

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 126

By Senators Trump, Deeds, Oliverio, Azinger, Stuart,
Clements, Barrett, Phillips, Roberts, Swope, Grady,
Tarr, Boley, Smith, Maynard, Rucker, Taylor, Weld,
Hamilton, Maroney, and Woodrum

[Introduced January 11, 2023]

1 A BILL to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §6-7-2a of said
3 code; to repeal §9-1-1 of said code; to amend and reenact §9-1-2 of said code; to amend
4 and reenact §9-2-1 of said code; to repeal §9-2-1a of said code; to amend and reenact §9-
5 2-2, §9-2-5, and §9-2-6, of said code; to repeal §9-2-9 of said code; to amend and reenact
6 §9-2-13 of said code; to amend said code by adding thereto a new section designated, §9-
7 2-14; to amend and reenact §16-1-2, §16-1-3, §16-1-4, and §16-1-6; to amend said code
8 by adding thereto a new section designated, §16-1-22; to amend and reenact §26-1-1,
9 §26-1-2, and §26-1-3; to amend said code by adding thereto a new section, designated
10 §26-1-4; to repeal §26-3-1, §26-3-2, §26-3-3, §26-3-4, and §26-3-5 of said code; to repeal
11 §26-5-1 of said code; to repeal §26-5A-5a of said code; to repeal §26-8-1, §26-8-2, and
12 §26-8-3 of said code; to repeal §26-9-1 and §26-9-2 of said code; to repeal §26-10-1 of
13 said code; to repeal §26-11-1, §26-11-2, §26-11-3, and §26-11-4 of said code; to repeal to
14 amend and reenact §48-18-101 of said code; and to amend and reenact §49-1-106 of said
15 code; all relating to reorganizing the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments 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 Environmental Protection;
5 (3) Department of Health; ~~and Human Resources;~~

- 6 (4) Department of Homeland Security;
- 7 (5) Department of Revenue;
- 8 (6) Department of Transportation;
- 9 (7) Department of Commerce;
- 10 (8) Department of Veterans' Assistance;
- 11 (9) Department of Economic Development; and
- 12 (10) Department of Tourism;
- 13 (12) Department of Health Facilities; and
- 14 (13) Department of Human Services.

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

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

14 (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

15 (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

16 (b) The following agencies and boards, including all of the allied, advisory, affiliated, or
17 related entities and funds associated with any agency or board, are incorporated in and
18 administered as a part of the Department of Commerce:

19 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

20 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of
21 this code; and

22 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of
23 this code.

24 (2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code.

25 The following boards are transferred to the Office of Miners' Health, Safety, and Training for
26 purposes of administrative support and liaison with the Office of the Governor:

27 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
28 Committee provided in §22A-6-1 *et seq.* of this code;

29 (B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of
30 this code; and

31 (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

32 (3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1
33 *et seq.* of this code;

34 (4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

35 (5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

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

37 (A) Division of Unemployment Compensation;

38 (B) Division of Employment Service;

39 (C) Division of Workforce Development;

40 (D) Division of Research, Information and Analysis; and

41 (7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

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

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

47 (e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of
48 this code is continued as a separate independent agency within the Department of Arts, Culture,
49 and History, which shall provide administrative support for the authority.

50 (f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is
51 continued as a separate independent agency within the Executive Branch as the Department of
52 Arts, Culture, and History. All references throughout this code to the "Division of Culture and
53 History" means the "Department of Arts, Culture, and History".

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

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

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

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

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

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

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

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

65 (h) On December 1, 2023, the following agencies and boards, including all of the allied,
66 advisory, affiliated, or related entities and funds associated with any agency or board, are
67 incorporated in and administered as a part of the Department of Health and Human Resources
68 Services:

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

70 ~~(2) Bureau for Public Health provided in §16-1-1 et seq. of this code;~~

71 ~~(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory~~
72 ~~Council provided in §16-4C-1 et seq. of this code;~~

73 ~~(4) Health Care Authority provided in §16-29B et seq. of this code;~~

74 ~~(5) State Commission on Intellectual Disability provided in §29-15-1 et seq. of this code;~~

75 ~~(6) Women's Commission provided in §29-20-1 et seq. of this code; and~~

76 ~~(7) Bureau for Child Support Enforcement provided in §48-1-1 et seq. of this code~~

77 (1) Bureau for Social Services;

78 (2) Bureau for Medical Services;

79 (3) Bureau for Child Support Enforcement provided in §48-1-1 et seq. of this code;

80 (4) Bureau for Family Assistance;

81 (5) Bureau for Behavioral Health; and

82 (6) Office of Drug Control Policy.

83 (i) On December 1, 2023, the following agencies and boards, including all of the allied,
84 advisory, affiliated, or related entities and funds associated with any agency or board, are
85 incorporated in and administered as a part of the Department of Health:

86 (A) Bureau for Public Health;

87 (B) Office of Emergency Medical Services and the Emergency Medical Service Advisory
88 Council provided in §16-4C-1 et seq. of this code;

89 (C) Office of the Chief Medical Examiner;

90 (D) Office of Threat Preparedness;

91 (E) Office of the Inspector General;

92 (i) Office of Health Facility Licensure and Certification;

93 (ii) Board of Review;

94 (iii) Foster Care Ombudsman;

95 (iv) Olmstead Office;

96 (v) Investigation and Fraud Management;

97 (vi) Quality Control; and

98 (vii) WV Clearance for Access: Registry and Employment Screening; and

99 (F) Health Care Authority.

100 (j) (1) By July 1, 2023, the following agencies and boards, including all of the allied,
101 advisory, affiliated, or related entities and funds associated with any agency or board, are
102 incorporated in and administered as a part of the Department of Health Facilities:

103 (A) Hopemont Hospital;

104 (B) Jackie Withrow Hospital;

105 (C) John Manchin, Sr. Health Care Center;

106 (D) Lakin Hospital;

107 (E) Mildred Mitchell-Bateman Hospital;

108 (F) Welch Community Hospital; and

109 (G) William R. Sharpe Jr. Hospital.

110 (2) If a bureau, office, board, commission or other state entity is not specifically organized
111 in subsection (h) or subsection (i) of this section, the secretaries shall decide where the entity shall
112 be placed within the organizational chart and provide a copy of the organizational chart to the
113 Legislative Commission on Health and Human Resources Accountability by September 1, 2023.
114 The changes made in this subsection, subsection (h) and subsection (i) effect the organizational
115 structure and provides for which secretary is the final decision maker for the agencies within the
116 department's organization.

117 (†) (k) The following agencies and boards, including all of the allied, advisory, affiliated, or
118 related entities and funds associated with any agency or board, are incorporated in and
119 administered as a part of the Department of Homeland Security:

120 (1) West Virginia State Police;

121 (2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and
122 Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That
123 notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule
124 promulgated thereunder, a reference is made to the Division of Homeland Security and
125 Emergency Management, it shall be construed to mean the Division of Emergency Management;

126 (3) Division of Administrative Services;

127 (4) Division of Corrections and Rehabilitation;

128 (5) Fire Commission;

129 (6) State Fire Marshal;

130 (7) Board of Probation and Parole;

131 (8) The West Virginia Fusion Center;

132 (9) Division of Protective Services; and

133 (10) Any other agency or entity hereinafter established within the Department of Homeland
134 Security by an act of the Legislature.

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

138 (1) Tax Division provided in §11-1-1 *et seq.* of this code;

139 (2) Racing Commission provided in §19-23-1 *et seq.* of this code;

140 (3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this
141 code;

142 (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

143 (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of
144 this code and §60-2-1 *et seq.* of this code;

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

146 (7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;

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

148 (9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

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

150 (11) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and

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

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

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

156 (2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

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

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

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

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

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

162 (~~l~~) (n) ~~Effective July 1, 2014~~ The Veterans' Council provided in §9A-1-1 *et seq.* of this code,
163 including all of the allied, advisory, affiliated, or related entities and funds associated with it, is
164 incorporated in and administered as a part of the Department of Veterans' Assistance.

165 (~~m~~) (o) Except for powers, authority, and duties that have been delegated to the secretaries
166 of the departments by §5F-2-2 of this code, the position of administrator and the powers, authority,
167 and duties of each administrator and agency are not affected by the enactment of this chapter.

168 (~~n~~) (p) Except for powers, authority, and duties that have been delegated to the secretaries

169 of the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards
170 and the membership, terms, and qualifications of members of the boards are not affected by the
171 enactment of this chapter. All boards that are appellate bodies or are independent decision makers
172 may not have their appellate or independent decision-making status affected by the enactment of
173 this chapter.

174 ~~(p)~~ (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 this
177 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.

187 ~~(q)~~ (s) The Department of Economic Development as established in §5B-2-1 *et seq.* of this
188 code is continued as a separate independent agency within the Executive Branch.

189 ~~(r)~~ (t) The Department of Tourism as established in §5B-21-1 *et seq.* of this code is
190 continued as a separate independent agency within the Executive Branch.

§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 for
8 the effective, efficient, and economical operation of the department;

9 (3) Eliminate or consolidate positions, other than positions of administrators or positions of
10 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
14 employees, 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 25 percent of the funds appropriated to any one agency or board may~~
20 ~~be transferred to other agencies or boards within the department: Provided, however, That no~~
21 ~~funds may be transferred from a special revenue account, dedicated account, capital expenditure~~
22 ~~account, or any other account or funds specifically exempted by the Legislature from transfer,~~
23 ~~except that the use of appropriations from the State Road Fund transferred to the office of the~~
24 ~~Secretary of the Department of Transportation is not a use other than the purpose for which the~~
25 ~~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 or
32 obligations of public funds under this provision shall not exceed or be interpreted as authority to
33 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 §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code:
40 *Provided, however*, That the powers granted to the secretary to lease, purchase, convey, or
41 dispose of such property shall not exceed or be interpreted as authority to exceed the powers
42 granted by the Legislature to the various commissioners, directors, or board members of the
43 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 in
49 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 of
51 this code, by any administrator, agency, or board within the department. Without written consent,
52 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 be
87 construed to abridge the rights of employees within the classified service of the state as provided
88 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 §16-29H-1 et seq. of this code for the purpose of improving the health care~~
102 ~~delivery services in West Virginia for any program over which they have authority~~

103 (f) Notwithstanding any other provision of this code to the contrary, the secretary of each
104 department shall cooperate with the State Resiliency Office to the fullest extent practicable to
105 assist that office in fulfilling its duties.

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 and
5 qualified. ~~Each of the~~ Appointive state officers are subject to the existing qualifications for holding
6 each respective office and each has and is hereby granted all of the powers and authority and shall
7 perform all of the functions and services heretofore vested in and performed by virtue of existing
8 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 and~~
11 ~~Rehabilitation, \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State~~
12 ~~Police, \$85,000; Commissioner, Division of 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; Chairperson, Board of Parole,~~
16 ~~\$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board,~~
17 ~~\$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments~~
18 ~~shall be paid an annual salary as follows: Health and Human Resources, \$95,000: Provided, That~~
19 ~~effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be~~
20 ~~paid an annual salary not to exceed \$175,000; Transportation, \$95,000: Provided, however, That if~~
21 ~~the same person is serving as both the Secretary of Transportation and the Commissioner of~~
22 ~~Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety,~~
23 ~~\$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000;~~

24 ~~Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000. Provided further, That~~
25 ~~any officer specified in this subsection whose salary is increased by more than \$5,000 as a result~~
26 ~~of the amendment and reenactment of this section during the 2011 regular session of the~~
27 ~~Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July~~
28 ~~1, 2011, up to the maximum salary provided in this subsection.~~

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

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

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

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

49 ~~Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Lottery~~

50 Director, \$110,000; Director, Division of Homeland Security and Emergency Management,
51 \$65,000; and Adjutant General, \$125,000.

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

58 (e) The annual salary of each appointive state officer named in this section shall continue
59 in the amount as set forth in this section from the effective date of the amendments to this section
60 enacted in 2020, until the position held by the officer is vacated or until July 1, 2020, whichever
61 occurs first. After the vacancy or after July 1, 2020, whichever occurs first, unless otherwise
62 prohibited by law, the annual salary of each appointed state officer named in this section shall be
63 fixed by the Governor within the current budget allocation. In the event the annual salary fixed by
64 the Governor for an appointed state officer named in this section exceeds the amount set forth in
65 this section for the appointed state officer

66 (b) The amount of the annual salary for the appointed state officer shall be set forth in a
67 line-item in the budget bill, and payment of an annual salary to the appointed state officer may not
68 exceed that amount but may be lower than the salary approved in the budget bill or established in
69 this section. The salary of a newly appointed state officer named in this section shall be included in
70 the appointment letter for the position.

71 The amendment and reenactment of this section in the third extraordinary session of the
72 Legislature, 2021, shall not operate to reduce the salary of any appointive state officer whose
73 salary has been increased pursuant to this subsection since July 1, 2020

CHAPTER 9. HUMAN SERVICES.

ARTICLE 1. DEFINITIONS.

§9-1-1. Legislative purpose.

1 [Repealed.]

§9-1-2.

Definitions.

1 The following words and terms when used in this chapter have the meanings indicated:
2 ~~unless the context clearly indicates a different meaning, and any amendment of this section~~
3 ~~applies to any verdict, settlement, compromise or judgment entered after the effective date of the~~
4 ~~amendments to this section enacted during the regular session of the Legislature, one thousand~~
5 ~~nine hundred ninety-five.~~

6 ~~(a) The term "Department" means the state division~~ Department of Human Services.

7 ~~(b) The term "Commissioner" means commissioner of human services~~ the secretary.

8 ~~(c) The term "Federal-state assistance" means and includes:~~ (1) All forms of aid, care,
9 assistance and services to or on behalf of persons, which are authorized by, and who are
10 authorized to receive the same under and by virtue of, subchapters one, four, five, ten, fourteen,
11 sixteen, eighteen and nineteen, chapter seven, Title 42, United States Code, as those
12 subchapters have heretofore been and may hereafter be amended, supplemented and revised by
13 acts of Congress, and as those subchapters so amended, supplemented and revised have
14 heretofore been and may hereafter be supplemented by valid rules and regulations promulgated
15 by authorized federal agents and agencies, and as those subchapters so amended,
16 supplemented and revised have heretofore been and may hereafter be supplemented by rules
17 promulgated by the state division of human services, which division rules shall be consistent with
18 federal laws, rules and regulations, but not inconsistent with state law; and (2) all forms of aid,
19 care, assistance and services to persons, which are authorized by, and who are authorized to
20 receive the same under and by virtue of, any act of Congress, other than the federal social security
21 act, as amended, for distribution through the state division of human services to recipients of any
22 form of aid, care, assistance and services to persons designated or referred to in (1) of this

23 definition and to recipients of state assistance, including by way of illustration, surplus food and
24 food stamps, which Congress has authorized the secretary of agriculture of the United States to
25 distribute to needy persons.

26 ~~(d) The term "Federal assistance" means and includes all forms of aid, care, assistance~~
27 ~~and services to or on behalf of persons, which are authorized by, and who are authorized to~~
28 ~~receive the same under and by virtue of, any act of Congress for distribution through the state~~
29 ~~division of human services, the cost of which is paid entirely out of federal appropriations.~~

30 ~~(e) The term "State assistance" means and includes all forms of aid, care, assistance,~~
31 ~~services and general relief made possible solely out of state, county and private appropriations to~~
32 ~~or on behalf of indigent persons, which are authorized by, and who are authorized to receive the~~
33 ~~same under and by virtue of, state division of human services' department rules.~~

34 ~~(f) The term "Welfare Assistance" means the three classes of assistance administered by~~
35 ~~the state division of human services, namely: Federal-state assistance, federal assistance, and~~
36 ~~state assistance.~~

37 ~~(g) The term "Indigent person" means any person who is domiciled in this state and who is~~
38 ~~actually in need as defined by department rules and has not sufficient income or other resources to~~
39 ~~provide for such need as determined by the state division of human services department.~~

40 ~~(h) The term "Domiciled in this state" means being physically present in West Virginia~~
41 ~~accompanied by an intention to remain in West Virginia for an indefinite period of time, and to~~
42 ~~make West Virginia his or her permanent home. The state division of human services department~~
43 ~~may by rules supplement the foregoing definition of the term "domiciled in this state", but not in a~~
44 ~~manner as would be inconsistent with federal laws, rules, and regulations applicable to and~~
45 ~~governing federal-state assistance.~~

46 ~~(i) The term "Medical services" means medical, surgical, dental and nursing services, and~~
47 ~~other remedial services recognized by law, in the home, office, hospital, clinic and any other~~
48 ~~suitable place, provided or prescribed by persons permitted or authorized by law to give such~~

49 services; the services to include drugs and medical supplies, appliances, laboratory, diagnostic
50 and therapeutic services, nursing home and convalescent care and such other medical services
51 and supplies as may be prescribed by the persons.

52 ~~(j) The term "General relief" means cash or its equivalent in services or commodities~~
53 ~~expended for care and assistance to an indigent person other than for care in a county infirmary,~~
54 ~~child shelter or similar institution.~~

55 ~~(k) The term "Secretary" means the secretary of the Department of Health and Human~~
56 ~~Resources Services.~~

57 ~~(l) The term "Estate" means all real and personal property and other assets included within~~
58 ~~the individual's estate as defined in the state's probate law.~~

59 ~~(m) The term "Services" means nursing facility services, home and community-based~~
60 ~~services, and related hospital and prescription drug services for which an individual received~~
61 ~~Medicaid medical assistance.~~

62 ~~(n) The term "State Medicaid agency" means the division of the Department of Health and~~
63 ~~Human Resources Bureau of Medical Services that is the federally designated single state agency~~
64 ~~charged with administration and supervision of the state Medicaid program.~~

ARTICLE 2. SECRETARY OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1. Department of Human Services.

1 ~~The state department of welfare, first created as the state department of public assistance~~
2 ~~by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred~~
3 ~~thirty-six, and later reconstituted as the state department of welfare by chapter one hundred ten,~~
4 ~~acts of the Legislature, regular session, one thousand nine hundred sixty-one, shall be continued~~
5 ~~and organized as provided and authorized by this chapter and shall have those powers and duties~~
6 ~~respecting the administration of the welfare assistance programs as authorized, granted and~~

7 ~~imposed by this chapter and elsewhere by law~~

8 By December 1, 2023, the Department of Human Services is created. The Department of
9 Human Services is comprised of the agencies as provided in §5F-2-1 of this code.

§9-2-1a. Department of Health and Human Resources.

1 [Repealed.]

§9-2-2. Secretary to be administrative head of department; appointment, qualifications, etc.; not to hold other office or engage in political activity.

1 ~~The chief executive officer and administrative head of the department shall be the~~
2 ~~commissioner of welfare, who shall be appointed and compensated, and shall serve, as provided~~
3 ~~by §6-7-2a of this code~~

4 The secretary shall be the head of the department, and shall be appointed before
5 December 1, 2023, by the Governor, with the advice and consent of the Senate.

6 ~~The commissioner shall be selected with special reference and consideration given to his~~
7 ~~or her training, experience, capacity and interest in or relating to the welfare assistance programs~~
8 ~~administered by the state department of welfare~~

9 Before entering upon the duties of his or her office, the ~~commissioner~~ secretary shall take
10 and subscribe to the oath of office prescribed by section five, article four of the state Constitution.
11 and shall execute a corporate surety bond in the sum of \$15,000 for the faithful performance of his
12 or her duties. ~~The bond shall be in the form prescribed by the Attorney General and approved by~~
13 ~~the Governor, and both the certificate of the oath and the bond shall be filed with the Secretary of~~
14 ~~State. Premiums upon the bond shall be paid out of the funds of the department~~

15 The ~~commissioner~~ secretary shall not be a candidate for, or hold, any other public office or
16 public employment under the federal government or under the government of this state or any of
17 its political subdivisions, or be a member or officer of any political party committee, or serve as an
18 election official, or engage in any political activity, other than to vote, in behalf of, or in opposition
19 to, any candidate, political party or public issue involved in an election. Any violation by the

20 ~~commissioner~~ secretary of the provisions of this paragraph section shall automatically vacate his
21 or her appointment as ~~commissioner~~ secretary.

§9-2-5. Administering the state assistance programs; information and data to be supplied by other agencies.

1 (a) The department ~~is charged with the responsibility of administering~~ shall administer the
2 state ~~the welfare~~ assistance programs, for which responsibility it shall have:

3 (1) All powers, not inconsistent with state law, as may be necessary for this state to obtain
4 maximum federal funds made available for federal-state assistance within whatever limits or
5 restrictions may be imposed by, or may exist by reason of the amount of state funds appropriated
6 for such; ~~assistance under, the state's budget act and supplementary appropriation acts and~~

7 (2) All powers, not inconsistent with state law, as may be necessary for the disbursement
8 and distribution of ~~welfare~~ assistance to those persons qualified therefor in as prompt, fair, orderly,
9 efficient and economical manner as possible.

10 (b) Notwithstanding any other provision of this code to the contrary, each ~~department,~~
11 agency, commission or board of state government shall make available to the department of
12 ~~welfare~~ such information and data as ~~each such department, agency, commission or board may~~
13 ~~collect~~ it collects about any applicant for or recipient of any type of federal or state assistance upon
14 such terms as may be prescribed by the Governor, if such information and data would be relevant
15 in ~~determining whether such~~ to determine if an applicant or recipient is qualified or eligible for any
16 such assistance. ~~and after such information and data have been obtained by the department of~~
17 ~~welfare, the same shall be used only by such department of welfare in carrying out and~~
18 ~~discharging~~ its ~~powers, duties and responsibilities~~

§9-2-6. Powers of secretary.

1 ~~(a)~~ 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 and elsewhere by law, may:

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

8 (a) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

9 (1) Coordinate efforts with the Secretary of Health Care Facilities and the Secretary of
10 Health;

11 (2) Promulgate, amend, revise, and rescind department legislative rules and regulations
12 policies respecting qualifications for receiving ~~the different classes of welfare assistance~~
13 consistent with or permitted by federal laws, rules, and policies, but not inconsistent with state law:
14 *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state
15 funds to pay for care rendered in any birthing center licensed under the provisions of §16-2E-1 *et*
16 *seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7
17 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife
18 as permitted by §30-15-7 of this code.

19 (3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment,
20 facilities, and services as may be necessary for the execution and administration of ~~those the~~
21 secretary's powers: ~~duties, and responsibilities granted and assigned by this chapter and~~
22 ~~elsewhere by law to the department and the secretary~~ *Provided*, That the provisions of §5A-10-1 *et*
23 *seq.* of this code are followed.

24 (4) Sign and execute in the name of the state ~~by the department of Health and Human~~
25 ~~Resources~~ any contract or agreement with the federal government or its agencies, other states,
26 political subdivisions of this state, corporations, associations, partnerships, or individuals:
27 *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.

28 (5) Sign and execute a contract to implement professional health care, managed care,
29 actuarial and health care-related monitoring, quality review/utilization, claims processing, and

30 independent professional consultant contracts for the Medicaid program. *Provided*, That the
31 provisions of §5A-3-1 *et seq.* of this code are followed. ~~Provided, however, That a contract~~
32 ~~awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in~~
33 ~~full force and effect and the secretary retains sole authority to review, approve, and issue changes~~
34 ~~to contracts issued under the former purchasing process, and is responsible for challenges,~~
35 ~~disputes, protests, and legal actions related to such contracts.~~

36 (6) ~~Establish such special funds as may be required by the federal Social Security Act, as~~
37 ~~amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of~~
38 ~~the benefits and provisions thereof relating to the federal state assistance and federal assistance~~
39 ~~programs administered by the department and to make payments into and disbursements out of~~
40 ~~any such special fund or funds in accordance with the requirements of the federal Social Security~~
41 ~~Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state~~
42 ~~law and the objects and purposes of this chapter. In addition, the Department of Health and~~
43 ~~Human Resources, through the secretary, is hereby authorized to Accept any and all gifts or~~
44 ~~grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys,~~
45 ~~shall be placed in a separate fund and expended solely for the purpose of public assistance~~
46 ~~programs. No part of this special fund may revert to the general revenue funds of this state. No~~
47 ~~expenses incurred pursuant to this special fund may be a charge against the general funds of this~~
48 ~~state.~~

49 (7) ~~Establish within the department an Office of Inspector General for the purpose of~~
50 ~~conducting and supervising investigations, performing inspections, evaluations, and review, and~~
51 ~~providing quality control for the programs of the department. The Office of Inspector General shall~~
52 ~~be headed by the Inspector General who shall report directly to the secretary. Neither the~~
53 ~~secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector~~
54 ~~General or his or her employees from initiating, carrying out, or completing any investigation,~~
55 ~~inspection, evaluation, review, or other activity oversight of public integrity by the Office of the~~

56 ~~Inspector General. The secretary shall place within the Office of Inspector General any function he~~
57 ~~or she deems necessary. Qualification, compensation, and personnel practice relating to the~~
58 ~~employees of the Office of the Inspector General, including that of the position of Inspector~~
59 ~~General, shall be governed by the classified service provisions of §29-6-1 et seq. of this code and~~
60 ~~rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of~~
61 ~~Inspector General. By December 1, 2023, the Office of the Inspector General is moved to the~~
62 ~~Department of Health.~~

63 (8) Provide at department expense a program of continuing professional, technical, and
64 specialized instruction for the personnel of the department.

65 (9) Pay from available funds all or part of the reasonable expenses incurred by a person
66 newly employed by the department in moving his household furniture, effects, and immediate
67 family from his or her place of residence in this state to his or her place of employment in this state;
68 and to pay from available funds all or part of the reasonable expenses incurred by a department
69 employee in moving his or her household furniture, effects, and immediate family as a result of a
70 reassignment of the employee which is considered desirable, advantageous to and in the best
71 interests of the state, but no part of the moving expenses of any one such employee may be paid
72 more frequently than once in 12 months or for any movement other than from one place of
73 employment in this state to another place of employment in this state.

74 (10) Establish a program to provide reimbursement to employees of the department whose
75 items of personal property, as defined by the department by policy, are damaged during the course
76 of employment or other work-related activity as a result of aggressive behavior by a client or
77 patient receiving services from the department: *Provided*, That the reimbursement is limited to a
78 maximum amount of \$250 per claim.

79 ~~(11) Establish and maintain such institutions as are necessary for the temporary care,~~
80 ~~maintenance, and training of children and other persons.~~

81 ~~(11) Establish and maintain such institutions as are necessary for the temporary care,~~

82 ~~maintenance, and training of children and other persons~~

83 (12) (11) Prepare and submit state plans which will meet the requirements of federal laws,
84 rules governing federal-state assistance, and federal assistance, and which are not inconsistent
85 with state law.

86 (13) (12) Organize within the department a board of review, consisting of a chairman
87 appointed by the secretary and as many assistants or employees of the department as may be
88 determined by the secretary and as may be required by federal laws and rules respecting state
89 assistance, federal-state assistance, and federal assistance, the board of review ~~to have such~~
90 ~~powers of a~~ shall review nature and ~~such additional powers as~~ may be granted ~~to it~~ additional
91 powers by the secretary and as may be required by federal laws and rules respecting ~~federal-state~~
92 ~~assistance and federal assistance.~~

93 (14) (13) Provide by rules, review and appeal procedures ~~within the department of Health~~
94 ~~and Human Resources~~ as may be required by applicable federal laws and rules respecting state
95 ~~assistance, federal-state assistance, and federal~~ assistance, and as will provide applicants for,
96 and recipients of, all classes of ~~welfare~~ assistance an opportunity to be heard by the board of
97 review, a member thereof, or individuals designated by the board, upon claims involving denial,
98 reduction, closure, delay, or other action or inaction pertaining to ~~public~~ assistance.

99 (15) (14) Provide by rules, consistent with requirements of applicable federal laws and
100 rules, application forms and application procedures ~~for the various~~ classes of public assistance.

101 (16) (15) Provide locations for making applications for ~~the various classes~~ of public
102 assistance.

103 (17) (16) Provide a citizen or group of citizens an opportunity to file objections and to be
104 heard upon objections to the grant of ~~any class of~~ public assistance.

105 (18) (17) Delegate to the personnel of the department all powers and duties vested in the
106 secretary, except the power and authority to sign contracts and agreements.

107 (19) (18) Make ~~such reports in such form and containing such information as~~ may be

108 required by applicable federal laws and rules respecting ~~federal state assistance and federal~~
109 assistance.

110 ~~(20)~~ (19) Invoke any legal, equitable, or special remedies for the enforcement of the
111 provisions of this chapter.

112 ~~(24)~~ (20) Require a provider, subgrantee, or other entity performing services on behalf of
113 the department to comply with all applicable laws, rules, and written procedures pertaining to the
114 program for which the entity is providing or coordinating services, including, but not limited to,
115 policy manuals, statements of work, program instructions, or other similar agreements. When
116 submitting a claim for payment, the entity shall certify that it has complied with all material
117 conditions for payment. Knowingly and intentionally submitting a claim or billing for services
118 performed in material violation of any law, rule, policy, or other written agreement shall constitute
119 fraud and the agreement for provision of services shall terminate. The entity shall be required to
120 repay the department for any payment under the program for which the provider was not entitled,
121 regardless of whether the incorrect payment was the result of department error, fraud, or other
122 cause. A demand for repayment or termination of agreement for provision of services shall be
123 subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions of
124 this subsection do not apply to fraud in the Medicaid program.

125 ~~(22)~~ (21) Develop a data analytics pilot program to identify potential fraud and help guide
126 policy objectives to eliminate future fraud. ~~The secretary shall submit a report containing the pilot~~
127 ~~program's results and recommendations to the Joint Committee on Government and Finance no~~
128 ~~later than December 31, 2020~~

129 (22) Coordinate administration of the department with the Chief Operating Officer.

130 ~~(b) The secretary shall~~ (23) Annually allocate Child Protective Services workers by districts
131 of the Bureau for Social Services and report the allocation process to the Legislative Oversight
132 Commission on Health and Human Resources Accountability by July 1 each year.

§9-2-9. Secretary to develop Medicaid monitoring and case management.

1 [Repealed.]

§9-2-13. Judicial review of decisions of contested cases.

1 (a) For purposes of this section:

2 (1) "Agency" means the Board of Review or the Bureau for Medical Services, as the case
3 may be, that has been named as a party to any proceeding on appeal made pursuant to the
4 provisions of this section.

5 (2) "Board of Review" or "Board" means the ~~West Virginia Department of Health and~~
6 ~~Human Resources~~ Board of Review operating pursuant to the provisions of §9-2-6 ~~(13)~~ of this
7 code.

8 (3) "Bureau" means the ~~Department of Health and Human Resources'~~ Bureau for Medical
9 Services which is the single state agency for Medicaid services in West Virginia.

10 (b) The board shall provide a fair, impartial, and expeditious grievance and appeal process
11 to applicants or recipients of ~~state assistance, federal assistance, federal-state assistance or~~
12 ~~welfare assistance. as defined in §9-1-1 et seq. of this code~~ The bureau shall provide a fair,
13 impartial, and expeditious grievance and appeal process to providers of Medicaid services.

14 (c) Any party adversely affected or aggrieved by a final decision or order of the agency may
15 seek judicial review of that decision.

16 (d) Proceedings for review shall be instituted by filing a petition, at the election of the
17 petitioner, in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the
18 county in which the petitioner or any one of the petitioners resides or does business, or with the
19 judge thereof in vacation, within 30 days after the date upon which such party received notice of
20 the final order or decision of the agency. A copy of the petition shall be served upon the agency
21 and all other parties of record by registered or certified mail. The petition shall state whether the
22 appeal is taken on questions of law or questions of fact, or both. No appeal bond is required to
23 effect any such appeal.

24 (e) The filing of the petition for appeal does not stay or supersede enforcement of the final

25 decision or order of the agency. The agency may voluntarily stay such enforcement and the
26 appellant, at any time after the filing of the petition for appeal, may apply to the circuit court of
27 Kanawha County, or in the circuit court of the county in which the petitioner or any one of the
28 petitioners resides or does business, for a stay of or to supersede the final decision or order.
29 Pending the appeal, the circuit court may grant a stay or supersede the order upon such terms as it
30 considers proper.

31 (f) Within 15 days after receipt of a copy of the petition by the agency, or within such further
32 time as the court may allow, the agency shall prepare and transmit to the circuit court of Kanawha
33 County, or in the circuit court of the county in which the petitioner or any one of the petitioners
34 resides or does business, the original or a certified copy of the entire record of the proceeding
35 under review: *Provided*, That all records prepared and transmitted that involve a minor shall be
36 filed under seal. This shall include a transcript of all reported testimony and all exhibits, papers,
37 motions, documents, evidence, records, agency staff memoranda and data used in consideration
38 of the case, all briefs, memoranda, papers, and records considered by the agency in the
39 underlying proceeding and a statement of matters officially noted. By stipulation of the parties, the
40 record may be shortened. In the event the complete record is not filed with the court within the time
41 provided for in this section, the appellant may apply to the court to have the case docketed and the
42 court shall order the agency to file the record.

43 (g) The cost of preparing the official record shall be assessed as part of the costs of the
44 appeal. The appellant shall provide security for costs satisfactory to the court. Any party
45 unreasonably refusing to stipulate to limit the record may be assessed by the court for the
46 additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at
47 cost to the requesting party, a copy of the official record.

48 (h) The court shall hear appeals upon assignments of error filed in the petition or set out in
49 the briefs filed by the parties. The court may disregard errors not argued by brief or may consider
50 errors that are not assigned or argued. The court shall fix a date and time for the hearing on the

51 petition. Unless otherwise agreed by the parties, the court may not schedule the hearing sooner
52 than 10 days after the filing of the petition for appeal. The petitioner shall provide notice of the date
53 and time of the hearing to the agency.

54 (l) In cases involving alleged irregularities in procedure before the agency that are not
55 shown in the record, the court may take additional testimony. Otherwise, the circuit court shall
56 review the appeal without a jury and may only consider the official record provided pursuant to the
57 requirements of this section. The court may hear oral arguments and require written briefs.

58 (j) The court may affirm the final decision or order of the agency or remand the matter for
59 further proceedings. The court may reverse, vacate or modify the final decision or order of the
60 agency only if the substantial rights of the petitioner have been prejudiced because the
61 administrative findings, inferences, conclusions, decision or order are:

62 (1) In violation of constitutional or statutory provisions;

63 (2) In excess of the statutory authority or jurisdiction of the agency;

64 (3) Made upon unlawful procedures;

65 (4) Affected by other error of law;

66 (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole
67 record; or

68 (6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted
69 exercise of discretion.

70 (k) The judgment of the circuit court is final unless reversed, vacated or modified on appeal
71 to the West Virginia Supreme Court of Appeals.

72 (l) The process established by this section is the exclusive remedy for judicial review of
73 final decisions of the Board of Review and the Bureau for Medical Services.

§9-2-14. Office of Chief Operating Officer.

1 (a) By July 1, 2023, there is continued an Office of the Chief Operating Officer. The Chief
2 Operating Officer shall assist the Department of Health, the Department of Human Services, and

3 the Department of Health Care Facilities by providing the administrative support of the day to day
4 operations of the departments. The administrative supports include legal, fiscal, personnel,
5 purchasing, and information technology.

6 (b) The Chief Operating Officer shall be appointed by the Governor, with advice and
7 consent of the Senate. The Chief Operating Officer may be removed by the Governor, for
8 misconduct in office and persistent failure to perform the duties of the office. On January 1, 2026,
9 and thereafter, the Chief Operating Officer shall be appointed by the Secretary.

10 (c) The Chief Operating Office shall coordinate efforts with the Department of
11 Administration to consolidate administrative services in an effort to contain expenses within the
12 Department of Health, the Department of Human Services, and the Department of Health Care
13 Facilities. The Chief Operating Officer shall implement a plan consolidating administrative
14 services for the purpose of streamlining administrative services and reducing expenses within the
15 departments. The Chief Operating Officer shall complete implementation by June 30, 2024, and
16 shall provide monthly updates to the Legislative Oversight Commission on Health and Human
17 Resources Accountability.

18 (d) The Chief Operating Officer is entitled to the salary provided in the state budget.

19 (e) Funding for the Office shall be as provided in the state budget.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. DEPARTMENT OF HEALTH.

§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;

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

5 (3) "Combined local board of health" means one form of organization for a local board of

6 health and means a board of health serving any two or more counties or any county or counties
7 and one or more municipalities within or partially within the county or counties;

8 (4) "Commissioner" means the commissioner of the bureau, who ~~is~~ may be designated as
9 the state health officer;

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

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

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

16 (7) ~~(8)~~ "Essential public health services" means the core public health activities necessary
17 to promote health and prevent disease, injury, and disability for the citizens of the state. The
18 services include:

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

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

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

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

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

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

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

27 (H) Promoting a competent public health and personal health care workforce;

28 (I) Evaluating the effectiveness, accessibility, and quality of personal and population-based
29 health services; and

30 (J) Researching for new insights and innovative solutions to health problems;

31 (8) ~~(9)~~ "Local board of health", "local board", or "board" means a board of health serving

32 one or more counties or one or more municipalities or a combination thereof;

33 ~~(9)-(10)~~ "Local health department" means the staff of the local board of health;

34 ~~(10)-(11)~~ "Local health officer" means ~~the physician with a current West Virginia license to~~
35 ~~practice medicine who supervises and directs the activities, services, staff, and facilities of the~~
36 ~~local health department and is appointed by the local board of health with approval by the~~
37 ~~commissioner; is defined in §16-2-2 of this code.~~

38 ~~(11)-(12)~~ "Municipal board of health" means one form of organization for a local board of
39 health and means a board of health serving a single municipality;

40 ~~(12)-(13)~~ "Performance-based standards" means generally accepted, objective standards
41 such as rules or guidelines against which public health performance can be measured;

42 ~~(13)-(14)~~ "Potential source of significant contamination" means a facility or activity that
43 stores, uses, or produces substances or compounds with potential for significant contaminating
44 impact if released into the source water of a public water supply;

45 ~~(14)-(15)~~ "Public groundwater supply source" means a primary source of water supply for a
46 public water system which is directly drawn from a well, underground stream, underground
47 reservoir, underground mine, or other primary source of water supplies which is found underneath
48 the surface of the state;

49 ~~(15)-(16)~~ "Public surface water supply source" means a primary source of water supply for
50 a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments,
51 or other primary sources of water supplies which are found on the surface of the state;

52 ~~(16)-(17)~~ "Public surface water influenced groundwater supply source" means a source of
53 water supply for a public water system which is directly drawn from an underground well,
54 underground river or stream, underground reservoir, or underground mine, and the quantity and
55 quality of the water in that underground supply source is heavily influenced, directly or indirectly,
56 by the quantity and quality of surface water in the immediate area;

57 ~~(17)-(18)~~ "Public water system" means:

58 (A) Any water supply or system which regularly supplies or offers to supply water for
59 human consumption through pipes or other constructed conveyances, if serving at least an
60 average of 25 individuals per day for at least 60 days per year, or which has at least 15 service
61 connections, and shall include:

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

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

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

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

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

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

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

74 ~~(18)-(19)~~ "Public water utility" means a public water system which is regulated by the West
75 Virginia Public Service Commission pursuant to the provisions of §24-1-1 et seq. of this code;

76 ~~(19)-(20)~~ "Secretary" means the Secretary of the Department of Health.

77 ~~(20)-(21)~~ "Service area" means the territorial jurisdiction of a local board of health;

78 ~~(21)-(22)~~ "Zone of critical concern" for a public surface water supply is a corridor along
79 streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface
80 water intake and the intake's susceptibility to potential contaminants within that corridor. The zone
81 of critical concern is determined using a mathematical model that accounts for stream flows,
82 gradient, and area topography. The length of the zone of critical concern is based on a five-hour
83 time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below

84 the water intake. The width of the zone of critical concern is 1,000 feet measured horizontally from
85 each bank of the principal stream and 500 feet measured horizontally from each bank of the
86 tributaries draining into the principal stream.

§16-1-3. Department of Health.

1 ~~(a) The secretary may establish a state public health system.~~

2 ~~(b) As necessary for the effective, efficient, and economical operation of the system, the~~
3 ~~secretary may from time to time delegate, assign, transfer, or combine responsibilities or duties to~~
4 ~~or among employees of the department.~~

5 ~~(c) Within the limits of applicable federal law, the secretary may require every applicant for~~
6 ~~a license, permit, certificate of registration, or registration under this chapter to place his or her~~
7 ~~social security number on the application.~~

8 ~~(d) The secretary may appoint advisory councils~~

9 By December 1, 2023, the Department of Health is created. The Department of Health is
10 comprised of the agencies as provided in §5F-2-1 of this code.

§16-1-4. Secretary of Department of Health; powers and duties.

1 ~~(a) The secretary may propose legislative rules in accordance with the provisions of §29A-~~
2 ~~3-1 et seq. of this code that include~~

3 (a) (1) The secretary shall be the head of the department, and shall be appointed by
4 December 1, 2023, by the Governor, with the advice and consent of the Senate.

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

7 (3) The secretary shall not be a candidate for, or hold, any other public office or public
8 employment under the federal government or under the government of this state or any of its
9 political subdivisions, or be a member or officer of any political party committee, or serve as an
10 election official, or engage in any political activity, other than to vote, in behalf of, or in opposition
11 to, any candidate, political party or public issue involved in an election. Any violation by the

12 secretary of the provisions of this section shall automatically vacate his or her appointment as
13 secretary.

14 (b) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

15 (1) Coordinate efforts with the Secretary of Health Care Facilities and the Secretary of
16 Human Services;

17 (2) Shall establish a state public health system; and

18 (3) Coordinate administrative personnel with the Chief Operating Officer.

19 (c) The secretary may:

20 (1) Within the limits of applicable federal law, the secretary may require every applicant for
21 a license, permit, certificate of registration, or registration under this chapter to place his or her
22 social security number on the application.

23 (2) Appoint advisory councils.

24 (3) Propose legislative rules in accordance with the provisions of §29A-3-1 et seq. of this
25 code that include:

26 (4) (A) Land usage endangering the public health: *Provided*, That no rules may be
27 promulgated or enforced restricting the subdivision or development of any parcel of land within
28 which the individual tracts, lots, or parcels exceed two acres each in total surface area and which
29 individual tracts, lots, or parcels have an average frontage of not less than 150 feet even though
30 the total surface area of the tract, lot, or parcel equals or exceeds two acres in total surface area,
31 and which tracts are sold, leased, or utilized only as single-family dwelling units. Notwithstanding
32 the provisions of this subsection, nothing in this section may be construed to abate the authority of
33 the department to:

34 (i) ~~(A)~~ ~~(I)~~ Restrict the subdivision or development of a tract for any more intense or higher
35 density occupancy than a single-family dwelling unit;

36 (ii) ~~(B)~~ ~~(II)~~ Propose or enforce rules applicable to single-family dwelling units for single-
37 family dwelling unit sanitary sewerage disposal systems; or

38 ~~(iii)~~ ~~(C)~~ ~~(III)~~ Restrict any subdivision or development which might endanger the public
39 health, the sanitary condition of streams, or sources of water supply;

40 ~~(2)~~ ~~(B)~~ The sanitary condition of all institutions and schools, whether public or private,
41 public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places
42 open to the general public and inviting public patronage or public assembly, or tendering to the
43 public any item for human consumption and places where trades or industries are conducted;

44 ~~(3)~~ ~~(C)~~ Occupational and industrial health hazards, the sanitary conditions of streams,
45 sources of water supply, sewerage facilities, and plumbing systems and the qualifications of
46 personnel connected with any of those facilities, without regard to whether the supplies or systems
47 are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage
48 systems, sewage treatment plants, excreta disposal methods, and swimming pools in this state,
49 whether publicly or privately owned;

50 ~~(4)~~ ~~(D)~~ Safe drinking water, including:

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

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

62 ~~(C)~~ ~~(iii)~~ The requirements covering the production and distribution of bottled drinking water
63 and may establish requirements governing the taste, odor, appearance, and other consumer

64 acceptability parameters of drinking water;

65 ~~(4)~~ (5) Food and drug standards, including cleanliness, proscription of additives,
66 proscription of sale, and other requirements in accordance with §16-7-1 *et seq.* of this code as are
67 necessary to protect the health of the citizens of this state;

68 ~~(5)~~ (6) The training and examination requirements for emergency medical service
69 attendants and emergency medical care technician-paramedics; the designation of the health
70 care facilities, health care services, and the industries and occupations in the state that must have
71 emergency medical service attendants and emergency medical care technician-paramedics
72 employed, and the availability, communications and equipment requirements with respect to
73 emergency medical service attendants and to emergency medical care technician-paramedics.
74 Any regulation of emergency medical service attendants and emergency medical care technician-
75 paramedics may not exceed the provisions of §16-4C-1 *et seq.* of this code;

76 ~~(6)~~ (7) The health and sanitary conditions of establishments commonly referred to as bed
77 and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment
78 providing sleeping accommodations and, at a minimum, a breakfast for a fee. The secretary may
79 not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer
80 rooms to install a restaurant-style or commercial food service facility. The secretary may not
81 require an owner of a bed and breakfast providing sleeping accommodations of more than six
82 rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast
83 inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

84 ~~(7)~~ (8) Fees for services provided by the Bureau for Public Health including, but not limited
85 to, laboratory service fees, environmental health service fees, health facility fees, and permit fees;

86 ~~(8)~~ (9) The collection of data on health status, the health system, and the costs of health
87 care;

88 ~~(9)~~ (10) The distribution of state aid to local health departments and basic public health
89 services funds in accordance with:

90 (A) Base allocation amount for each county;

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

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

95 (D) Distribution of remaining funds on a per capita weighted population approach which
96 factors coefficients for poverty, health status, population density, and health department
97 interventions for each county and a coefficient which encourages counties to merge in the
98 provision of public health services; and

99 (E) The provisions of this subdivision are in effect until the performance standard funding
100 formula is created and established by legislative rule.

101 ~~(b)~~ (d) The secretary shall not review any repair or modernization of equipment at a public
102 pool facility as long as such activity does not change the scope of the facility or its current use and
103 such activity does not exceed \$25,000 in planned cost.

§16-1-6. Powers and duties of the Commissioner of the Bureau for Public Health

1 (a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau
2 for Public Health and has the following powers and duties:

3 (1) To supervise and direct the fiscal and administrative matters of the bureau, and in that
4 regard and in accordance with law, employ, fix the compensation of, and discharge all persons
5 necessary for the proper execution of the public health laws of this state and the efficient and
6 proper discharge of the duties imposed upon, and execution of powers vested in the commissioner
7 by law and as directed by the secretary;

8 (2) To enforce all laws of this state concerning public health.

9 (3) To investigate the cause of disease, especially of epidemics and endemic conditions,
10 and the means of prevention, suppression, or control of those conditions; the source of sickness
11 and mortality, the effects of environment, employment, habits, and circumstances of life on the

12 public health.

13 (4) To inspect and examine food, drink, and drugs offered for sale or public consumption in
14 the manner the commissioner considers necessary to protect the public health and shall report all
15 violations of laws and rules relating to the law to the prosecuting attorney of the county in which the
16 violations occur;

17 (5) To make complaint or cause proceedings to be instituted against any person,
18 corporation, or other entity for the violation of any public health law before any court or agency,
19 without being required to give security for costs; the action may be taken without the sanction of
20 the prosecuting attorney of the county in which the proceedings are instituted or to which the
21 proceedings relate;

22 (6) To promote the provision of essential public health services to citizens of this state;

23 (7) To monitor the operation and coordination of the local boards of health and local health
24 officers;

25 (8) To develop and maintain a state plan of operation that sets forth the needs of the state
26 in the areas of public health; goals and objectives for meeting those needs; methods for achieving
27 the stated goals and objectives; and needed personnel, funds, and authority for achieving the
28 goals and objectives;

29 (9) To collect data as may be required to foster knowledge on the citizenry's health status,
30 the health system, and costs of health care;

31 (10) To delegate to any appointee, assistant, or employee any and all powers and duties
32 vested in the commissioner, including, but not limited to, the power to execute contracts and
33 agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the
34 acts of his or her appointees, assistants, and employees;

35 (11) To transfer any patient or resident between hospitals and facilities and, by agreement
36 with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law,
37 accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of

38 Corrections and Rehabilitation;

39 (12) To make periodic reports to the Governor and to the Legislature relative to specific
40 subject areas of public health, or other matters affecting the public health of the people of the state;

41 (13) To accept and use for the benefit of the health of the people of this state, any gift or
42 devise of any property or thing which is lawfully given: *Provided*, That if any gift is for a specific
43 purpose shall be used as specified. Any profit which may arise from any gift or devise of any
44 property or thing shall be deposited in a special revenue fund with the State Treasurer and shall be
45 used only as specified by the donor or donors;

46 ~~(14) To acquire by condemnation or otherwise any interest, right, privilege, land, or~~
47 ~~improvement and hold title to the land or improvement, for the use or benefit of the state or a state~~
48 ~~hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or~~
49 ~~improvement acquired or held by the state, state hospital, or state facility Any condemnation~~
50 ~~proceedings shall be conducted pursuant to §54-1-1 et seq. of this code~~

51 ~~(15)~~ (14) To inspect and enforce rules to control the sanitary conditions of and license all
52 institutions and health care facilities as set forth in this chapter, including, but not limited to,
53 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,
54 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places
55 open to the general public and inviting public patronage or public assembly, or tendering to the
56 public any item for human consumption and places where trades or industries are conducted;

57 ~~(16)~~ (15) To make inspections, conduct hearings, and to enforce the legislative rules
58 concerning occupational and industrial health hazards, the sanitary condition of streams, sources
59 of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel
60 connected with the supplies, facilities or systems without regard to whether they are publicly or
61 privately owned; and to make inspections, conduct hearings and enforce the legislative rules
62 concerning the design of chlorination and filtration facilities and swimming pools;

63 ~~(17)~~ (16) To provide in accordance with this subdivision for a program for the care,

64 treatment, and rehabilitation of the parents of sudden infant death syndrome victims; for the
65 training and employment of personnel to provide the requisite rehabilitation of parents of sudden
66 infant death syndrome victims; for the education of the public concerning sudden infant death
67 syndrome; for the education of police, employees, and volunteers of all emergency services
68 concerning sudden infant death syndrome; and for requesting appropriation of funds in both
69 federal and state budgets to fund the sudden infant death syndrome program;

70 ~~(18)~~ (17) To establish and maintain a state hygienic laboratory as an aid in performing the
71 duties imposed upon the commissioner, and to employ employees that may be necessary to
72 properly operate the laboratory. The commissioner may establish branches of the state laboratory
73 within the state that are necessary in the interest of the public health;

74 ~~(19)~~ (18) To expend, for the purpose of performing the public health duties imposed on the
75 bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may
76 make advance payments to public and nonprofit health services providers when the commissioner
77 determines it is necessary for the initiation or continuation of public health services. The advance
78 payments, being in derogation of the principle of payment only after receipt of goods or services,
79 shall be authorized only after serious consideration by the commissioner of the necessity of the
80 advance payments and shall be for a period no greater than 90 days in advance of rendition of
81 service or receipt of goods and continuation of health services;

82 ~~(20)~~ (19) To exercise all other powers delegated to the commissioner by the secretary or by
83 this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities
84 necessary and incident to the authority and area of concern entrusted to the bureau or the
85 commissioner.

86 (b) The commissioner shall establish within the Bureau for Public Health, a Center for
87 Local Public Health. The center shall:

88 (1) Enhance the quality and availability of essential public health services throughout the
89 state provided by local boards of health;

- 90 (2) Provide technical assistance and consultation to a local board of health agency;
- 91 (3) Allocate and distribute funding based upon performance based standards;
- 92 (4) Provide technical assistance to the local public health workforce;
- 93 (5) Facilitate bi-directional communication;
- 94 (6) Establish a uniform state-wide computer system for the reporting of public health data;
- 95 (7) Inventory the services provided by a local boards of health;
- 96 (8) Support sharing of services between local boards of health;
- 97 (9) Create a performance-based evaluation system based on standards established by
- 98 legislative rule;
- 99 (10) Provide a quarterly training to ensure consistency in the application of state laws,
- 100 legislative rules, and local health department rules; and
- 101 (11) Enforce compliance with performance standards.

§16-1-22. Office of the Inspector General.

1 (a) By December 1, 2023, the Office of the Inspector General is moved from the

2 Department of Health and Human Resources and is continued within this department. The Office

3 of Inspector General shall be headed by the Inspector General and is comprised of the offices as

4 provided in §5F-2-1 of this code.

5 (b) (1) The Inspector General shall be appointed unanimously by the Governor, the

6 Attorney General, and the State Auditor, subject to the advice and consent of the Senate.

7 (A) The term of the Inspector General is 5 years.

8 (B) At the end of a term, the Inspector General is eligible to be reappointed for one

9 additional term. The Inspector General shall continue to serve until a successor is appointed.

10 (C) If a vacancy occurs in the office, an interim Inspector General may be appointed as

11 successor to serve for the remainder of the unexpired term.

12 (2) The Inspector General may be removed unanimously by the Governor, the Attorney

13 General, and the State Auditor for:

- 14 ~~(A)(1) Misconduct in office;~~
- 15 ~~(B) (2) Persistent failure to perform the duties of the Office; or~~
- 16 ~~(C)(3) Conduct prejudicial to the proper administration of justice.~~
- 17 ~~(c) The Inspector General must be professionally qualified through experience or~~
18 ~~education in at least two of the following areas:~~
- 19 ~~(1) Law;~~
- 20 ~~(2) Auditing;~~
- 21 ~~(3) Government operations;~~
- 22 ~~(4) Financial management; or~~
- 23 ~~(5) Health policy.~~
- 24 ~~(d) The Inspector General is entitled to the salary provided in the state budget.~~
- 25 ~~(e) Funding for the Office shall be as provided in the state budget.~~
- 26 ~~(f) The Inspector General:~~
- 27 ~~(1) Shall conduct and supervise investigations, perform inspections, evaluations, and~~
28 ~~review, and provide quality control for the programs of the Department of Health, the Department~~
29 ~~of Human Services and the Department of Health Care Facilities.~~
- 30 ~~(2) Shall investigate fraud, waste, abuse of departmental funds, and behavior in the~~
31 ~~Department of Health, the Department of Human Services and the Department of Health Care~~
32 ~~Facilities that threatens public safety or demonstrates negligence, incompetence, or malfeasance;~~
- 33 ~~(3) Shall cooperate with and coordinate investigative efforts with the Medicaid Fraud~~
34 ~~Control Unit and where a preliminary investigation establishes a sufficient basis to warrant referral,~~
35 ~~shall refer such matters to the Medicaid Fraud Control Unit; and~~
- 36 ~~(4) Shall cooperate with and coordinate investigative efforts with departmental programs~~
37 ~~and other state and federal agencies to ensure a provider is not subject to duplicative audits.~~
- 38 ~~(5) Shall be empowered to consult with the Legislature for policy development;~~
- 39 ~~(6) (A) May subpoena any person or evidence, administer oaths, and take depositions and~~

40 other testimony for the purpose of investigating fraud, waste, abuse of departmental funds, or
41 behavior in the departments that threatens public safety or demonstrates negligence,
42 incompetence, or malfeasance.

43 (B) If a person fails to comply with a lawful order or subpoena issued under this subsection,
44 on petition of the Inspector General or a designated Assistant Inspector General, a court of
45 competent jurisdiction may compel:

46 (i) Compliance with the order or subpoena; or

47 (ii) Testimony or the production of evidence.

48 (C) Within 30 business days after receiving a complaint or allegation, the Inspector
49 General shall respond to the individual who filed the complaint or allegation with:

50 (1) A preliminary indication of whether the Office of the Inspector General is able to
51 investigate the complaint or allegation; and

52 (2) If the Office of the Inspector General is unable to investigate the complaint or allegation
53 because of a conflict of interest. The Office of the Inspector General shall refer the complaint or
54 allegation to another unit of government or law enforcement.

55 (g) Neither the secretary nor any employee of the Department of Human Service,
56 Department of Health, and the Department of Health Care Facilities may prevent, inhibit, or
57 prohibit the Inspector General or his or her employees from initiating, carrying out, or completing
58 any investigation, inspection, evaluation, review, or other activity oversight of public integrity by the
59 Office of the Inspector General.

60 (h) The Inspector General approves and submits his or her budget.

61 (i) The Inspector General shall supervise all personnel of the Office of the Inspector
62 General. Qualification, compensation, and personnel practice relating to the employees of the
63 Office of the Inspector General, shall be governed by the classified service.

CHAPTER 26. STATE HEALTH CARE FACILITIES.

ARTICLE 1. DEPARTMENT OF HEALTH CARE FACILITIES.

§26-1-1. Department of Health Care Facilities.

1 ~~The West Virginia Children's Home, heretofore established, shall be continued, and shall~~
2 ~~be managed, directed and controlled by the state department of welfare~~

3 (a) On July 1, 2023, the Department of Health Care Facilities is created. The Department
4 of Health Care Facilities is comprised of the facilities as provided in §5F-2-1 of this code.

5 (b) The department is not subject to the requirements of §5A-3-1 et seq. and §5A-10-1 et
6 seq. of this code.

7 (c) Effective July 1, 2023, a new employee of the department is not eligible for civil service
8 as provided in §29-6-1 of this code.

§26-1-2. Secretary of Department of Health Care Facilities.

1 ~~The state department of welfare shall admit to the home children surrendered or otherwise~~
2 ~~placed in its custody in any manner authorized by law; and the children shall be kept, maintained~~
3 ~~and educated therein until they can be placed by legal authority in suitable homes elsewhere~~

4 (a) The secretary shall be the head of the department, and shall be appointed before July
5 1, 2023, by the Governor, with the advice and consent of the Senate.

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

8 (c) The secretary shall not be a candidate for, or hold, any other public office or public
9 employment under the federal government or under the government of this state or any of its
10 political subdivisions, or be a member or officer of any political party committee, or serve as an
11 election official, or engage in any political activity, other than to vote, in behalf of, or in opposition
12 to, any candidate, political party or public issue involved in an election. Any violation by the
13 secretary of the provisions of this section shall automatically vacate his or her appointment as
14 secretary.

§26-1-3. Authority of the Secretary of Health Care Facilities.

1 ~~The commissioner of welfare shall appoint a superintendent of the children's home. The~~
2 ~~superintendent shall establish and post rules for operation of the home, subject to approval of the~~
3 ~~commissioner~~

4 (a) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

5 (1) Coordinate efforts with the Secretary of Health and the Secretary of Human Services;

6 (2) Manage, direct, control and govern the state's health care facilities;

7 (3) Coordinate administrative services with the Chief Operating Officer as provided in §9-2-
8 14 of this code;

9 (4) Operate state facilities and adopt rules pertaining to their operation;

10 (5) Protect the rights of clients served by state facilities.

11 (6) Develop and implement critical performance indicators to be used to hold state
12 hospitals accountable. The performance system indicators shall be implemented no later than
13 January 1, 2024.

14 By January 1, 2024, create and present to the Legislative Oversight Commission on Health
15 and Human Resources Accountability a long-term sustainability plan for each health facility.

16 (b) The Secretary may:

17 (1) Acquire by condemnation or otherwise any interest, right, privilege, land, or
18 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
19 hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or
20 improvement acquired or held by the state, state hospital, or state facility Any condemnation
21 proceedings shall be conducted pursuant to §54-1-1 *et seq.* of this code;

22 (2) Receive donations;

23 (3) Accept, allocate, and spend any federal funds that may be made available to the State
24 by the federal government; and

25 (4) Transfer residents between the facilities. The director may accept transfer of residents
26 from correctional institutions, subject to the provisions of §28-1-1 *et seq.* of this code.

§26-1-4. Supervision of each facility by administrator and clinical director.

1 Each facility shall have a chief executive officer denominated an "administrator." The
2 administrator shall be the person having the fiscal responsibility of the facility and the authority to
3 manage and administer the financial, business and personnel affairs of the facility under the
4 direction of the Secretary.

5 Each facility shall have a clinical director who shall have the responsibility for decisions
6 involving clinical and medical treatment of patients.

ARTICLE 3. HOME FOR AGED AND INFIRM MEN AND WOMEN.

§26-3-1. Establishment; name; management; superintendent.

1 [Repealed.]

§26-3-2. Admission of inmates.

1 [Repealed.]

§26-3-3. Transfer of inmates of state hospitals.

1 [Repealed.]

§26-3-4. Transfer of inmates from the industrial school for boys.

1 [Repealed.]

§26-3-5. How expenses to be paid.

1 [Repealed.]

ARTICLE 5. JACKIE WITHROW HOSPITAL.

§26-5-1. Continuation; management; superintendent; qualifications of superintendent;
division of fiscal, administrative and clinical duties; certain persons exempted from
qualification requirements.

1 [Repealed.]

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-5a. Return of escapees from state tuberculosis institutions.

1 [Repealed.]

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 [Repealed.]

§26-8-2. Patients; expenses; disposition of receipts.

1 [Repealed.]

§26-8-3. Admission of deformed, crippled or defective children.

1 [Repealed.]

ARTICLE 9. HOPEMONT STATE HOSPITAL.

§26-9-1. Establishment and continuation; name and location; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 [Repealed.]

§26-9-2. Eligibility for admission of patients.

1 [Repealed.]

ARTICLE 10. HOSPITALS, HOMES AND SANITARIA FEES.

§26-10-1. Authority of commissioner of public institutions to establish; exonerating persons from payment.

1 [Repealed.]

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

1 [Repealed.]

§26-11-2. Supervision of each facility by administrator; qualifications of administrator;

clinical

director.

1 [Repealed.]

§26-11-3. Guidelines for admissions; fees for the maintenance of persons.

1 [Repealed.]

§26-11-4. Transfer of residents; rules and regulations for maintenance of patients.

1 [Repealed.]

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

**§48-18-101. Establishment of the Bureau for Child Support enforcement; cooperation with
the division of human services.**

1 (a) ~~Effective July 1, 1995~~ There is hereby ~~established~~ continued in the Department of
2 ~~Health and Human Resources~~ Human Services the Bureau for Child Support enforcement. The
3 bureau is under the immediate supervision of the commissioner, who is responsible for the
4 exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The
5 bureau is designated as the single and separate organizational unit within this state to administer
6 the state plan for child and spousal support according to 42 U.S.C. §654(3).

7 (b) The division of human services shall cooperate with the Bureau for Child Support
8 enforcement. At a minimum, such cooperation shall require that the division of human services:

9 (1) Notify the Bureau for Child Support enforcement when the division of human services
10 proposes to terminate or provide public assistance payable to any obligee;

11 (2) Receive support payments made on behalf of a former or current recipient to the extent
12 permitted by Title IV-D, Part D of the Social Security Act; and

13 (3) Accept the assignment of the right, title or interest in support payments and forward a
14 copy of the assignment to the Bureau for Child Support enforcement.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services.

1 (a) The child welfare service of the state shall be located within and administered by the
2 Bureau for Family Assistance of Department of ~~Health and Human Resources~~ Human Services.
3 The Division of Juvenile Services of the Department of Military Affairs and Public Safety shall
4 administer the secure predispositional juvenile detention and juvenile correctional facilities of the
5 state. Notwithstanding any other provision of this code to the contrary, the administrative authority
6 of the Division of Juvenile Services over any child or juvenile in this state extends only to those
7 detained or committed to a secure detention facility or secure correctional facility operated and
8 maintained by the division by an order of a court of competent jurisdiction during the period of
9 actual detention or confinement in the facility.

10 (b) The Department of ~~Health and Human Resources~~ Human Services is designated as
11 the state entity to cooperate with the United States Department of Health and Human Services and
12 United States Department of Justice in extending and improving child welfare services, to comply
13 with federal regulations, and to receive and expend federal funds for these services. The Division
14 of Juvenile Services of the Department of Military Affairs and Public Safety is designated as the
15 state entity to cooperate with the United States Department of Health and Human Services and
16 United States Department of Justice in operating, maintaining and improving juvenile correction
17 facilities and centers for the predispositional detention of children, to comply with federal
18 regulations, and to receive and expend federal funds for these services.

19 (c) The Division of Juvenile Services of the Department of Military Affairs and Public Safety
20 is authorized to operate and maintain centers for juveniles needing detention pending disposition
21 by a court having juvenile jurisdiction or temporary care following that court action.