residential facilities.

"Group residential home" means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in this article.

"Intermediate care facility" means a setting for individuals with intellectual disabilities or distinct part of that:

(1) Is primarily for the diagnosis, treatment, or rehabilitation of the intellectually disabled or persons with related conditions; and

(2) Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each individual function at his greatest ability.

“Neglect” means the failure of the facility, its employees, or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

"Office of Health Facility Licensure and Certification" or "OHFLAC" means the West Virginia Office of Health Facility Licensure & Certification.

“Protection and advocacy system” or “P&A” means the agency designated to serve as the protection and advocacy system for the State of West Virginia as provided in 29 U.S.C. § 794e, 42 U.S.C. § 15041 *et seq*., and 42 U.S.C. § 10801 *et seq*., that has the express federal statutory authority to receive information regarding and to investigate complaints involving suspected abuse and neglect.

“Specialized intermediate care facility” means a Centers for Medicare and Medicaid Services approved transitional setting that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility. A facility may not be located within one mile of a residential area, a public or private licensed day care center, or a public or private K-12 school.

“Supportive Service” means a service provided exclusively to individuals with intellectual disabilities, developmental disabilities, ongoing mental health or addictive challenged, or traumatic brain injury. This service is designed to assist the individual to live in the community in a manner that is socially inclusive, optimally independent, and self-directed while preserving his or her health, safety, and quality of life. These services are not designed to change behavior or emotional functioning to support the individual in his or her community-based settings. Supportive services may include coaching or prompting of age appropriate living skills.

§16-5W-2. Regulation of Behavioral Health Centers – Residential Settings.

A behavioral health center, may not provide residential behavioral health services unless a license is first obtained from the Office of Health Facility Licensure and Certification. The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*., in regard to the operation of behavioral health centers – residential settings. The Inspector General, or any person authorized by the Inspector General, has authority to investigate and inspect any licensed behavioral health center – residential setting. The Inspector General may impose a civil money penalty, or limit, deny, suspend, or revoke the license of any center for good cause after reasonable notice, including due process rights as provided in legislative rule. The Inspector General shall promulgate a rule to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities including, but not limited to, the process to be followed by applicants seeking a license; provision of treatment; development of treatment plans and discharge plans; management, operation, staffing and equipping of these facilities; clinical, medical, patient, and business records kept by these facilities; procedures for inspections and for review of utilization and quality of patient care; standards and procedures for the general operation of these facilities including facility operations, physical operations, infection control requirements, health and safety requirements and quality assurance; and such other standards or requirements as the Inspector General determines are appropriate.

§16-5W-3. Regulation of Behavioral Health Centers – NonResidential Settings.

A behavioral health center, may not provide community based, nonresidential behavioral health services unless a license is first obtained from the Office of Health Facility Licensure and Certification. The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*., in regard to the operation of behavioral health centers – nonresidential settings. The Inspector General, or a person authorized by the Inspector General, has authority to investigate and inspect any licensed behavioral health center – nonresidential setting. The Inspector General may impose a civil money penalty, or limit, deny, suspend, or revoke the license of any center for good cause after reasonable notice, including due process rights as provided in legislative rule. The Inspector General shall a rule to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities including, but not limited to, the process to be followed by applicants seeking a license and licensure fees and types; provision of treatment; development of treatment plans and discharge plans; management, operation, staffing and equipping of these facilities; clinical, medical, patient, and business records kept by these facilities; procedures for inspections and for review of utilization and quality of patient care; standards and procedures for the general operation of these facilities including facility operations, physical operations, infection control requirements, health and safety requirements and quality assurance; and such other standards or requirements as the Inspector General determines are appropriate.

§16-5W-4. Inspection; inspection warrant; penalty.

(a) The Office of Health Facility Licensure and Certification shall inspect each behavioral health center – residential setting annually, or as necessary, including a review of patient records, to ensure that the facility complies with this article and the applicable rules.

(b) The Office of Health Facility Licensure and Certification shall inspect each behavioral health center – nonresidential setting every two years, or as necessary, including a review of the patient records, to ensure that the facility complies with this article and applicable rules.

(c) The Office of Health Facility Licensure and Certification shall perform unannounced complaint and verification inspections at behavioral health centers – residential settings and behavioral health centers – nonresidential settings.

(d) The Office of Health Facility Licensure and Certification may assess a fine on residential or nonresidential settings up to $100,000 and/or reduce bed capacity, as that term is defined in §16-2D-2. The provisions of the subsection shall be included in legislative rule by the director, in accordance with §29A-3-1, including when such fines or bed capacity reduction would be issued.

(e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an inspection warrant against any person, partnership, association, or corporation to allow any inspection or seizure of records in order to complete any inspection allowed by this article or the rules promulgated pursuant to this article.

§16-5W-5. Access to Consumers.

(a) An individual for whom the state is the guardian shall receive a visit by his or her assigned caseworker by the agency at least once a month.  Case workers and advocates shall have unlimited access to consumers. The P&A shall have access to consumers, case workers, records, and complaints in accordance with federal law.

(b) The mental health, long-term care and foster care ombudsman may investigate and resolve complaints filed on behalf of individuals with IDD in any setting.

§16-5W-6. Reporting.

(a) The Office of the Inspector General shall send to county prosecutors any findings that may be subject to criminal prosecution in cases of abuse and neglect with IDD. The Office of the Inspector General shall send to the P&A the findings of any cases involving instances of substantiated abuse or neglect involving a person with a developmental disability.

(b) An annual report shall be submitted to the Legislative Oversight Commission on Health and Human Resources Accountability including:

(1) All instances where abuse and neglect cases involving IDD at any location has been substantiated by the Office of the Inspector General.

(2) The county or region where the substantiated abuse or neglect occurred;

(2) The descriptive category of the abuse and neglect;

(3) The type of setting where the abuse and neglect occurred;

(4) Whether the abuse and neglect information was turned over to the county prosecutor and law enforcement;

(5) The name of the provider, if the provider is involved, who is charged with the care of the individual; and

(6) The age range and gender of the individual.

(c) In instances where abuse and/or neglect leads to the death of an individual, the department shall send a letter, within 30 days after the findings where substantiated, to the Senate President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above about the case.

§16-5W-7. Independent Mental Health Ombudsman.

(a) (1) The Office of the Inspector General shall continue an independent mental health ombudsman;

(2) The duties of the mental health ombudsman shall include, but are not limited to, the following:

(A) Advocating for the well-being, treatment, safety, and rights of consumers of mental health care facilities or psychiatric hospital;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or decisions of providers of mental and behavioral health, of public agencies, or social service agencies, which may adversely affect the health, safety, welfare, and rights of a consumer of a mental health care facility or psychiatric hospital; and

(C) Monitoring the development and implementation of federal, sate, and local legislation, regulations, and policies with respect to mental and behavioral health care and services;

(3) The mental health ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities;

(4)(A) Information relating to any investigation of a complaint that contains the identity of the complainant or consumer shall remain confidential except:

(i) Where imminent risk of serious harm is communicated directly to the mental health ombudsman or his or her staff; or

(ii) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both;

(B) The mental health ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the mental health care ombudsman to carry out duties of the office or to support recommendations;

(C) All information, records, and reports received by or developed by the mental health ombudsman program which relate to a consumer of a mental health care facility or psychiatric hospital, including written material identifying a consumer are confidential, and are not subject to the provisions of §29-1-1, *et seq.* of this code, and may not be disclosed or released by the mental health ombudsman program, except under the circumstances enumerated in this section;

(D) Nothing in this section prohibits the preparation and submission by the mental health ombudsman of statistical data and reports, as required to implement the provisions of this section or any applicable federal law, exclusive of any material that identifies any consumer or complainant; and

(E) The Inspector General shall have access to the records and files of the mental health ombudsman program to verify its effectiveness and quality.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 8. ~~MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.~~

§27-8-2b. Local mental health programs — Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.

[Repealed.]

§27-8-3. Care of patients in boarding homes.

[Repealed.]

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from Secretary of Health and Human Resources; regulations.

[Repealed.]

ARTICLE 13. ~~LAWS REPEALED; SEVERABILITY~~.

§27-13-1. Laws repealed.

[ Repealed.]

§27-13-2. Severability.

[Repealed.]

ARTICLE 16. ~~STERILIZATION OF MENTAL DEFECTIVES~~.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

[Repealed.]

§27-17-2. Permitted use of group residential facilities; restrictions.

[Repealed.]

§27-17-3. License from Secretary of Health and Human Resources; regulations; and penalties.

[Repealed]

§27-17-4. Exclusion by private agreement void.

[Repealed]