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# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

**Senate Bill Number**

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1 A BILL to repeal §16-1-5, §16-2G-1, §16-4A-1, §16-4A-2, §16-4A-3, §16-4A-4, §16-4A-5, §16-  
2 4A-6, §16-4E-1, §16-4E-2, §16-4E-3, §16-4E-4, §16-4E-5, §16-4E-6, §16-22-1, §16-22-  
3 2, §16-22-3, §16-22-4, §16-22-5, §16-22-6, §16-22A-1, §16-22A-2, §16-22A-3, §16-22A-  
4 4, §16-22B-1, §16-22B-2, §16-22B-3, §16-22B-4, 16-24-8, §16-37-1, §16-37-2, §16-37-  
5 3, §16-37-4, §16-37-5, §16-38-1, §16-38-2, §16-38-3, §16-38-4, §16-38-5, §16-38-6,  
6 §16-38-7, §16-44-1, §16-44-2, §16-45-1, §16-44-2, §16-44-3, §16-44-4 and §16-44-5 of  
7 the Code of West Virginia, 1931, as amended; to amend and reenact §5-6-4, §5-14-3,  
8 §5F-1-2, §5F-1-3a, §5F-2-1, §5F-2-2, §5F-2-7, §5F-3-1, §5F-3-2, §6-7-2a and §8-19-18;  
9 to amend and reenact Chapter 9; to amend and reenact §15-12-2a, §15-12-2b, §16-1-2  
10 and §16-1-3; to amend said code by adding thereto three new sections designated §16-  
11 1-3a, §16-1-5a and §16-1-5b; to amend and reenact §16-1-6; to amend said code by  
12 adding thereto three new sections designated §16-1-6a, §16-1-6b and §16-1-6c; to  
13 amend and reenact §16-2-2, §16-2-9, §16-3-4, §16-3D-2, §16-8-1 and §16-8-2; to  
14 amend said code by adding thereto four new sections designated §16-8-3, §16-8-4, §16-  
15 8-5 and §16-8-6; to amend and reenact §16-29E-2, §16-29E-3, §16-29E-5, §17C-5-6a,  
16 §17C-5A-3, §18-4-2, §18-5-22c, §18-7A-3, §18-9E-3, §18-9E-5, §18-10K-2, §18C-3-1,  
17 §19-11D-1, §19-11D-3, §19-12A-6, §19-16A-4, §20-2-28, §22-15-10, §22-28-4, §22-28-  
18 5, §22A-1-1, §22C4-10 and §25-1-3; to amend and reenact Chapter 27; to amend and  
19 reenact §30-3-4, §30-3-5, §30-3-8, §30-16-19, §31-15A-2, §31-15A-3, §48-1-236, §48-  
20 14-401, §48-18-101, §48-18-108, §48-18-126, §48-19-103, §48-22-104, §48-23-301,  
21 §48-26-501, §48-26-502, §48-26-503, §49-1-206, §49-1-208, §49-2-901, §49-2-902,  
22 §49-2-903, §49-2-905, §49-2-906, §49-2-9123, §49-7-204, §61-12-3, §61-12-4, §61-12-6  
23 and §62-13-5, all relating to reorganization of the West Virginia Department of Health  
24 and Human Resources; creating the departments of health and compliance, human  
25 services and healthcare facilities; creating the office of inspector general; setting out  
26 powers and duties of cabinet secretaries and inspector general; setting out powers and

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27 duties of newly created departments and office of inspector general; transferring various  
28 functions, personal and authority from existing department to the newly created  
29 departments; creating various bureaus within the newly created departments; setting  
30 forth powers and duties of commissioners of bureaus; setting forth powers and duties of  
31 the bureaus; transferring and restructuring various existing functionality among bureaus;  
32 revising, rearranging and recodifying the laws of the State of West Virginia relating to  
33 health care, human services and behavioral health; providing for various transition plans;  
34 requiring restructuring to remain as revenue neutral as possible; transferring the division  
35 of juvenile services from the department of military affairs and public safety to the newly  
36 created department of human services; placing autonomous healthcare licensing boards  
37 within the newly created department of health and compliance for administrative  
38 purposes; defining terms; making various technical corrections and removing outdated  
39 language.

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

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

**ARTICLE 6. STATE BUILDINGS.**

**§5-6-4. Powers of commission.**

1 The commission has the power:  
2 (1) To sue and be sued, plead and be impleaded;  
3 (2) To have a seal and alter the same at pleasure;  
4 (3) To contract to acquire and to acquire, in the name of the commission or of the state, by  
5 purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or  
6 convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those

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7 purposes;

8 (4) To acquire, hold and dispose of personal property for its corporate purposes;

9 (5) To make bylaws for the management and regulation of its affairs;

10 (6) With the consent of the Attorney General of the State of West Virginia, to use the facilities of  
11 his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;

12 (7) To appoint officers, agents and employees and fix their compensation;

13 (8) To make contracts, and to execute all instruments necessary or convenient to effectuate the  
14 intent of, and to exercise the powers granted to it by this article;

15 (9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it  
16 appears to the commission that its interests will be best served;

17 (10) To construct a building or buildings on real property, which it may acquire, or which may be  
18 owned by the State of West Virginia, in the city of Charleston, as convenient as may be to the capitol  
19 building, together with incidental approaches, structures and facilities, subject to the consent and  
20 approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or  
21 construct a warehouse, including office space in the warehouse in Kanawha County for the West Virginia  
22 Alcohol Beverage Control Commissioner, and equip and furnish the office space; and to acquire or  
23 construct, through lease, purchase, lease-purchase or bond financing, hospitals or other facilities,  
24 buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients,  
25 inmates and guests at facilities under the jurisdiction of and supervision of the ~~division of health~~  
26 Department of Health and Compliance, the Department of Human Services and at institutions under the  
27 jurisdiction of the Division of Corrections or the regional jail and correctional facilities authority; and to  
28 formulate and program plans for the orderly and timely capital improvement of all of the hospitals and  
29 institutions and the state Capitol buildings; and to construct a building or buildings in Kanawha County to  
30 be used as a general headquarters by the division of public safety to accommodate that division's  
31 executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to  
32 develop, improve and expand state parks and recreational facilities to be operated by the Division of  
33 Natural Resources; and to establish one or more systems or complexes of buildings and projects under  
34 control of the commission; and, subject to prior agreements with holders of bonds previously issued, to

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35 change the systems, complexes of buildings and projects from time to time, in order to facilitate the  
36 issuance and sale of bonds of different series on a parity with each other or having such priorities  
37 between series as the commission may determine; and to acquire by purchase, eminent domain or  
38 otherwise all real property or interests in the real property necessary or convenient to accomplish the  
39 purposes of this subdivision. The rights and powers set forth in this subdivision shall not be construed as  
40 in derogation of any rights and powers now vested in the West Virginia Alcohol Beverage Control  
41 Commissioner, the Department of Health and Compliance, and the Department of Human Resources  
42 Services, the Division of Corrections or the Division of Natural Resources;

43 (11) To maintain, construct and operate a project authorized under this article;

44 (12) To charge rentals for the use of all or any part of a project or buildings at any time financed,  
45 constructed, acquired or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant  
46 to this article, subject to and in accordance with such agreements with bondholders as may be made as  
47 provided in this article: *Provided*, That on and after the effective date of the amendments to this section,  
48 to charge rentals for the use of all or any part of a project or buildings at any time financed, constructed,  
49 acquired, maintained or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant  
50 to this article, subject to and in accordance with such agreements with bondholders as may be made as  
51 in this section provided, or with any funds available to the state building commission, including, but not  
52 limited to, all buildings and property owned by the State of West Virginia or by the state building  
53 commission, but no rentals shall be charged to the Governor, Attorney General, Secretary of State, State  
54 Auditor, State Treasurer, the Legislature and the members of the Legislature, the Supreme Court of  
55 Appeals, nor for their offices, agencies, official functions and duties;

56 (13) To issue negotiable bonds and to provide for the rights of the holders of the negotiable  
57 bonds;

58 (14) To accept and expend any gift, grant or contribution of money to, or for the benefit of, the  
59 commission, from the State of West Virginia or any other source for any or all of the purposes specified in  
60 this article or for any one or more of such purposes as may be specified in connection with the gift, grant  
61 or contribution;

62 (15) To enter on any lands and premises for the purpose of making surveys, soundings and

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63 examinations;

64 (16) To invest in United States government obligations, on a short-term basis, any surplus funds  
65 which the commission may have on hand pending the completion of any project or projects;

66 (17) To issue revenue bonds in accordance with the applicable provisions of this article for the  
67 purposes set forth in section eleven-a of this article; and

68 (18) To do all things necessary or convenient to carry out the powers given in this article.

69 (19) The power and authority granted to the state building commission pursuant to this section  
70 and sections seven, eight and eleven-a of this article to initiate, acquire, construct, finance or develop  
71 projects; to issue revenue bonds; or to exercise the power of eminent domain with respect to any project,  
72 shall terminate on the effective date of this section: *Provided*, That nothing herein shall be construed to  
73 affect the validity of any act of the state building commission prior to the effective date of this section or to  
74 impair the rights of bondholders with respect to bonds or other evidence of indebtedness issued prior to  
75 the effective date of this section. Following the effective date of this section, the secretary of  
76 administration may exercise any power expressly granted pursuant to this article with respect to any  
77 project or facility previously constructed or acquired, any existing contractual obligations, and any  
78 outstanding bonded indebtedness. Refunding bonds for any outstanding bonded indebtedness are  
79 authorized, subject to the provisions of article two-e, chapter thirteen of this code. The West Virginia  
80 economic development authority provided for in article fifteen, chapter thirty-one of this code is  
81 designated to act as the governing body whose authorizations and determinations are required for the  
82 purpose of refunding bonds.

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.**

**§5-14-3. Continuation of commission; membership.**

1 (a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the  
2 Department of ~~Health and Human Resources~~ Services consisting of seventeen persons, eight of whom  
3 shall serve ex officio. The remaining members are appointed by the Governor by and with the advice and  
4 consent of the Senate. The commission shall meet no less than four times annually. All meetings and  
5 activities held by the commission shall be attended by at least two qualified interpreters who shall be

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6 hired at the commission's expense or provided free of charge by agencies, organizations or individuals  
7 willing to volunteer qualified interpreters.

8 (b) The members are: The Secretary of the Department of ~~Health and Human Resources~~ Human  
9 Services, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the  
10 Commissioner of the Bureau for Public Health, or his or her designee; the state Superintendent of  
11 Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her  
12 designee; the ~~Commissioner of the Division of Human Services~~ Secretary of the Department of Health  
13 and Compliance, or his or her designee; the Chairman of the Advisory Council for the Education of  
14 Exceptional Children, or his or her designee; and the superintendent of the West Virginia School for the  
15 Deaf and Blind, or his or her designee, all of whom serve ex officio with full voting privileges.

16 (c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing,  
17 one of whom is the parent of a deaf child, one of whom is a certified teacher of the hearing-impaired, one  
18 audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of  
19 five people recommended by the board of the West Virginia Association of the Deaf.

**CHAPTER FIVE-F. REORGANIZATION OF THE EXECUTIVE BRANCH.**

**ARTICLE ONE. GENERAL PROVISIONS.**

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

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

3 (1) Department of Administration;

4 (2) Department of Education and the Arts;

5 (3) Department of Environmental Protection;

6 (4) Effective July 1, 2019, Department of Health and ~~Human Resources~~ Compliance;

7 (5) Effective July 1, 2019, Department of Human Services;

8 (6) Effective July 1, 2019, Department of Healthcare Facilities;

9 ~~(5)~~ (7) Department of Military Affairs and Public Safety;

10 ~~(6)~~ (8) Department of Revenue;

11           ~~(7)~~ (9) Department of Transportation;  
12           ~~(8)~~ (10) Department of Commerce; and  
13           ~~(9)~~ (11) ~~Effective July 1, 2011,~~ Department of Veterans' Assistance.

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

17           (c) Effective July 1, 2019, unless the context indicates otherwise, any reference in this  
18 code to the Secretary of the Department of Health and Human Resources shall be and refer to  
19 the secretary of the department which has control over the functions referenced in any section,  
20 article of chapter of this code which had previously been granted to the Secretary of the  
21 Department of Health and Human Resources.

22           (d) Effective July 1, 2019, unless the context indicates otherwise any reference to any  
23 powers, duties, functions or responsibility set forth in this code of the Secretary of the  
24 Department of Health and Human Resources shall transfer and become the powers, duties,  
25 functions and responsibility of the secretary which has either expressly been granted that  
26 power, duty, function or responsibility in chapters nine or sixteen of this code or by the intent of  
27 any section, article or chapter of this code that power, duty, function or responsibility would  
28 logically be within one of the departments created in chapter nine of this code and over which  
29 the \_\_\_\_\_ appropriate \_\_\_\_\_ secretary \_\_\_\_\_ has \_\_\_\_\_ control.

**§5F-1-3a. Executive compensation commission.**

1           There is hereby created an executive compensation commission composed of three  
2 members, one of whom shall be the secretary of administration, one of whom shall be appointed  
3 by the Governor from the names of two or more nominees submitted by the President of the  
4 Senate, and one of whom shall be appointed by the Governor from the names of two or more  
5 nominees submitted by the Speaker of the House of Delegates. The names of such nominees



6 shall be submitted to the Governor by not later than June 1, 2000, and the appointment of such  
7 members shall be made by the Governor by not later than July 1, 2000. The members  
8 appointed by the Governor shall have had significant business management experience at the  
9 time of their appointment and shall serve without compensation other than reimbursement for  
10 their reasonable expenses necessarily incurred in the performance of their commission duties.  
11 For the 2001 regular session of the Legislature and every four years thereafter, the commission  
12 shall review the compensation for cabinet secretaries and other appointed officers of this state,  
13 including, but not limited to, the following: Commissioner, Division of Highways; commissioner,  
14 Bureau of Employment Programs; director, Division of Environmental Protection; commissioner,  
15 Bureau of Senior Services; director of tourism; commissioner, division of tax; ~~administrator,~~  
16 ~~division of health~~; commissioner, Division of Corrections; director, Division of Natural  
17 Resources; superintendent, state police; administrator, lottery division; director, Public  
18 Employees Insurance Agency; administrator, Alcohol Beverage Control Commission;  
19 commissioner, Division of Motor Vehicles; director, Division of Personnel; Adjutant General; the  
20 Executive Director of the Health Care Authority; director, Division of Rehabilitation Services;  
21 executive director, educational broadcasting authority; executive secretary, Library Commission;  
22 chairman and members of the Public Service Commission; director of emergency services;  
23 ~~administrator, division of human services~~; executive director, Human Rights Commission;  
24 director, division of Veterans Affairs; director, office of miner's health safety and training;  
25 commissioner, Division of Banking; commissioner, division of insurance; commissioner, Division  
26 of Culture and History; commissioner, Division of Labor; director, Prosecuting Attorneys  
27 Institute; director, Board of Risk and Insurance Management; commissioner, oil and gas  
28 conservation commission; director, geological and economic survey; executive director, water  
29 development authority; executive director, Public Defender Services; director, state rail  
30 authority; chairman and members of the Parole Board; members, employment security review

31 board; members, workers' compensation appeal board; chairman, Racing Commission;  
32 executive director, women's commission; and director, hospital finance authority.

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

38 **ARTICLE TWO. TRANSFER OF AGENCIES AND BOARDS.**

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

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

4 (1) Building Commission provided in article six, chapter five of this code;

5 (2) Public Employees Insurance Agency provided in article sixteen, chapter five of this  
6 code;

7 (3) Governor's Mansion Advisory Committee provided in article five, chapter five-a of this  
8 code;

9 (4) Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of  
10 this code;

11 (5) West Virginia Public Employees Grievance Board provided in article three, chapter  
12 six-c of this code;

13 (6) Board of Risk and Insurance Management provided in article twelve, chapter twenty-  
14 nine of this code;

15 (7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this  
16 code;

17 (8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this  
18 code;

19 (9) Division of Personnel provided in article six, chapter twenty-nine of this code;

20 (10) The West Virginia Ethics Commission provided in article two, chapter six-b of this  
21 code;

22 (11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this  
23 code; and

24 (12) Real Estate Division provided in article ten, chapter five-a of this code.

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

28 (1) Division of Labor provided in article one, chapter twenty-one of this code, which  
29 includes:

30 (A) Occupational Safety and Health Review Commission provided in article three-a,  
31 chapter twenty-one of this code; and

32 (B) Board of Manufactured Housing Construction and Safety provided in article nine,  
33 chapter twenty-one of this code.

34 (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-  
35 two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety  
36 and Training for purposes of administrative support and liaison with the Office of the Governor:

37 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review  
38 Committee provided in article six, chapter twenty-two-a of this code;

39 (B) Board of Miner Training, Education and Certification provided in article seven,  
40 chapter twenty-two-a of this code; and

41 (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of

42 this code.

43 (3) The West Virginia Development Office provided in article two, chapter five-b of this  
44 code;

45 (4) Division of Natural Resources and Natural Resources Commission provided in article  
46 one, chapter twenty of this code;

47 (5) Division of Forestry provided in article one-a, chapter nineteen of this code;

48 (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this  
49 code; and

50 (7) Workforce West Virginia provided in chapter twenty-one-a of this code, which  
51 includes:

52 (A) Division of Unemployment Compensation;

53 (B) Division of Employment Service;

54 (C) Division of Workforce Development; and

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

56 (8) Division of Energy provided in article two-f, chapter five-b of this code.

57 (9) Division of Tourism Commission provided in article two-h, chapter five-b of this code.

58 (c) The Economic Development Authority provided in article fifteen, chapter thirty-one of  
59 this code is continued as an independent agency within the executive branch.

60 (d) The Water Development Authority and the Water Development Authority Board  
61 provided in article one, chapter twenty-two-c of this code is continued as an independent  
62 agency within the executive branch.

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

66 (1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

67 (2) Solid Waste Management Board provided in article three, chapter twenty-two-c of  
68 this code;

69 (3) Environmental Quality Board, or its successor board, provided in article three,  
70 chapter twenty-two-b of this code;

71 (4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

72 (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-  
73 two-c of this code;

74 (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this  
75 code; and

76 (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c  
77 of this code.

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

81 (1) Library Commission provided in article one, chapter ten of this code;

82 (2) Division of Culture and History provided in article one, chapter twenty-nine of this  
83 code; and

84 (3) Division of Rehabilitation Services provided in article ten-a, chapter eighteen of this  
85 code.

86 (g) The Educational Broadcasting Authority provided in article five, chapter ten of this  
87 code is part of the Department of Education and the Arts for the purposes of administrative  
88 support and liaison with the office of the Governor.

89 (h) ~~The~~ Effective July 1, 2019, the following agencies and boards, including all of the  
90 allied, advisory, affiliated or related entities and funds associated with any agency or board, are  
91 incorporated in and administered as a part of the Department of Health and ~~Human Resources~~

92 Compliance:

93 ~~(1) Human Rights Commission provided in article eleven, chapter five of this code;~~

94 ~~(2) Division of Human Services provided in article two, chapter nine of this code;~~

95 ~~(3) Bureau for Public Health provided in article one, chapter sixteen of this code;~~

96 ~~(4) Office of Emergency Medical Services and the Emergency Medical Service Advisory~~  
97 ~~Council provided in article four-c, chapter sixteen of this code;~~

98 ~~(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;~~

99 ~~(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of~~  
100 ~~this code;~~

101 ~~(7) Women's Commission provided in article twenty, chapter twenty-nine of this code;~~

102 and

103 ~~(8) (1) The Bureau for Child Support Enforcement Division provided in chapter forty-eight~~  
104 ~~of this code.~~

105 (2) Bureau for Public Health provided in article one, chapter sixteen of this code.

106 (3) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

107 (4) The following regulatory boards which shall remain as autonomous entities but may  
108 be subject to administrative oversight of the Department of Health and Compliance for purposes  
109 of consistency of service delivery:

110 (A) Acupuncture Board provided in article thirty-six of chapter thirty of this code;

111 (B) Board of Chiropractic provided in article sixteen of chapter thirty of this code;

112 (C) Board of Dentistry provided in article four of chapter thirty of this code including, the  
113 following ancillary duties of the Board of Dentistry:

114 (i) Administration of anesthesia by dentist provided in article four-A of chapter thirty of  
115 this code; and

116 (ii) Dental laboratory services provided in article four-B of chapter thirty of this code.

117 (D) Board of Directors for the West Virginia Center for Nursing provided in article seven-  
118 B of chapter thirty of this code;

119 (E) Board of Examiners in Counseling provided in article thirty-one of chapter thirty of  
120 this code;

121 (F) Board of Examiners for Licensed Practical Nurses provided in article seven-A of  
122 chapter thirty of this code;

123 (G) Board of Examiners of Psychologist provided in article twenty-one of chapter thirty of  
124 this code;

125 (H) Board of Examiners for Registered Professional Nurses provided in article seven of  
126 chapter thirty of this code including the following ancillary duties of the Board of Examiners for  
127 Registered Professional Nurses:

128 (i) Dialysis technicians provided in article seven-C of chapter thirty of this code;

129 (ii) Medication assisted persons provided in article seven-D of chapter thirty of this code;

130 (iii) Nurse health programs provided in article seven-E of chapter thirty of this code; and

131 (iv) Nurse midwives provided in article fifteen of chapter thirty of this code.

132 (I) Board of Examiners for Speech-Language Pathology and Audiology provided in  
133 article thirty-two of chapter thirty of this code;

134 (J) Board of Licensed Dieticians provided in article thirty-five of chapter thirty of this  
135 code;

136 (K) Board of Medicine provided in article three, chapter thirty and the Board of  
137 Osteopathic Medicine provided in article fourteen of chapter thirty of this code including the  
138 following ancillary duties of the Board of Medicine and the Board of Osteopathic Medicine:

139 (i) Management of pain provided in article three-A of chapter thirty of this code;

140 (ii) Physician health programs provided in article three-D of chapter thirty of this code;

141 and

142 (iii) Physician assistants practice provided in article three-D of chapter thirty of this code.

143 (L) Board of Optometry provided in article eight of chapter thirty of this code including the  
144 ancillary duties of the Board of Optometry relative to eye care consumer protection provided in  
145 article eight-A of chapter thirty of this code;

146 (M) Board of Pharmacy provided in article five of chapter thirty of this code;

147 (N) Board of Physical Therapy provided in article twenty of chapter thirty of this code  
148 including the ancillary duties of the Board of Physical Therapy relative to athletic trainers  
149 provided in article twenty-A of chapter thirty of this code;

150 (O) Board for Respiratory Care provided in article thirty-four of chapter thirty of this code;

151 (P) Massage Therapy Licensure Board provided in article thirty-seven of chapter thirty of  
152 this code;

153 (Q) Medical Imaging and Radiation Therapy Technology Board of Examiners provided in  
154 article twenty-three of chapter thirty of this code; and

155 (R) Nursing Home Administrators Licensing Board provided in article twenty-five of  
156 chapter thirty of this code.

157 (5) The following functions shall also transfer to the Department of Health and  
158 Compliance effective July 1, 2019:

159 (A) Health Care peer review organization protections provided in article three-C of  
160 chapter thirty of this code; and

161 (B) Qualification for Armed Forces Health Technicians for Civilian Health Occupations  
162 provided in article twenty-four of chapter thirty of this code.

163 (j) Effective July 1, 2019, the following agencies and boards, including all of the allied,  
164 advisory, affiliated or related entities and funds associated with any agency or board, are  
165 incorporated in and administered as a part of the Department of Human Services:

166 (1) Bureau for Behavioral Health provided in article two, chapter twenty-seven of this



167 code;

168 (2) Commission on Intellectual Disability provided in article fifteen, chapter twenty-nine of

169 this code; and

170 (3) Bureau for Economic Assistance provided in chapter nine of this code, including

171 Special Supplementary Food Program for Women, Infants and Children (WIC);

172 (4) Bureau for Child and Family Services provided in chapter nine of this code, which

173 shall include the Division of Juvenile Services provided for in article two, chapter forty-nine of

174 this code and the Office of Maternal, Child and Family Health as set forth in chapter nine of this

175 code;

176 (5) Human Rights Commission provided in article eleven, chapter five of this code;

177 (6) Women's Commission provided in article twenty, chapter twenty-nine of this code;

178 (7) Bureau for Medical Services provided in chapter nine of this code and Early and

179 Periodic Screening, Diagnostic and Treatment programs; and

180 (8) Children's Health Insurance Program provided in chapter nine of this code.

181 (k) Effective July 1, 2019, the following state owned and operated facilities, including all

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

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

184 (1) The Welch Community Hospital;

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

186 (3) Mildred-Mitchell Bateman Hospital;

187 (4) Hopemont Hospital;

188 (5) John Manchin Health Care Center; and

189 (6) Lakin Hospital.

190 (j) (l) The following agencies and boards, including all of the allied, advisory, affiliated or

191 related entities and funds associated with any agency or board, are incorporated in and

192 administered as a part of the Department of Military Affairs and Public Safety:

193 (1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

194 (2) Armory Board provided in article six, chapter fifteen of this code;

195 (3) Military Awards Board provided in article one-g, chapter fifteen of this code;

196 (4) West Virginia State Police provided in article two, chapter fifteen of this code;

197 (5) Division of Homeland Security and Emergency Management and Disaster Recovery

198 Board provided in article five, chapter fifteen of this code and Emergency Response

199 Commission provided in article five-a of said chapter;

200 (6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

201 (7) Division of Justice and Community Services provided in article nine-a, chapter fifteen

202 of this code;

203 (8) Division of Corrections provided in chapter twenty-five of this code;

204 (9) Fire Commission provided in article three, chapter twenty-nine of this code;

205 (10) Regional Jail and Correctional Facility Authority provided in article twenty, chapter

206 thirty-one of this code; ~~and~~

207 (11) Board of Probation and Parole provided in article twelve, chapter sixty-two of this

208 code.; and

209 (j) (m) The following agencies and boards, including all of the allied, advisory, affiliated

210 or related entities and funds associated with any agency or board, are incorporated in and

211 administered as a part of the Department of Revenue:

212 (1) Tax Division provided in chapter eleven of this code;

213 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

214 (3) Lottery Commission and position of Lottery Director provided in article twenty-two,

215 chapter twenty-nine of this code;

216 (4) Insurance Commissioner provided in article two, chapter thirty-three of this code;

217 (5) West Virginia Alcohol Beverage Control Commissioner provided in article sixteen,  
218 chapter eleven of this code and article two, chapter sixty of this code;

219 (6) Board of Banking and Financial Institutions provided in article three, chapter thirty-  
220 one-a of this code;

221 (7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

222 (8) Division of Banking provided in article two, chapter thirty-one-a of this code;

223 (9) The State Budget Office provided in article two of this chapter;

224 (10) The Municipal Bond Commission provided in article three, chapter thirteen of this  
225 code;

226 (11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

227 (12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this  
228 code.

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

232 (1) Division of Highways provided in article two-a, chapter seventeen of this code;

233 (2) Parkways, Economic Development and Tourism Authority provided in article sixteen-  
234 a, chapter seventeen of this code;

235 (3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

236 (4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this  
237 code;

238 (5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

239 (6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

240 (7) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.

241 ~~(j)~~ (o) Effective July 1, 2011, the Veterans' Council provided in article one, chapter nine-a

242 of this code, including all of the allied, advisory, affiliated or related entities and funds associated  
243 with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

244 ~~(m)~~ (p) Except for powers, authority and duties that have been delegated to the  
245 secretaries of the departments by the provisions of section two of this article, the position of  
246 administrator and the powers, authority and duties of each administrator and agency are not  
247 affected by the enactment of this chapter.

248 ~~(n)~~ (q) Except for powers, authority and duties that have been delegated to the  
249 secretaries of the departments by the provisions of section two of this article, the existence,  
250 powers, authority and duties of boards and the membership, terms and qualifications of  
251 members of the boards are not affected by the enactment of this chapter. All boards that are  
252 appellate bodies or are independent decision makers shall not have their appellate or  
253 independent decision-making status affected by the enactment of this chapter.

254 ~~(o)~~ (r) Any department previously transferred to and incorporated in a department by  
255 prior enactment of this section means a division of the appropriate department. Wherever  
256 reference is made to any department transferred to and incorporated in a department created in  
257 section two, article one of this chapter, the reference means a division of the appropriate  
258 department and any reference to a division of a department so transferred and incorporated  
259 means a section of the appropriate division of the department.

260 ~~(p)~~ (s) When an agency, board or commission is transferred under a bureau or agency  
261 other than a department headed by a secretary pursuant to this section, that transfer is solely  
262 for purposes of administrative support and liaison with the Office of the Governor, a department  
263 secretary or a bureau. Nothing in this section extends the powers of department secretaries  
264 under section two of this article to any person other than a department secretary and nothing  
265 limits or abridges the statutory powers and duties of statutory commissioners or officers  
266 pursuant to this code.

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

1 (a) Notwithstanding any other provision of this code to the contrary, the secretary of  
2 each 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  
5 and pleasure of the secretary;

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

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

11 (4) Transfer permanent state employees between departments in accordance with the  
12 provisions of section seven of this article;

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  
18 not expended due to cost savings resulting from the implementation of the provisions of this  
19 chapter: *Provided*, That no more than twenty-five percent of the funds appropriated to any one  
20 agency or board may be transferred to other agencies or boards within the department:

21 *Provided, however*, That no funds may be transferred from a special revenue account,  
22 dedicated account, capital expenditure account or any other account or funds specifically  
23 exempted by the Legislature from transfer, except that the use of appropriations from the state  
24 Road Fund transferred to the office of the Secretary of the Department of Transportation is not a

25 use other than the purpose for which the funds were dedicated and is permitted: *Provided*  
26 *further*, That if the Legislature by subsequent enactment consolidates agencies, boards or  
27 functions, the appropriate secretary may transfer the funds formerly appropriated to the agency,  
28 board or function in order to implement consolidation. The authority to transfer funds under this  
29 section shall expire on June 30, 2010;

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

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

46 (10) Conduct internal audits;

47 (11) Supervise internal management;

48 (12) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of  
49 this code, to implement and make effective the powers, authority and duties granted and

50 imposed by the provisions of this chapter in accordance with the provisions of chapter twenty-  
51 nine-a of this code;

52 (13) Grant or withhold written consent to the proposal of any rule, as defined in section  
53 two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within  
54 the department. Without written consent, no proposal for a rule shall have any force or effect;

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

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

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

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

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

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

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

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

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

76 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the  
77 powers granted to the secretaries herein shall be exercised by the secretary if to do so would  
78 violate or be inconsistent with the provisions of any federal law or regulation, any federal-state  
79 program or federally delegated program or jeopardize the approval, existence or funding of any  
80 program.

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

92 ~~(e) Notwithstanding any other provision of this code to the contrary, the secretary of~~  
93 ~~each department with authority over programs which have an impact on the delivery of health~~  
94 ~~care services in the state or are payors for health care services or are payors for prescription~~  
95 ~~drugs, including, but not limited to, the Public Employees Insurance Agency, the Department of~~  
96 ~~Health and Human Resources, the Bureau of Senior Services, the Children's Health Insurance~~  
97 ~~Program, the Health Care Authority, the Office of the Insurance Commissioner, the Division of~~  
98 ~~Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility~~  
99 ~~Authority, state colleges and universities, public hospitals, state or local institutions including~~



100 ~~nursing homes and veterans' homes, the Division of Rehabilitation Services, public health~~  
101 ~~departments, the Bureau for Medical Services and other programs, which have an impact on the~~  
102 ~~delivery of health care services or are payors for health care services or are payors for~~  
103 ~~prescription drugs, in West Virginia shall cooperate with the Governor's Office of Health~~  
104 ~~Enhancement and Lifestyle Planning established pursuant to article twenty-nine h, chapter~~  
105 ~~sixteen of this code for the purpose of improving the health care delivery services in West~~  
106 ~~Virginia for any program over which they have authority.~~

**§5F-2-7. Interdepartmental transfer of permanent state employees.**

1 (a) A department secretary may enter into a memorandum of understanding with another  
2 department secretary to transfer a permanent state employee from a position that is to be  
3 consolidated or eliminated, to a funded vacant position in another Department, in accordance  
4 with the provisions of this section and the law. To support the transfer of the employee, a  
5 department secretary may also transfer furniture and equipment, except motor vehicles and any  
6 assets purchased by designated funds for specific uses and purposes, the removal of which is  
7 prohibited by law or would jeopardize federal funds, grants or other funding sources.

8 (b) The transferred employee shall receive the same level of benefits and rate of  
9 compensation or higher, and shall retain the same level of seniority.

10 (c) An employee shall be given notice of the proposed transfer at least fifteen days prior  
11 to the transfer. During the notice period, an affected employee may agree to be voluntarily  
12 transferred.

13 (d) If an employee does not volunteer to be transferred, then an involuntary transfer may  
14 be ordered. An involuntary transfer shall begin with the least senior permanent employee who  
15 qualifies for the position.

16 (e) A classified employee who is transferred shall retain his or her classified status:  
17 *Provided*, That any transfer shall be made in accordance with the law.

18 (f) An involuntary transfer may be rejected by an employee if the involuntary transfer  
19 would require the employee to travel thirty miles or more, one way, than the distance the  
20 employee currently travels from his or her current job site.

21 (g) An employee who qualifies for and chooses to reject a transfer shall be laid off in  
22 accordance with the law.

23 (h) Nothing in this section shall abridge any other rights provided by law.

24 (i) Prior to December 31, 2005, the Division of Personnel shall promulgate an  
25 emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this  
26 code, to effectuate the provisions of this section. The provisions of this section and the rules  
27 promulgated pursuant to this section shall apply to all changes made to this article during the  
28 2018 Regular Session of the Legislature. The Division of Personnel shall make any necessary  
29 changes to the rules authorized by this section to effectuate those changes. Any necessary  
30 changes to the rules shall be filed as an emergency rule in accordance with the provisions of  
31 article three, chapter twenty-nine-a of this code.

32 (j) The Division of Personnel is authorized to promulgate legislative rules in accordance  
33 with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the  
34 provisions of this section.

35 (k) Annually, on or before January 1, the Division of Personnel shall report to the Joint  
36 Committee on Government and Finance, on all interdepartmental employee transfers, including  
37 but not limited to, voluntary and involuntary transfers, furniture and equipment transfers, and the  
38 Departments involved in the transfers.

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

**§5F-3-1. Recommendations for further reorganization.**

1 The Governor shall submit to the Legislature Joint Committee on Government and Finance on or  
2 before ~~January 1, 1994~~ June 30, 2019, a report setting forth the reorganization implemented by executive

3 action pursuant to this chapter and resulting cost savings as determined by the Governor, any  
4 recommendations for further reorganization requiring legislative action and drafts of recommended  
5 legislation to implement the reorganization requiring legislative action.

**§5F-3-2. Operative dates.**

1 The provisions of this chapter shall become operative as to any department created in section  
2 two, article one of this chapter ~~upon the appointment of the secretary of such department~~ on the first day  
3 of July, 2019.

**CHAPTER SIX. 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  
4 the Governor was elected and until the respective state officers' successors have been  
5 appointed and qualified. Each of the appointive state officers are subject to the existing  
6 qualifications for holding each respective office and each has and is hereby granted all of the  
7 powers and authority and shall perform all of the functions and services heretofore vested in  
8 and performed by virtue of existing law respecting each office.

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

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

16 Veterans Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole,  
17 \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner,  
18 Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual  
19 salary as follows: Health and Human Resources and Compliance, \$95,000; ~~Provided, That~~  
20 ~~effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall~~  
21 ~~be paid an annual salary not to exceed \$175,000;~~ Human Services, \$95,000; Healthcare  
22 Facilities, \$95,000; Transportation, \$95,000: *Provided, however,* That if the same person is  
23 serving as both the Secretary of Transportation and the Commissioner of Highways, he or she  
24 shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000;  
25 Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans'  
26 Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further,* That any officer  
27 specified in this subsection whose salary is increased by more than \$5,000 as a result of the  
28 amendment and reenactment of this section during the 2011 regular session of the Legislature  
29 shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011,  
30 up to the maximum salary provided in this subsection.

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

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

42 Director, Regional Jail and Correctional Facility Authority, \$80,000 and Executive Director of the  
43 Health Care Authority, \$80,000.

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

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

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

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

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

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

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

1 This article shall, without reference to any other statute or charter provision, be deemed full  
2 authority for the acquisition, construction, establishment, extension, equipment, additions, betterment,  
3 improvement, repair, maintenance and operation of or to a waterworks or electric power system or for the  
4 construction of any additions, betterments, improvements, repairs, maintenance or operation of or to an  
5 existing electric power system as herein provided and for the issuance and sale of the bonds or the  
6 alternative methods of financing by this article authorized, and shall be construed as an additional and  
7 alternative method therefor and for the financing thereof, and no petition, referendum or election or other  
8 or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the  
9 alternative methods of financing under the provisions of this article and no publication of any resolution,  
10 ordinance, order, notice or proceeding relating to any such undertaking or to the issuance or sale of such  
11 bonds or the alternative methods of financing shall be required, except as prescribed by this article, any  
12 provisions of other statutes of the state to the contrary notwithstanding: *Provided*, That all functions,  
13 powers and duties of the ~~state division of health~~ Department of Health and Compliance shall remain  
14 unaffected by this article.

15 This article shall be construed as cumulative authority for any undertaking herein authorized, and  
16 shall not be construed to repeal any existing laws with respect thereto.

## **CHAPTER 9. REORGANIZATION OF THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.**

### **ARTICLE ONE. LEGISLATIVE PURPOSE.**

#### **§9-1-101. Legislative findings.**

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

5 (b) The Legislature finds that the state provides a number of assistance programs which are  
6 established with the purpose of helping the citizens of the state who through the misfortunes of life are in  
7 need of assistance and encouragement. These services consist of monetary and economic assistance,  
8 medical assistance, services available to families and children in distress and regulation of healthcare

9 and medical services.

10 (c) The department and its predecessors were created to provide these services, however, the  
11 department has grown into an unmanageable bureaucracy. This growth has resulted in the delivery of  
12 services to the residents of this state in an inferior manner.

**§9-1-102. Reorganization; effective date; transition plans.**

1 (a) Effective the first day of July, 2019, The Department of Health and Human Resources shall be  
2 reorganized into four separate entities: The Department of Health and Compliance, the Department of  
3 Healthcare Facilities; the Inspector General and the Department of Human Services. Each department  
4 shall have the entities prescribed to it as set forth in article two, chapter five-F and elsewhere in this code.  
5 The functions, powers and duties of each department shall be as set forth in this chapter. It is the  
6 intention of the Legislature in developing these new entities that they be developed and operate as much  
7 as practical and possible within the current budget of the Department of Health and Human Resources.

8 (b) The Secretary of the Department of Health and Human Resources shall develop a plan by  
9 September 1, 2018, for assigning and allocating existing employees among the four entities and submit  
10 the plan to the Division of Personnel, the Governor and the Joint Committee on Government and Finance.  
11 The purpose of this plan is to consolidate job functions of current employees of the Department of Health  
12 and Human Resources, where possible, and assign current employees among the four newly created  
13 entities. The plan should also provide for administrative functions such as internal personnel matters,  
14 internal purchasing matters, legal matters, client/customer service matters, agency media issues and any  
15 other function not listed in this subsection to be accomplished by allocating existing employees or sharing  
16 employees among these four entities in an attempt to remain as revenue neutral as possible. Each of the  
17 secretaries of the newly created departments is granted specific authority to enter into agreements and  
18 memorandums of understanding among the four entities to share costs, employees and functions to  
19 remain as much as possible within the current budget allocation.

20 (c) Included in the plan as set forth in subsection (b) of this section shall be any recommendation  
21 which indicates that functions may not be shared among the four entities, recommends or requires a  
22 newly created position or hiring additional personnel shall contain a written justification which:

23           (1) Details the need for the position;  
24           (2) Offers and explanation as to why the function cannot be shared between entities;  
25           (3) Details why the functions of the position cannot be accomplished by transferring or utilizing  
26 existing employees;  
27           (4) Sets out salary, job duties and requirements, education and background requirements, to  
28 whom they will report; and  
29           (5) Indicates an internal funding source to pay the newly created position beyond an additional  
30 legislative appropriation.  
31           (d) The Secretary of the Department of Health and Human Resources shall develop and  
32 implement a plan for the transfer of all functions of the Department of Health and Human Resources to  
33 the appropriate entity of the four entities created by this chapter. The Secretary of the Department of  
34 Health and Human Resources shall consider as part of this plan any existing function of the Department  
35 of Health and Human Resources which may be privatized to make the function more accessible and  
36 responsive to the public and more cost effective to the state. The plan shall be prepared in as revenue  
37 neutral a manner as possible. It shall be submitted in writing to the Joint Committee on Government and  
38 Finance, the Governor, the Secretary of the Department of Administration and the Division of Personnel.  
39 This plan shall be submitted no later than January 1, 2019. The plan shall include proposals for the  
40 following:  
41           (1) As much as possible, a means to make the transfer of all functionality of the Department of  
42 Health and Human Resources revenue neutral;  
43           (2) A plan to transfer all existing and ongoing functions of the Department of Health and  
44 Human Resources to the appropriate department; including rulemaking authority;  
45           (3) Functions which may be privatized to increase efficiency and potentially lower costs.  
46           (4) A means to allow the Inspector General to function as an it is intended in this  
47 chapter as an investigative and fraud management unit across the Department of Healthcare  
48 Facilities, the Department of Health and Compliance and the Department of Human Services;



49 (5) Notwithstanding any provision of the code to the contrary, to provide for the  
50 continued ability to transfer funds by agreement among entities of the four entities set forth in  
51 this chapter;

52 (6) Closing out and transferring existing budget allocations, if necessary;

53 (7) A means of developing agreements and memorandum of understanding between the four  
54 entities to share space, supplies, duties, employees and personnel, administrative functions, data and  
55 information, common policies and procedures and any other matters which may be performed jointly  
56 among the four entities;

57 (8) A transition plan developed in conjunction with the Division of Personnel for the  
58 transfer of employees to the appropriate department;

59 (9) In consultation with the Department of Administration, discontinuation of use of the  
60 current building including termination of any lease or rental agreements, if necessary;

61 (10) In consultation with the Department of Administration, disposition of all state owned  
62 or leased office furniture and equipment, including any state-owned vehicles, if necessary;

63 (11) Notwithstanding any provisions of this code to the contrary, the ability to exchange  
64 data and information as necessary for the proper operation and functionality of the four entities  
65 created in this chapter;

66 (12) Transition to appropriate entities or destruction of hard and electronic copies of files;  
67 and

68 (13) Any other matters which would effectively transfer all functions of the Department of  
69 Health and Human Resources.

**§9-1-103. Legislative Intent; continuation of existing statutory provisions; no increase in  
funding obligations.**

1 In restructuring the Department of Health and Human Resources during the regular  
2 session of the Legislature in the year 2018, it is intended by the Legislature that each specific

3 existing function of the Department of Health and Human Resources continue and that  
4 modifications to the statutory authority of the Department of Health and Human Resources be  
5 continued in the four newly created entities and that substantively similar prior statutory  
6 provisions will be construed as continuing the intended meaning of the corresponding prior  
7 statutory provisions and any existing judicial interpretation of the prior statutory provisions. It is  
8 not the intent of the Legislature, by restructuring the Department of Health and Human  
9 Resources during the regular session of the Legislature in the year 2018 to alter the substantive  
10 law of this state as it relates to powers and duties assigned to the Department of Health or  
11 Human Resources or to increase or enlarge any funding obligation of any spending unit of the  
12 state.

**§9-1-104. Forms; no increase of funding obligations to be construed.**

1 (a) None of the newly created entities are required to change any form or letter that  
2 contains a citation to this code that is changed or otherwise affected by the changes to this  
3 chapter, chapter sixteen of this code, or to chapter twenty-seven of this code during the 2018  
4 regular session of the Legislature unless specifically required by a provision of this code.

5 (b) No modification to any provision of this chapter, chapter sixteen of this code, or  
6 chapter twenty-seven of this code during the 2018 regular session of the Legislature may be  
7 construed to increase or enlarge any funding obligation of any spending unit of the state.

**ARTICLE TWO. DEPARTMENT OF HEALTH AND COMPLIANCE.**

**PART ONE. DEFINED WORDS AND PHRASES.**

**§9-2-101. Definitions.**

1 (a) As used in this article, the following words shall have the following meaning:

2 "Commissioner" shall mean either the Commissioner of the Bureau for Public Health or the  
3 Commissioner of the Bureau for Child Support Enforcement as the context dictates.

4 "Department" means the Department of Health and Compliance.

5 "Federal assistance" means and includes all forms of aid, care, assistance and services  
6 to or on behalf of persons, which are authorized by, and who are authorized to receive the same  
7 under any act of Congress for distribution through the Department, the cost of which is paid  
8 entirely out of federal appropriations.

9 "Federal-state assistance" means and includes:

10 (A) All forms of aid, care, assistance and services to, or on behalf of, persons, which are  
11 authorized by, and who are authorized to receive the same under and by virtue of, subchapters  
12 one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United  
13 States Code:

14 (B) All forms of aid, care, assistance and services to persons, which are authorized by,  
15 and who are authorized to receive the same under and by virtue of, any act of Congress, other  
16 than the federal social security act, as amended, for distribution through the Department to  
17 recipients of any form of aid, care, assistance and services to persons designated or referred to  
18 in paragraph (A) and to recipients of state assistance.

19 "Person" means any individual, corporation, association, partnership, proprietor, agent,  
20 assignee or entity.

21 "Secretary" means the Secretary of the Department of Health and Compliance.

22 "State assistance" means all forms of aid, care, assistance, services and general relief  
23 made possible solely out of state, county and private appropriations to, or on behalf of, indigent  
24 persons.

25 (b) All other definitions relative to public health are those set out in article one of chapter  
26 sixteen of this code.

27 (c) All other definitions relative to behavioral health are those set out in article one of  
28 chapter twenty-seven of this code.

**PART TWO. GENERAL PROVISIONS.**

**§9-2-201. Creation of department.**

1        (a) The Legislature hereby creates the Department of Health and Compliance. In creating this  
2 department, the Legislature intends to continue on a reorganized basis state compliance programs  
3 previously administered by the Department of Health and Human Resources and its predecessor agency.  
4 The purpose of this agency is to regulate public health programs, provide administrative oversight of  
5 specified regulatory boards, administration of certain licensed facilities, enforcement of familial support  
6 obligations and education to the citizens of this state. These changes shall become effective July 1,  
7 2019.

8        (b) The rules of the Secretary of the Department of Health and Human Resources, the Bureau for  
9 Public Health, the Bureau for Child Support Enforcement and the West Virginia Health Care Authority  
10 shall remain in effect until they are amended or rescinded by the Secretary of the Department of Health  
11 and Compliance.

**§9-2-202. Department agencies.**

1        (a) The Department of Health and Compliance shall consist of the Bureau for Public Health set  
2 forth in chapter sixteen of this code, the Bureau Child Support Enforcement, set forth in chapter forty-  
3 eight of this code and the Health Care Authority set forth in chapter sixteen of this code. All functions,  
4 powers, duties, employees and responsibilities of these entities shall transfer to the Department of Health  
5 and Compliance on the first day of July, 2019.

6        (b) The following regulatory boards, as provided in chapter thirty of this code, shall remain as  
7 autonomous entities but may be subject to administrative oversight of the Department of Health and  
8 Compliance for purposes of consistency of service delivery:

9            (1) Acupuncture Board provided in article thirty-six of chapter thirty of this code;

10          (2) Board of Chiropractic provided in article sixteen of chapter thirty of this code;

11          (3) Board of Dentistry provided in article four of chapter thirty of this code including the  
12 following ancillary duties of the Board of Dentistry:

13            (A) Administration of anesthesia by dentist provided in article four-A of chapter thirty of  
14 this code; and

15 (B) Dental laboratory services provided in article four-B of chapter thirty of this code.

16 (4) Board of Directors for the West Virginia Center for Nursing provided in article seven-  
17 B of chapter thirty of this code;

18 (5) Board of Examiners in Counseling provided in article thirty-one of chapter thirty of  
19 this code;

20 (6) Board of Examiners for Licensed Practical Nurses provided in article seven-A of  
21 chapter thirty of this code;

22 (7) Board of Examiners of Psychologist provided in article twenty-one of chapter thirty of  
23 this code;

24 (8) Board of Examiners for Registered Professional Nurses provided in article seven of  
25 chapter thirty of this code including the following ancillary duties of the Board of Examiners for  
26 Registered Professional Nurses:

27 (A) Dialysis technicians provided in article seven-C of chapter thirty of this code;

28 (B) Medication assisted persons provided in article seven-D of chapter thirty of this code;

29 (C) Nurse health programs provided in article seven-E of chapter thirty of this code; and

30 (D) Nurse midwives provided in article fifteen of chapter thirty of this code.

31 (9) Board of Examiners for Speech-Language Pathology and Audiology provided in  
32 article thirty-two of chapter thirty of this code;

33 (10) Board of Licensed Dieticians provided in article thirty-five of chapter thirty of this  
34 code;

35 (11) Board of Medicine provided in article three, chapter thirty and the Board of  
36 Osteopathic Medicine provided in article fourteen of chapter thirty of this code of including the  
37 following ancillary duties of the Board of Medicine and the Board of Osteopathic Medicine:

38 (A) Management of pain provided in article three-A of chapter thirty of this code;

39 (B) Physician health programs provided in article three-D of chapter thirty of this code;

40 and

41 (C) Physician assistants practice provided in article three-E of chapter thirty of this code;

42 (12) Board of Optometry provided in article eight of chapter thirty of this code including  
43 the ancillary duties of the Board of Optometry relative to eye care consumer protection provided  
44 in article eight-A of chapter thirty of this code;

45 (13) Board of Pharmacy provided in article five of chapter thirty of this code;

46 (14) Board of Physical Therapy provided in article twenty of chapter thirty of this code  
47 including the ancillary duties of the Board of Physical Therapy relative to athletic trainers  
48 provided in article twenty-A of chapter thirty of this code;

49 (15) Board for Respiratory Care provided in article thirty-four of chapter thirty of this  
50 code;

51 (16) Massage Therapy Licensure Board provided in article thirty-seven of chapter thirty  
52 of this code;

53 (17) Medical Imaging and Radiation Therapy Technology Board of Examiners provided  
54 in article twenty-three of chapter thirty of this code; and

55 (18) Nursing Home Administrators Licensing Board provided in article twenty-five of  
56 chapter thirty of this code.

57 (c) The following functions shall also transfer to the Department of Health and  
58 Compliance effective July 1, 2019:

59 (1) Health Care peer review organization protections provided in article three-C of  
60 chapter thirty of this code; and

61 (2) Qualification for Armed Forces Health Technicians for Civilian Health Occupations  
62 provided in article twenty-four of chapter thirty of this code.

**PART THREE. ORGANIZATION; POWERS AND DUTIES OF THE DEPARTMENT AND SECRETARY.**

**§9-2-301. Responsibility and powers of Department; information and data to be supplied by other agencies.**

1           (a) The Department is charged with administering public health, healthcare compliance,  
2 administrative oversight of specified regulatory boards, licensing of certain juvenile and child  
3 care facilities and enforcement of familial support obligations. This shall include:

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

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

11           (b) The Department is charged with ensuring healthy environments for clients, patients and  
12 residents within hospitals and other healthcare facilities by promoting the quality services and high  
13 standards of care that exist when facilities are in compliance with state licensure rules and federal  
14 certification regulations.

15           (c) Notwithstanding any other provision of this code to the contrary, each department,  
16 agency, commission or board of state government shall make available to the Department such  
17 information and data as each department, agency, commission or board may collect about any  
18 applicant for, or recipient of, any type of federal or state public health or familial support services  
19 upon such terms as may be prescribed by the Governor, if the information and data would be  
20 relevant in determining whether the applicant or recipient is eligible for any public or familial  
21 support services, and after the information and data have been obtained by the department, the  
22 same shall be used only by the department in carrying out and discharging its powers, duties  
23 and responsibilities.

**§9-2-302. Secretary of the Department; qualifications.**

1        (a) The administrative head of the Department is the Secretary, who shall be appointed  
2 and compensated, as provided by article seven, chapter six of this code.

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

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

**§9-2-303. Organization of Department.**

1        (a) The Department shall consist of the Bureau for Public Health, the Bureau for Child  
2 Support Enforcement and the Health Care Authority and the. Various regulatory boards set  
3 forth in section two hundred two of this article shall remain as autonomous entities but may be  
4 subject to administrative oversight of the Department of Health and Compliance for purposes of  
5 consistency of service delivery.

6        (b) Consistent with the provisions of section one, article two, chapter five-f of this code,  
7 the secretary may organize the Department into such other offices, divisions, agencies and  
8 other administrative units as he or she sees as necessary.

**§9-2-304. Acceptance of federal-state assistance and federal assistance.**

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



6 rules \_\_\_\_\_ and \_\_\_\_\_ regulations.

**§9-2-305. Powers and duties of Secretary.**

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

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

9 (2) Promulgate, amend, revise and rescind department rules and regulations respecting  
10 qualifications for receiving public health and behavioral health services consistent with or  
11 permitted by federal laws, rules and policies, but not inconsistent with state law.

12 (3) Promulgate, amend, revise and rescind department rules and regulations respecting  
13 the various entities within the department. These rules shall include, but are not limited to:

14 (A) Operation of the certificate of need program;

15 (B) Grants and financial assistance to rural health systems and hospitals; and

16 (C) Quality control.

17 (4) For the protection of applicants and recipients of public health and familial support  
18 services, the department shall be required to establish legislative rules governing the custody,  
19 use and preservation of the records, papers, files and communications of the department.

20 (5) Obtain by purchase or lease grounds, buildings, office or other space, equipment,  
21 facilities and services as may be necessary for the execution and administration of those  
22 powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law  
23 to the department and the secretary.

24 (6) Sign and execute in the name of the state by the Department of Health and  
25 Compliance any contract or agreement with the federal government or its agencies, other  
26 states, political subdivisions of this state, corporations, associations, partnerships or individuals:  
27 Provided, That the provisions of article three, chapter five-a of this code are followed.

28 (7) Sign and execute a contract to implement independent professional consultant  
29 contracts for department programs: Provided, That the provisions of article three, chapter five-a  
30 of this code are followed.

31 (8) Establish such special funds as may be required by the federal Social Security Act,  
32 as amended, or by any other Act or Acts of Congress, in order for this state to take full  
33 advantage of the benefits and provisions thereof relating to the federal-state assistance and  
34 federal assistance programs administered by the department and to make payments into and  
35 disbursements out of any such special fund or funds in accordance with the requirements of the  
36 federal Social Security Act, as amended, or any other Act or Acts of Congress, and in  
37 accordance with applicable state law and the objects and purposes of this chapter. In addition,  
38 the Department of Health and Compliance, through the Secretary, is hereby authorized to  
39 accept any and all gifts or grants, whether in money, land, services or materials, which gift or  
40 gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the  
41 purpose of public health and behavioral health programs. No part of this special fund shall revert  
42 to the General Revenue Funds of this state. No expenses incurred pursuant to this special fund  
43 shall be a charge against the General Funds of this state.

44 (9) Provide at department expense a program of continuing professional, technical and  
45 specialized instruction for the personnel of the department.

46 (10) Pay from available funds all or part of the reasonable expenses incurred by a  
47 person newly employed by the department in moving his household furniture, effects and  
48 immediate family from his or her place of residence in this state to his or her place of  
49 employment in this state; and to pay from available funds all or part of the reasonable expenses

50 incurred by a department employee in moving his or her household furniture, effects and  
51 immediate family as a result of a reassignment of the employee which is considered desirable,  
52 advantageous to and in the best interests of the state, but no part of the moving expenses of  
53 any one such employee shall be paid more frequently than once in twelve months or for any  
54 movement other than from one place of employment in this state to another place of  
55 employment in this state.

56 (11) Establish a program to provide reimbursement to employees of the department  
57 whose items of personal property, as defined by the department by policy, are damaged during  
58 the course of employment or other work-related activity as a result of aggressive behavior by a  
59 client or patient receiving services from the department: *Provided*, That such reimbursement is  
60 limited to a maximum amount of \$250.00 per claim.

61 (12) If necessary, prepare and submit state plans which will meet the requirements of  
62 federal laws, rules governing federal-state assistance and federal assistance and which are not  
63 inconsistent with state law.

64 (13) Provide by rules, consistent with requirements of applicable federal laws and rules,  
65 application forms and application procedures for the various classes of public health and familial  
66 support services.

67 (15) (A) Serve, by certified mail or personal service, an administrative subpoena on any  
68 person, corporation, partnership, financial institution, labor organization or state agency for an  
69 appearance or for production of documents necessary for administration of the public  
70 assistance programs of the department. In the case of disobedience to the subpoena, the  
71 Secretary may invoke the aid of any circuit court in requiring the appearance or production of  
72 records and documents.

73 (B) Apply to the circuit court of any county in which any hearing is to be held, or the  
74 circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of  
75 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to

76 compel the attendance of witnesses or the production of documents, before any hearing or  
77 administrative tribunal convened to consider suspension or termination of any person or  
78 corporation from providing services under the public assistance programs administered by the  
79 department.

80 (15) Delegate to the personnel of the department all powers and duties vested in the  
81 secretary, except the power and authority to sign contracts and agreements.

82 (16) Make such reports in such form and containing such information as may be required  
83 by applicable federal laws and rules respecting federal-state assistance and federal assistance.

84 (17) Invoke any legal, equitable or special remedies for the enforcement of the  
85 provisions of this article.

**§9-2-306. Transfer of functions to Secretary.**

1 In addition to other duties assigned to the Secretary in this article, effective July 1, 2019,  
2 the following functions as set out in the respective sections of the code shall become functions  
3 of the Secretary. Any reference in these sections to the Secretary of the Department of Health  
4 and Human Resources or the Director of Health shall mean the Secretary of the Department of  
5 Health and Compliance:

6 (1) Uniform credentialing for health care practitioners as set forth in article one-A of  
7 chapter sixteen of this code;

8 (2) Skilled Nursing Facilities for Veterans of the United States Armed Forces as set forth  
9 in article one-B of chapter sixteen of this code;

10 (3) Health care provider transparency as set forth in article one-C of chapter sixteen of  
11 this code;

12 (4) Certificate of need as set forth in article two-D of chapter sixteen of this code;

13 (5) Provider Sponsored Networks as set forth in article two-L of chapter sixteen of this  
14 code;

15 (6) Neonatal abstinence centers as set forth in article two-N of chapter sixteen of this  
16 code;

17 (7) Clinical laboratory quality assurance as set forth in article five-J of chapter sixteen of  
18 this code;

19 (8) Licensure of radon mitigations, testers, contractors and laboratories as set forth in  
20 article thirty-four of chapter sixteen of this code;

21 (9) Clearance for access: registry and employment screening act as set forth in article  
22 forty-nine of chapter sixteen of this code;

23 (10) Establishing additional substance abuse treatment facilities as set forth in article  
24 fifty-three of chapter sixteen of this code; and

25 (11) The West Virginia health information network as set forth in article twenty-nine-G of  
26 chapter sixteen of this code.

**§9-2-307. Attorney General and prosecuting attorneys to render legal services to  
Secretary and Commissioner.**

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

1 laws, rules and regulations.

**ARTICLE THREE. DEPARTMENT OF HUMAN SERVICES.**

**PART ONE. DEFINED WORDS AND PHRASES.**

**§9-3-101. Definitions.**

1 The following words as used in this article shall have the following meaning unless the context

2 clearly indicates otherwise;

3 "Abuse" means the infliction or threat to inflict physical pain or injury on or the imprisonment of  
4 any incapacitated adult or facility resident.

5 "Adult protective services agency" means any public or nonprofit private agency, corporation,  
6 board or organization furnishing protective services to adults.

7 "Agency" means the Children's Health Insurance Agency.

8 "Approved accounts" means any retirement account that the Secretary has determined  
9 is not to be included as an asset in determining the eligibility of an individual for participation in  
10 the buy-in program. Approved accounts may include, but not be limited to, private retirement  
11 accounts such as individual retirement accounts; other individual accounts; and employer-  
12 sponsored retirement plans such as 401(k) plans, Keogh plans and employer pension plans.

13 "Asset disregard" means, with regard to the state's medical assistance program,  
14 disregarding any assets or resources in an amount equal to the insurance benefit payments that  
15 are made to, or on behalf of, an individual who is a beneficiary under a qualified long-term care  
16 insurance partnership policy.

17 "Assistance" means money payments, medical care, transportation and other goods and services  
18 necessary for the health or welfare of individuals, including guidance, counseling and other medical or  
19 public assistance services and shall include Federal-state assistance, federal assistance and state  
20 assistance.

21 "At-risk family" means a group of persons living in the same household, living below the federally  
22 designated poverty level, lacking the resources to become self-supporting and consisting of a dependent  
23 minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include  
24 an unmarried minor parent and his or her dependent child or children who live in an adult-supervised  
25 setting.

26 “Autism spectrum disorder” means any pervasive developmental disorder, including  
27 autistic disorder, Asperger’s Syndrome, Rett syndrome, childhood disintegrative disorder, or  
28 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and  
29 Statistical Manual of Mental Disorders of the American Psychiatric Association.

30 “Basic coverage group” means an optional coverage group as defined by the Ticket to Work and  
31 Work Incentives Improvement Act of 1999.

32 “Benefits” means money payments, goods, services, or any other thing of value.

33 “Beneficiary” or “participant” means any parent, work eligible individuals or caretaker-  
34 relative in an at-risk family who receives cash assistance for himself or herself and family  
35 members.

36 “Board” means the Children’s Health Insurance Program Board.

37 “Board and Care Facility” shall mean a residential setting where tow or more unrelated  
38 adults receive nursing services or personal care services.

39 “Bureau” shall mean:

40 (A) For purposes of part four of this article and part five of this article the term Bureau  
41 shall refer to the Bureau for Child and Family Services;

42 (B) For purposes of parts six, seven and eight of this article the term Bureau shall refer  
43 to the Bureau for Economic Assistance; and

44 (C) For purposes of parts nine, ten, eleven, twelve, thirteen and fourteen of this article  
45 the term Bureau shall refer to the Bureau for Medical Services.

46 “Caretaker-relative” means grandparents or other nonparental caretakers not included in  
47 the assistance group or receiving cash assistance directly.

48 “Caregiver” means a person or entity who cares for or shares in the responsibility for the care of  
49 an incapacitated adult on a full-time or temporary basis, regardless of whether such person or entity has

50 been designated as a guardian or custodian of the incapacitated adult by any contract, agreement or  
51 legal procedures. Caregiver includes health care providers, family members, and any person who  
52 otherwise voluntarily accepts a supervisory role towards an incapacitated adult.

53 "Cash assistance" means temporary assistance for needy families.

54 "Claim" means an application for payment for goods or services provided pursuant to the  
55 medical programs of the Department of Human Services.

56 "Clinical trial" means a study that determines whether new drugs, treatments or medical  
57 procedures are safe and effective on humans. To determine the efficacy of experimental drugs,  
58 treatments or procedures, a study is conducted in four phases including the following:

59 (A) Phase II: The experimental drug or treatment is given to, or a procedure is  
60 performed on, a larger group of people to further measure its effectiveness and safety.

61 (B) Phase III: Further research is conducted to confirm the effectiveness of the drug,  
62 treatment or procedure, to monitor the side effects, to compare commonly used treatments and  
63 to collect information on safe use.

64 (C) Phase IV: After the drug, treatment or medical procedure is marketed, investigators  
65 continue testing to determine the effects on various populations and to determine whether there  
66 are side effects associated with long-term use.

67 "Commissioner" shall mean:

68 (A) For purposes of child and family services as set forth in part four of this article and  
69 social services for adults as set forth in part five of this article the term Commissioner shall refer  
70 to the Commissioner for the Bureau for Child and Family Services;

71 (B) For purposes of public and economic assistance as set forth in parts six, seven and  
72 eight of this article the term Commissioner shall refer to the Commissioner for the Bureau for  
73 Economic Assistance; and



74 (C) For purposes of medical assistance as set forth in parts nine, ten, eleven, twelve,  
75 thirteen and fourteen of this article the Commissioner shall refer to the Commissioner of the  
76 Bureau for Medical Services.

77 “Cooperative group” means a formal network of facilities that collaborate on research  
78 projects and have an established NIH-approved peer review program operating within the  
79 group. This includes:

80 (A) The National Cancer Institute Clinical Cooperative Group;

81 (B) The National Cancer Institute Community Clinical Oncology Program;

82 (C) The AIDS Clinical Trial Group; and

83 (D) The Community Programs for Clinical Research in AIDS.

84 “Copayment” means a fixed fee to be paid by the patient at the time of each office visit,  
85 outpatient service or filling of prescriptions.

86 “Cost-sharing” means the eligible participant will participate in the cost of the program by  
87 paying the enrollment fee, monthly premiums and copayments if established by the Department.

88 “Countable income” means income that does not exceed two hundred fifty percent of the  
89 federal poverty level. For the purposes of this chapter, countable income does not include:

90 (A) The income of the individual’s spouse, parent or guardian with whom he or she  
91 resides; and

92 (B) Income disregarded under the state Medicaid plan’s financial methodology, including  
93 income disregarded pursuant to the federal supplemental security income program (42 U.S.C.  
94 §1382) as impairment-related work expenses.

95 “Countable resources” means earned and unearned income. Countable resources do  
96 not include:

97 (A) Liquid assets of up to \$5,000 for an individual;

98 (B) Liquid assets of up to \$10,000 for a family;

99 (C) Retirement accounts; and

100 (D) Independence accounts.

101 “Department” shall mean the Department of Human Services.

102 “Director” means the Director of the Children’s Health Insurance Agency.

103 “Disability” means a medically determinable physical or mental condition that:

104 (A) Can be expected to result in death or has lasted, or can be expected to last, for a  
105 continuous period of not less than twelve months; and

106 (B) Renders a person unable to engage in substantial gainful activity; and

107 (C) Is a disability defined by social security administration criteria and has been so  
108 determined as such by either the Social Security Administration or the Department.

109 "Domiciled in this state" means being physically present in West Virginia accompanied  
110 by an intention to remain in West Virginia for an indefinite period of time, and to make West  
111 Virginia his or her permanent home.

112 "Education and training" means hours spent regularly attending and preparing for classes in any  
113 approved course of schooling or training.

114 “Eligible buy-in participant” means an individual who:

115 (A) Is a resident of the State of West Virginia;

116 (B) Has a disability as defined herein;

117 (C) Is at least sixteen years of age and less than sixty-five years of age;

118 (D) Is engaged in competitive employment, including self-employment or nontraditional  
119 work that results in remuneration at or above minimum wage in an integrated setting;

120 (E) Has countable resources that do not exceed the resource limits as defined in this  
121 chapter; and

122 (F) Has countable income that does not exceed the income limits as defined in this  
123 chapter.

124 "Emergency" or "emergency situation" means a situation or set of circumstances which presents  
125 a substantial and immediate risk of death or serious injury to an incapacitated adult.

126 "Entity" means any corporation, association, partnership, limited liability company, or other legal  
127 entity.

128 "Enrollment fee" means a one-time fee to participate in the Medicaid buy-in program.

129 "Essential community health service provider" means a health care provider that:

130 (A) Has historically served medically needy or medically indigent patients and  
131 demonstrates a commitment to serve low-income and medically indigent populations which  
132 constitute a significant portion of its patient population or, in the case of a sole community  
133 provider, serves medically indigent patients within its medical capability; and

134 (B) Either waives service fees or charges fees based on a sliding scale and does not  
135 restrict access or services because of a client's financial limitations. Essential community health  
136 service provider includes, but is not limited to, community mental health centers, school health  
137 clinics, primary care centers, pediatric health clinics or rural health clinics.

138 "Estate" means all real and personal property and other assets included within the individual's  
139 estate as defined in the state's probate law.

140 "FDA" means the federal Food and Drug Administration.

141 "Family assessments" means evaluation of the following: Work skills, prior work experience,  
142 employability, education and challenges to becoming self-sufficient such as mental health and physical  
143 health issues along with lack of transportation and child care.

144 "Facility resident" means an individual living in a nursing home or other facility, as that term is  
145 defined in this section.

146 "Federal assistance" means and includes all forms of aid, care, assistance and services to or on

147 behalf of persons, which are authorized by, and who are authorized to receive the same under any act of  
148 Congress for distribution through the Department, the cost of which is paid entirely out of federal  
149 appropriations.

150 "Federal benefit rate" means the amount of monthly federal or state benefits paid to  
151 persons with limited income and resources who are age sixty-five or older, blind or disabled.

152 "Federal poverty level" means the level of personal or family income below which one is classified  
153 as poor according to federal governmental standards, commonly referred to as the federal poverty  
154 guidelines which are issued and printed each year in the federal register.

155 "Federal-state assistance" means and includes:

156 (A) All forms of aid, care, assistance and services to, or on behalf of, persons, which are  
157 authorized by, and who are authorized to receive the same under and by virtue of, subchapters  
158 one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United  
159 States Code;

160 (B) All forms of aid, care, assistance and services to persons, which are authorized by,  
161 and who are authorized to receive the same under and by virtue of, any act of Congress, other  
162 than the federal social security act, as amended, for distribution through the Department to  
163 recipients of any form of aid, care, assistance and services to persons designated or referred to  
164 in paragraph (A) and to recipients of state assistance.

165 "Financial Exploitation" means the intentional misappropriation or misuse of funds or  
166 assets of another.

167 "General relief" means cash or its equivalent in services or commodities expended for  
168 care and assistance to an indigent person other than for care in a county infirmary, child shelter  
169 or similar institution.

170 "Incapacitated adult" means any person who by reason of physical, mental or other infirmity is  
171 unable to independently carry on the daily activities of life necessary to sustaining life and reasonable

172 health.

173 "Income":

174 (1) For purposes of the West Virginia Works Act as set forth in this article income shall mean  
175 money received by any member of an at-risk family which can be used at the discretion of the household  
176 to meet its basic needs. Income does not include:

177 (A) Supplemental security income paid to any member or members of the at-risk family;

178 (B) Earnings of minor children;

179 (C) Payments received from earned income tax credit or tax refunds;

180 (D) Earnings deposited in an individual development account approved by the department;

181 (E) Any educational grant or scholarship income regardless of source; or

182 (F) Any moneys specifically excluded from countable income by federal law.

183 (2) For purposes of determining Medicaid eligibility by the Bureau for Medical Services  
184 as set forth in this article income shall mean money earned from employment wages or self-  
185 employment earnings and unearned money received from any other source.

186 "Independence accounts" means Department-approved accounts established with the  
187 Department solely by funds paid from the earned income of an eligible buy-in participant to  
188 cover expenses necessary to enhance or maintain his or her independence or increase  
189 employment opportunities. Approved expenditures from the funds may include: Educational  
190 expenses; work-related expenses; home purchase or modification; transportation; medical  
191 expenses; assistive technology and related services; or for short-term living expenses in times  
192 of qualified emergencies as determined by the Department.

193 "Indigent person" means any person who is domiciled in this state and who is actually in need as  
194 defined by Department rules and has not sufficient income or other resources to provide for such need as  
195 determined by the Department.

196 "Legal representative" means a person lawfully invested with the power and charged with the  
197 duty of taking care of another person or with managing the property and rights of another person,

198 including, but not limited to, a guardian, conservator, medical power of attorney representative, trustee or  
199 other duly appointed person.

200 “Life-threatening condition” means a terminal condition or illness that according to  
201 current diagnosis has a high probability of death within two years, even with treatment with an  
202 existing generally accepted treatment protocol.

203 “Liquid assets” means cash or assets payable in cash on demand, including financial  
204 instruments that can be converted to cash within twenty working days. National, state and local  
205 holidays are not working days.

206 “Long-term care insurance” means a policy described in section four, article fifteen-a,  
207 chapter thirty-three of this code.

208 “Long-term care partnership program” means a qualified state long-term care insurance  
209 partnership as defined in 42 U.S.C. 1396, Section 1917(b) of the Social Security Act.

210 “Medicaid” means that assistance provided pursuant to a state plan implemented  
211 pursuant to the provisions of subchapter nineteen, chapter seven, Title 42, United States Code,  
212 as that chapter has been and may hereafter be amended.

213 “Medical services” means medical, surgical, dental and nursing services, and other  
214 remedial services recognized by law, in the home, office, hospital, clinic and any other suitable  
215 place, provided or prescribed by persons permitted or authorized by law to give such services;  
216 the services to include drugs and medical supplies, appliances, laboratory, diagnostic and  
217 therapeutic services, nursing home and convalescent care and such other medical services and  
218 supplies as may be prescribed by the persons.

219 “Member” means a policyholder, subscriber, insured, certificate holder or a covered  
220 dependent of a policyholder, subscriber, insured or certificate holder.

221 “Multiple project assurance contract” means a contract between an institution and the  
222 federal Department of Health and Human Services that defines the relationship of the institution  
223 to the federal Department of Health and Human Services and sets out the responsibilities of the  
224 institution and the procedures that will be used by the institution to protect human subjects.

225 “NIH” means the National Institutes of Health.

226 "Neglect" means:

227 (A) The failure to provide the necessities of life to an incapacitated adult or facility resident with  
228 intent to coerce or physically harm the incapacitated adult or resident; and

229 (B) The unlawful expenditure or willful dissipation of the funds or other assets owned or paid to, or  
230 for the benefit of, an incapacitated adult or resident.

231 "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or state law  
232 from receiving cash assistance.

233 "Nursing home" or "facility" means any institution, residence, intermediate care facility for the  
234 intellectually disabled, care home or any other adult residential facility, or any part or unit thereof, that is  
235 subject to the provisions of article five-C of chapter sixteen of this code.

236 “Patient cost” means the routine costs of a medically necessary health care service that  
237 is incurred by a member as a result of the treatment being provided pursuant to the protocols of  
238 the clinical trial. Routine costs of a clinical trial include all items or services that are otherwise  
239 generally available to beneficiaries of the insurance policies. “Patient cost” does not include:

240 (A) The cost of the investigational drug or device;

241 (B) The cost of non-health care services that a patient may be required to receive as a  
242 result of the treatment being provided to the member for purposes of the clinical trial;

243 (C) Services customarily provided by the research sponsor free of charge for any  
244 participant in the trial;

245 (D) Costs associated with managing the research associated with the clinical trial  
246 including, but not limited to, services furnished to satisfy data collection and analysis needs that  
247 are not used in the direct clinical management of the participant;

248 (E) Costs that would not be covered under the participant's policy, plan, or contract for  
249 non-investigational treatments; or

250 (F) Adverse events during treatment are divided into those that reflect the natural history  
251 of the disease, or its progression, and those that are unique in the experimental treatment.  
252 Costs for the former are the responsibility of the payor, and costs for the later are the  
253 responsibility of the sponsor. The sponsor shall hold harmless any payor for any losses and  
254 injuries sustained by any member as a result of his or her participation in the clinical trial.

255 "Person" means any individual, corporation, association, partnership, proprietor, agent, assignee  
256 or entity.

257 "Personal responsibility contract" means a written agreement entered into by the department and  
258 a beneficiary for purposes of participation in the West Virginia Works Program;

259 "Premium" means a monthly fee paid by an eligible buy-in participant to continue  
260 participation in the program.

261 "Program" means the West Virginia Children's Health Insurance Program.

262 "Provider" means any individual or entity furnishing goods or services pursuant to the  
263 programs of the Department of Human Services.

264 "Public assistance" shall mean any type of assistance offered by the department pursuant to this  
265 article, chapter forty-eight of this code and chapter forty-nine of this code.

266 "Reasonable funeral service expenses" means expenses for services provided by a  
267 funeral director for the disposition of human remains.

268 "Recipient" means a person who applies for, and receives assistance from, the  
269 Department of Human Services.



270 "Regional long-term care ombudsman" means any paid staff of a designated regional long-term  
271 care ombudsman program who has obtained appropriate certification from the bureau for senior services  
272 and meets the qualifications set forth in section seven, article five-I, chapter sixteen of this code.

273 "Secretary" means the Secretary of the Department of Human Services.

274 "Services" means nursing facility services, home and community-based services, and  
275 related hospital and prescription drug services for which an individual received Medicaid  
276 medical assistance.

277 "State assistance" means all forms of aid, care, assistance, services and general relief  
278 made possible solely out of state, county and private appropriations to, or on behalf of, indigent  
279 persons.

280 "State long-term care ombudsman" means an individual who meets the qualifications of  
281 chapter sixteen of this code who is employed by the state Bureau for Senior Services to  
282 implement the state long-term care ombudsman program.

283 "State Medicaid agency" means the Bureau of Medical Services within the Department  
284 that is the federally designated single state agency charged with administration and supervision  
285 of the state Medicaid program.

286 "Subsidized employment" means employment with earnings provided by an employer who  
287 receives a subsidy from the department for the creation and maintenance of the employment position.

288 "Support services" includes, but is not limited to, the following services: Child care;  
289 Medicaid; transportation assistance; information and referral; resource development services  
290 which includes assisting families to receive child support and supplemental security income;  
291 family support services which includes parenting, budgeting and family planning; relocation  
292 assistance; and mentoring services.

293 "Temporary assistance for needy families" is the federal program funded under Part A, Title IV of  
294 the Social Security Act, codified at 42 U.S.C. §601, et. seq.

295 "Third-party" means an individual or entity that is alleged to be liable to pay all or part of  
296 the costs of a recipient's medical treatment and medical-related services for personal injury,  
297 disease, illness or disability, as well as any entity including, but not limited to, a business  
298 organization, health service organization, insurer, or public or private agency acting by, or on  
299 behalf of, the allegedly liable third-party.

300 "Transitional assistance" may include medical assistance, food stamp assistance, child care and  
301 supportive services as defined by the secretary and as funding permits.

302 "Two-parent family" means two parents with a common child residing in the same household and  
303 included in a common West Virginia Works grant payment or, two parents with a common child residing in  
304 the same home and one or both of the parents are "work eligible individuals", as that term is defined in  
305 this section, but are excluded from the West Virginia Works payments unless the exclusion is due to an  
306 exemption as provided in this article.

307 "Unit" means the Medicaid Fraud Control Unit established pursuant to this chapter.

308 "Unsubsidized employment" means employment with earnings provided by an employer  
309 who does not receive a subsidy from the Department for the creation and maintenance of the  
310 employment position.

311 "Vocational-educational training" means organized educational programs, not to exceed twelve  
312 months for any individual, that are directly related to the preparation of individuals for employment in  
313 current or emerging occupations requiring training other than a baccalaureate or advance degree.

314 "Work" means unsubsidized employment, subsidized employment, work experience, community  
315 or personal development and education and training.

316 "Work eligible individual" means an adult or minor child head-of-household receiving assistance  
317 under the West Virginia Works Program or a nonrecipient parent living with a child receiving the  
318 assistance.

319 "Work experience" means a publicly assisted work activity, including work associated with the  
320 refurbishing of publicly assisted housing, performed in return for program benefits that provide general

321 skills, training, knowledge and work habits necessary to obtain employment. This activity must be  
322 supervised daily and on an ongoing basis by an employer, work site sponsor or other responsible party.

**PART TWO. GENERAL PROVISIONS.**

**§9-3-201. Creation of department.**

1 (a) The Legislature creates the Department of Human Services. In creating this department, the  
2 Legislature intends to continue on a reorganized basis state provided human services functions and  
3 behavioral health services previously administered by the Department of Health and Human Resources  
4 and its predecessor agency. The purpose of this agency is to provide public assistance and human  
5 services to eligible persons. These changes shall become effective July 1, 2019.

6 (b) The rules of the Secretary of the Department of Health and Human Resources related to the  
7 Bureau for Medical Services, the Children’s Health Insurance Program and any other provisions of this  
8 article shall remain in effect until they are amended or rescinded by the Secretary of the Department of  
9 Human Services.

**§9-3-202. Department agencies.**

1 The Department of Human Services shall consist of the Bureau for Economic Assistance set forth  
2 in this chapter, the Bureau for Child and Family Services set forth in this chapter, the Bureau for  
3 Behavioral Health set forth in in of chapter twenty-seven of this code, the Bureau for Medical Services as  
4 set forth in article three, chapter nine of this code and the Children’s Health Insurance Program as set  
5 forth in article three, chapter nine of this code. All functions, powers, duties, employees and  
6 responsibilities of these entities shall transfer to the Department of Human Services on the first day of  
7 July, 2019.

**PART. THREE. ORGANIZATION AND POWERS AND DUTIES OF THE DEPARTMENT AND SECRETARY.**

**§9-3-301. Responsibility and powers of Department; information and data to be supplied by other agencies.**

1           (a) The Department is charged with administering state programs which provide medical  
2 and public assistance, behavioral health services and child and family services. This shall  
3 include:

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

9           (2) All powers, not inconsistent with state law, as may be necessary for the  
10 disbursement and distribution of medical and public assistance to those persons qualified  
11 therefor in as prompt, fair, orderly, efficient and economical manner as possible;

12           (3) Provide behavioral health services as set forth in chapter twenty-seven of this code;  
13 and

14           (4) Provide child and family welfare services as set forth in chapter forty-nine of this  
15 code.

16           (b) Notwithstanding any other provision of this code to the contrary, each department,  
17 agency, commission or board of state government shall make available to the Department such  
18 information and data as each department, agency, commission or board may collect about any  
19 applicant for, or recipient of, any type of federal or state public assistance upon such terms as  
20 may be prescribed by the Governor, if the information and data would be relevant in determining  
21 whether the applicant or recipient is qualified or eligible for any public assistance, and after the  
22 information and data have been obtained by the department, the same shall be used only by the  
23 department in carrying out and discharging its powers, duties and responsibilities.

**§9-3-302. Secretary of the department; qualifications.**

1           (a) The administrative head of the department is the Secretary, who shall be appointed  
2 and compensated, as provided by article seven, chapter six of this code.

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

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

**§9-3-303. Organization of Department.**

1           (a) The Department shall consist of the Bureau for Economic Assistance; the Bureau for  
2 Behaviorial Health, the Bureau for Child and Family Services, the Bureau of Medical Services  
3 and the West Virginia Children's Health Insurance Program.

4           (b) Consistent with the provisions of section one, article two, chapter five-f of this code,  
5 the secretary may organize the department into such other offices, divisions, agencies and other  
6 administrative units as he or she sees as necessary.

**§9-3-304. Acceptance of federal-state assistance and federal assistance.**

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

**§9-3-305. Powers and duties of Secretary.**

1           Within limits of state appropriations and federal grants and subject to provisions of state

2 and federal laws and regulations, the Secretary, in addition to all other powers, duties and  
3 responsibilities granted and assigned to that office in this chapter and elsewhere by law, is  
4 authorized to:

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

9 (2) Promulgate, amend, revise and rescind department rules and regulations respecting  
10 qualifications for receiving the different classes of public assistance consistent with, or permitted  
11 by, federal laws, rules and policies, but not inconsistent with state law.

12 (3) For the protection of applicants and recipients of public and medical assistance, child  
13 and family assistance and behavioral health services, the department shall be required to  
14 establish legislative rules governing the custody, use and preservation of the records, papers,  
15 files and communications of the department.

16 (4) Obtain by purchase or lease grounds, buildings, office or other space, equipment,  
17 facilities and services as may be necessary for the execution and administration of those  
18 powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law  
19 to the department and the secretary.

20 (5) Sign and execute in the name of the state by the Department of Human Services any  
21 contract or agreement with the federal government or its agencies, other states, political  
22 subdivisions of this state, corporations, associations, partnerships or individuals: *Provided*, That  
23 the provisions of article three, chapter five-a are followed.

24 (6) Sign and execute a contract to implement professional health care, managed care,  
25 actuarial and health care-related monitoring, quality review/utilization, claims processing and  
26 independent professional consultant contracts for the Medicaid program: *Provided*, That the  
27 provisions of article three, chapter five-a of this code are followed: *Provided, however*, That a

28 contract awarded under the agency purchasing process from April 1, 2009, to January 2, 2013,  
29 remains in full force and effect and the secretary retains sole authority to review, approve and  
30 issue changes to contracts issued under the former purchasing process, and is responsible for  
31 challenges, disputes, protests and legal actions related to such contracts.

32 (7) Establish such special funds as may be required by the federal Social Security Act,  
33 as amended, or by any other Act or Acts of Congress, in order for this state to take full  
34 advantage of the benefits and provisions thereof relating to the federal-state assistance and  
35 federal assistance programs administered by the department and to make payments into and  
36 disbursements out of any such special fund or funds in accordance with the requirements of the  
37 federal Social Security Act, as amended, or any other Act or Acts of Congress, and in  
38 accordance with applicable state law and the objects and purposes of this chapter. In addition,  
39 the Department of Human Services, through the Secretary, is hereby authorized to accept any  
40 and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the  
41 form of moneys, shall be placed in a separate fund and expended solely for the purpose of  
42 public assistance programs. No part of this special fund shall revert to the General Revenue  
43 Funds of this state. No expenses incurred pursuant to this special fund shall be a charged  
44 against the General Funds of this state.

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

47 (9) Pay from available funds all or part of the reasonable expenses incurred by a person  
48 newly employed by the department in moving his household furniture, effects and immediate  
49 family from his or her place of residence in this state to his or her place of employment in this  
50 state; and to pay from available funds all or part of the reasonable expenses incurred by a  
51 department employee in moving his or her household furniture, effects and immediate family as  
52 a result of a reassignment of the employee which is considered desirable, advantageous to and  
53 in the best interests of the state, but no part of the moving expenses of any one such employee

54 shall be paid more frequently than once in twelve months or for any movement other than from  
55 one place of employment in this state to another place of employment in this state.

56 (10) Establish a program to provide reimbursement to employees of the department  
57 whose items of personal property, as defined by the department by policy, are damaged during  
58 the course of employment or other work-related activity as a result of aggressive behavior by a  
59 client or patient receiving services from the department: *Provided*, That such reimbursement is  
60 limited to a maximum amount of \$250.00 per claim.

61 (11) Prepare and submit state plans which will meet the requirements of federal laws,  
62 rules governing federal-state assistance and federal assistance and which are not inconsistent  
63 with state law.

64 (12) Provide by rules review and appeal procedures within the department as may be  
65 required by applicable federal laws and rules respecting state assistance, federal-state  
66 assistance and federal assistance and as will provide applicants for, and recipients of all,  
67 classes of assistance an opportunity to be heard by the Board of Review as set forth in this  
68 chapter, or a member thereof or individuals designated by the board, upon claims involving  
69 denial, reduction, closure, delay or other action or inaction pertaining to public assistance.

70 (13) Provide by rules, consistent with requirements of applicable federal laws and rules,  
71 application forms and application procedures for the various classes of public assistance.

72 (14) Provide locations for making applications for the various classes of public  
73 assistance: *Provided*, That the Secretary may accomplish this through the use of  
74 memorandums of understanding with other entities of state government which provide services  
75 locations throughout the state.

76 (15) Provide a citizen or group of citizens an opportunity to file objections and to be  
77 heard upon objections to the grant of any class of public assistance.

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



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

82 (18) (A) Develop caseload standards based on the actual duties of employees in each  
83 program area of the department and may take into consideration existing professional caseload  
84 standards. Standards shall be reasonable and achievable.

85 (B) The caseload standards which are developed establishing minimum and maximum  
86 caseloads shall be advisory for the department in the hiring of staff and in individual caseload  
87 assignments, and may be used as a basis of the departments personal services budget request  
88 to the governor and the Legislature.

89 (C) As used in this subsection "caseload standards" means a measurable numerical  
90 minimum and maximum workload which an employee can reasonably be expected to perform in  
91 a normal workday or workweek, based on the number, variety and complexity of cases handled  
92 or number of different job functions performed and, "professional caseload standards" means  
93 standards established by national standard setting authorities, when they exist, or caseload  
94 standards used in other states which have similar job titles.

95 (19) Have authority over early intervention services for children with developmental  
96 disabilities as set forth in article five-K of chapter sixteen of this code.

97 (20) Have authority over the James "Tiger" Morton catastrophic illness fund as set out in  
98 article five-Q of chapter sixteen of this code;

99 (21) (A) Serve, by certified mail or personal service, an administrative subpoena on any  
100 person, corporation, partnership, financial institution, labor organization or state agency for an  
101 appearance or for production of documents necessary for administration of the public  
102 assistance programs of the department. In the case of disobedience to the subpoena, the  
103 Secretary may invoke the aid of any circuit court in requiring the appearance or production of  
104 records and documents.

105 (B) Apply to the circuit court of any county in which any hearing is to be held, or the

106 circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of  
107 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to  
108 compel the attendance of witnesses or the production of documents, before any hearing or  
109 administrative tribunal convened to consider suspension or termination of any person or  
110 corporation from providing services under the public assistance programs administered by the  
111 department.

112 (22) Make such reports in such form and containing such information as may be required  
113 by applicable federal laws and rules respecting federal-state assistance and federal assistance.

114 (23) Invoke any legal, equitable or special remedies for the enforcement of the  
115 provisions of this article.

**§9-3-306. Attorney General and prosecuting attorneys to render legal services to Secretary and Commissioner.**

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

**PART FOUR. BUREAU FOR CHILD AND FAMILY SERVICES.**

**§9-3-401. Creation of the Bureau for Child and Family Services.**

1 Effective the first day of July 2019, The Bureau for Child and Family Services is created  
2 and continued within the Department of Human Services.

**§9-3-402. Appointment of commissioner; qualifications; compensation.**

1 (a) There is hereby created the position of Commissioner. The Commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the Secretary;

4 (3) Serve at the will and pleasure of the Governor;

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

8 (5) Have an appropriate educational level and have reasonable administrative  
9 experience, possess management skills and have knowledge of insurance, specifically publicly  
10 provided insurance.

11 (b) Before entering upon the discharge of the duties as Commissioner, the  
12 Commissioner shall take and subscribe to the oath of office prescribed in section five, article IV  
13 of the Constitution of West Virginia.

14 (c) The Commissioner shall receive:

15 (1) A reasonable and competitive compensation package to be established by the  
16 Secretary; and

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

**§9-3-403. Powers and duties of the Commissioner.**

1 (a) In addition to the powers and duties set forth in any other provision of this code, the  
2 Commissioner has the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in providing child and family services to person who qualify;

5 (B) Sets forth goals and objectives for meeting those needs; and

6 (C) Contains plans of operation for achieving the stated goals and objectives, including  
7 organizational structure; and statement of requirements in personnel funds and authority for achieving the  
8 goals and objectives.

9 (2) To appoint deputies and assistants to supervise the bureau's programs and such other  
10 assistants and employees as may be necessary for the efficient operation of the bureau and all its

11 programs.

12 (3) To delegate to any of his or her appointees, assistants or employees all powers and duties  
13 vested in the Commissioner, including the power to execute contracts and agreements in the name of the  
14 bureau as provided in this article. The Commissioner shall be responsible for the acts of such  
15 appointees, assistants and employees.

16 (4) To make periodic reports to the Secretary, Governor and to the Legislature as required by this  
17 chapter.

18 (b) The Commissioner is authorized and empowered to accept and use for the benefit of the state  
19 programs any gift or devise of any property or thing which lawfully may be given. Any gift or devise of any  
20 property or thing which lawfully may be given and whatever profit may arise from its use or investment  
21 shall be deposited in a special revenue fund with the State Treasurer, and shall be used only as specified  
22 by the donor or donors.

#### **§9-3-404. Organization and employees.**

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

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

6 (c) The Secretary may transfer employees and resources of the department to the  
7 bureau as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to  
8 this chapter. The Secretary may not transfer employees of other divisions and agencies within  
9 the department to the bureau without a prior finding that the office or position held by the  
10 employee may be eliminated and until the office or position is, in fact, eliminated.

11 (d) The Commissioner, if he or she deems such action necessary, may hire legal  
12 counsel for the bureau, notwithstanding the provisions of section two, article three, chapter five  
13 of this code or any other code provision to the contrary, or may request the Attorney General to  
14 appoint counsel who shall perform such duties as may be required by the bureau. The Attorney

15 General, in pursuance of such request, may select and appoint counsel to serve during the will  
16 and pleasure of the Attorney General, and shall be paid out of any funds allocated and  
17 appropriated to the bureau.

18 (e) The Commissioner may employ such staff or employees as may be necessary to  
19 administer and enforce this chapter.

**§9-3-405. Supervisory responsibilities of the Commissioner.**

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

**§9-3-406. General duties and powers of the Bureau for Child and Family Services.**

1 (a) In carrying out the policies and procedures for enforcing the provisions of this  
2 chapter, the bureau shall have the following power and authority:

3 (1) To establish policies and procedures for governing the administration of the bureau  
4 and providing child and family services to the citizens of this state as set forth in this code;

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

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

8 (4) To act as a liaison with other state entities and private groups with an interest in  
9 services to children and families;

10 (5) To offer child and family services to those who meet the eligibility standards set by  
11 the bureau and the federal government through laws, rules and regulations; and

12 (6) To perform any other duties assigned to the bureau by the Secretary.

13 (b) To operate and oversee all child welfare programs as set forth in chapter forty-nine of

14 this code, including but not limited to child care center licensing, early childhood education, child  
15 protective series and any other child welfare service.

16 (c) To operate and oversee a program of social services for adults as set forth in this  
17 chapter.

**§9-3-407. Continuation of present aid; contributions by counties.**

1 (a) Except as otherwise provided in this chapter, aid or assistance rendered under  
2 existing law shall not be deemed to be discontinued.

3 (b) County commissions may contribute in-kind services or money into a special fund of  
4 the department to expand the general assistance programs for citizens of its county. No part of  
5 this fund shall revert to the general revenue of the state.

**§9-3-408. Application for and granting of federal-state or federal assistance.**

1 Any person domiciled in this state, who shall make, or have made in his or her behalf, an  
2 application therefor and who is otherwise in all respects qualified to receive the same, shall be granted  
3 federal-state assistance or federal assistance in such form and amount, to such extent, and for such  
4 period, as authorized by applicable federal and state laws, rules and regulations and as determined by  
5 the bureau in accordance with such laws, rules and regulations and within limits of available funds.

**§9-3-409. Application for and granting of state assistance.**

1 Any indigent person domiciled in this state, who shall make, or have made in his or her behalf, an  
2 application therefor and who is otherwise in all respects qualified to receive the same, shall be granted  
3 state assistance in such form and amount, to such extent, and for such period, as authorized by  
4 applicable state laws, rules and regulations of the bureau and as determined by the bureau in accordance  
5 with such laws, rules and regulations and within limits of available funds.

**§9-3-410. Making application, investigation and grant.**

1 (a) All persons wishing to make application for child and family services and assistance shall  
2 have an opportunity to do so. Upon receipt of an application for child and family services and assistance,  
3 the bureau shall make such investigation as may be necessary and as the exigency of the case will

4 permit to determine the eligibility of the applicant for, and the form, amount, extent, and period of, such  
5 assistance.

6 (b) When the bureau approves an application for child and family services and assistance, it shall  
7 fix the amount, form, extent and period of such assistance in accordance with applicable federal and state  
8 laws, rules and regulations and within the limits of available funds.

**§9-3-411. Penalties for false statements, etc.**

1 Any person who obtains, or attempts to obtain, or aids or abets an applicant or recipient in  
2 obtaining, or attempting to obtain, by means of a willfully false statement or misrepresentation or by  
3 impersonation of any other fraudulent device:

4 (1) Any assistance to which the applicant or recipient is not entitled; or

5 (2) Any assistance in excess of that to which the applicant or recipient is justly entitled; shall upon  
6 conviction be punished as follows:

7 (A) If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall  
8 be \$500 or less, the person so convicted shall be guilty of a misdemeanor and, shall be fined not more  
9 than \$1,000 or confined in jail not exceeding one year; or

10 (B) If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall  
11 exceed \$500, the person so convicted shall be guilty of a felony and, shall be fined not more than \$5,000  
12 or confined in the penitentiary not less than one year nor more than five years.

13

**§9-3-412. Assignment of support obligations.**

14 (a) Any recipient of financial assistance under the program of state and federal assistance  
15 established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act  
16 thereto, shall, as a condition of receiving assistance funded pursuant to this article assign to the  
17 Department of Human Services any right the family member may have, on behalf of the family member or  
18 of any other person for whom the family member has applied for, or is receiving such assistance, to  
19 support from any other person, not exceeding the total amount of assistance so paid to the family, which  
20 accrues during the period that the family receives assistance pursuant to the program.

21 (b) Each applicant for assistance subject to the assignment established in this section shall,  
22 during the application process, be informed in writing of the nature of the assignment.

23 (c) Any payment of federal and state assistance made to, or for the benefit of, any child or  
24 children or the caretaker of a child or children creates a debt due and owing to the Department of Human  
25 Services by the person or persons responsible for the support and maintenance of the child, children or  
26 caretaker in an amount equal to the amount of assistance money paid: *Provided*, That the debt is limited  
27 by the amount established in any court order or final decree of divorce if the amount in the order or  
28 decree is less than the amount of assistance paid.

29 (d) The assignment pursuant to this section shall subrogate the Department of Human Services  
30 to the rights of the child, children or caretaker to the prosecution or maintenance of any action or  
31 procedure existing under law providing a remedy whereby the Department of Human Services may be  
32 reimbursed for moneys expended on behalf of the child, children or caretaker. The Department of Human  
33 Services shall further be subrogated to the debt created by any order or decree awarding support and  
34 maintenance to, or for the benefit of, any child, children or caretaker included within the assignment  
35 pursuant to this section and shall be empowered to receive money judgments and endorse any check,  
36 draft, note or other negotiable document in payment thereof.

37 (e) The assignment created pursuant to this section shall be released upon closure of the  
38 assistance case and the termination of assistance payments except for support and maintenance  
39 obligations accrued and owing at the time of closure which are necessary to reimburse the department for  
40 any balance of assistance payments made.

41 (f) The Department of Human Services may, at the election of the recipient, continue to receive  
42 support and maintenance moneys on behalf of the recipient following closure of the assistance case and  
43 shall distribute the moneys to the caretaker, child or children.

**§9-3-413. Authority to examine witnesses, administer oaths and take affidavits.**



1           The Secretary, the Commissioner and employees of the department may administer  
2 oaths, examine witnesses and take and certify affidavits in any matter or thing pertaining to the  
3 business of the department.

**§9-3-414. Authority to subpoena witnesses and documents when investigating the provision of assistance programs.**

1           The Secretary and the Commissioner and every duly appointed hearing examiner may  
2 apply, on behalf of any party, to the circuit court of the county in which a hearing is to be held, or  
3 the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of  
4 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to  
5 compel the attendance of witnesses or the production of documents, before any hearing or  
6 administrative tribunal convened to consider suspension or termination of any person or  
7 corporation from providing services under the public assistance programs administered by the  
8 department. The application for a subpoena duces tecum shall state with particularity any  
9 papers or documents requested and upon hearing, the applicant or party shall notify the court or  
10 judge, as the case may be, of the necessity therefor in such hearing. The court or judge  
11 thereof, prior to issuing the requested subpoena or subpoena duces tecum, may make any  
12 order which justice requires to protect a party or person from annoyance, embarrassment,  
13 oppression or undue burden or expense. The party who applies for the subpoena or subpoena  
14 duces tecum shall pay the sheriff's fees required for service of these documents.

**PART FIVE. OFFICE OF MATERNAL, CHILD AND FAMILY HEALTH.**

**§9-3-501. Creation of office.**

1           (a) There is established and continued within the Department of Human Services, Bureau for  
2 Child and Families, the Office of Maternal, Child and Family Health.

3           (b) The office shall develop a plan for a comprehensive system and uniform approach to any  
4 screening conducted by physicians and midwives to discover at-risk and high-risk pregnancies and to  
5 offer better health outcomes for women and their families.

6           (c) The office shall provide for prenatal examination as set forth in this article and for a birth score  
7 program and newborn testing as set forth in this article and shall also include programs federally funded  
8 pursuant to Title V of Maternal and Child Health Block Grant Program.

**§9-3-502. Compulsory serologic test.**

1           Every pregnant woman who is resident in West Virginia, shall have a blood sample taken and  
2 submitted to the West Virginia State Hygienic Laboratory or other laboratory approved by the Department.  
3 The laboratory shall perform a standard serologic test for syphilis. Any standard laboratory test for syphilis  
4 approved by the Secretary shall be considered to be such a standard serologic test.

**§9-3-503. Attending physician to obtain blood specimen.**

1           (a) Every physician providing services to a pregnant woman in West Virginia shall, as soon  
2 as he or she is engaged to attend a woman and has reasonable grounds for suspecting that pregnancy  
3 exists, acquaint such woman with the provisions of this article and take or cause to be taken a specimen  
4 of blood from such woman. This specimen shall be submitted to the state hygienic laboratory or other  
5 laboratory approved by the Department as required by this article. If the woman is in a stage of gestation  
6 or labor at the time that the diagnosis of pregnancy is made, which may make it inadvisable to obtain the  
7 specimen, the specimen of blood shall be obtained within ten days following delivery.

8           (b) The state hygienic laboratory shall perform the serological tests required by law on all  
9 blood specimens taken from pregnant women by physicians for examination. These tests shall be  
10 performed without charge.

11           (c) Upon request it shall be the duty of local health officers to draw blood specimens from  
12 pregnant women for performing thereon a serologic test for syphilis. This service shall be performed  
13 without charge.

14           (d) In those areas where the services of a district or county health officer are not available,  
15 the Department shall assume the responsibility of obtaining the required blood specimens without any  
16 charge to the pregnant women.

**§9-3-504. Identification of specimen; report.**

1           (a) Any physician who takes or causes to be taken from a woman in pregnancy or suspected

2 pregnancy a blood test for syphilis shall identify such specimen as being from a pregnant woman, and  
3 the laboratory shall provide a report in triplicate on forms prepared and furnished by the Department  
4 showing the results of such tests.

5 (b) The original of each such report shall be sent at once to the physician submitting the  
6 specimen, a duplicate shall be forwarded to the Department during the week that the test was  
7 performed, and the triplicate shall be retained by the laboratory for its files.

8 (c) All laboratory reports shall be confidential and shall not be open to public inspection.

9 (d) The laboratory test for syphilis in compliance with this article shall be performed free of  
10 charge by the state hygienic laboratory on the application of any municipal or county health officer or  
11 other physician, or any other person permitted by law to secure such specimens.

**§9-3-505. Notation on birth certificate.**

1 (a) Every physician required to report births and stillbirths, shall state on each birth certificate  
2 or stillbirth certificate, as the case may be, whether a blood test for syphilis was performed during such  
3 pregnancy upon a specimen of blood taken from the woman who bore the child for which the birth or  
4 stillbirth certificate is filed.

5 (b) If such test was made, the physician shall state on the certificate the name of the test  
6 used, the date the test was performed and the name of the laboratory making the test; if not made, the  
7 physician filing the certificate shall state the reason or reasons why such test was not performed. In no  
8 event shall the result of the test be stated on the birth or stillbirth certificate.

**§9-3-506. Penalties.**

1 Any physician or representative of a laboratory, making such examinations or tests as are  
2 required above, or filing such birth or stillbirth certificates, who shall knowingly misrepresent any of the  
3 facts called for in the laboratory reports or birth or stillbirth certificate, or who otherwise knowingly and  
4 wilfully shall violate any provision above, shall be guilty of a misdemeanor and, upon conviction thereof  
5 shall be subject to a fine of not less than \$10 nor more than \$50.

**§9-3-507. Birth score program established.**

1 (a) The Department shall establish and implement a birth score program designed to combat

2 postneonatal mortality and to detect debilitating conditions and possible developmental delays in newborn  
3 infants in the state.

4 (b) The purpose and goals of the birth score program are to reduce the incidence of postneonatal  
5 mortality and disease by:

6 (1) Identifying newborns at greatest risk for death between one month and one year of age; and

7 (2) Linking these infants with physicians for close follow-up during the first year of life.

8 (c) The birth score of a newborn infant shall be determined pursuant to the program established  
9 by the Department by trained hospital or birthing facility personnel immediately after the infant is  
10 delivered.

**§9-3-508. Determination of birth score; referral to physician.**

1 (a) Any hospital or birthing facility in which an infant is born, any physician attending the  
2 infant, or any other person attending the infant if not under the care of a physician, shall require and  
3 ensure that a birth score is determined for the newborn infant in order to assess the level of risk for  
4 postneonatal mortality, debilitating conditions and developmental delays.

5 (b) No birth score shall be determined or birth score program implemented if the parent or  
6 guardian objects to the birth score program on the grounds that it conflicts with their religious tenets and  
7 practices.

8 (c) Any infant delivered at a nonlicensed facility, including, but not limited to, home births,  
9 shall have a birth score determined by the child's primary physician within ten days of birth, subject to the  
10 exception set forth in this section.

11 (d) When any infant receives a high risk birth score, as determined by the program  
12 established by this article, the parents shall be informed of the birth score and its implications, and then  
13 linked with a local primary care physician for a recommended six visits in the first six months of the  
14 infant's life.

15 (e) The Department, in cooperation with other state departments and agencies, may provide  
16 necessary medical and other referrals for services related to infants determined to be at high risk for  
17 postneonatal mortality and other debilitating conditions and developmental delays.

**§9-3-509 Newborn testing program established.**

1 (a) The Department is authorized to establish and carry out a program designed to  
2 conduct tests on newborns in this state to combat intellectual disability or other severe health  
3 hazards in our state's population due to phenylketonuria, galactosemia, hypothyroidism, and  
4 certain other diseases specified by the Secretary and in section five hundred ten of this article.

5 (b) The Department shall establish and maintain facilities at its state hygienic  
6 laboratory for testing specimens for the detection of phenylketonuria, galactosemia,  
7 hypothyroidism, and certain other diseases specified by the Secretary.

8 (c) Tests shall be made by such laboratory of specimens upon request by  
9 physicians, hospital medical personnel and other individuals attending newborn infants. The  
10 Secretary is authorized to establish additional laboratories throughout the state to perform tests  
11 for the detection of phenylketonuria, galactosemia, hypothyroidism, and certain other diseases  
12 specified by the Secretary.

**§9-3-510. Tests for diseases specified by the Secretary; reports; assistance to afflicted children; penalties.**

1 (a) The hospital or birthing center in which an infant is born, the parents or legal  
2 guardians, the physician attending a newborn child, or any person attending a newborn child not  
3 under the care of a physician shall require and ensure that each such child be tested for  
4 phenylketonuria, galactosemia, hypothyroidism, sickle cell anemia and certain other diseases  
5 specified by the Secretary. The Department shall also require testing for congenital adrenal  
6 hyperplasia, cystic fibrosis and biotinidase deficiency.

7 (b) The Department shall also require testing for isovaleric acidemia, glutaric  
8 acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple carboxylase deficiency,  
9 methylmalonic acidemia-mutase deficiency form, 3-methylcrotonyl-CoA carboxylase deficiency,

10 methylmalonic acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-ketothiolase  
11 deficiency, medium-chain acyl-CoA dehydrogenase deficiency, very long-chain acyl-CoA  
12 dehydrogenase deficiency, long-chain hydroxyacyl-CoA dehydrogenase deficiency, trifunctional  
13 protein deficiency, carnitine uptake defeat, maple syrup urine disease, homocystinuria,  
14 citrullinemia type I, argininosuccinate acidemia, tyrosinemia type I, hemoglobin S/Beta-  
15 thalassemia, sickle C disease and hearing deficiency.

16 (c) Any person violating the provisions of this section and section five hundred nine  
17 of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not  
18 less than \$25 nor more than \$50.

19 (d) Violation of each such provision shall be considered a separate offense.

**§9-3-511. Pulse oximetry newborn testing.**

1 (a) The Department shall also require each birthing facility which they license to perform a pulse  
2 oximetry screening on every newborn in its care, when the baby is twenty-four to forty-eight hours of age,  
3 or as late as possible if the baby is to be discharged from the hospital before he or she is twenty-four  
4 hours of age.

5 (b) As used in this section, "birthing facility" means an inpatient or ambulatory health care facility  
6 licensed by the Department that provides birthing and newborn care services.

**§9-3-512. Reporting requirements.**

1 A positive result on any test specified in this article, or a positive result for any other  
2 diseases specified by the Department shall be promptly reported to the Department by the  
3 director of the laboratory performing such test.

**§9-3-513. Testing required on newborns for hearing loss.**

1 (a) The physician or midwife in attendance at, or present immediately after, a live  
2 birth shall perform, or cause to be performed, a test for hearing loss in the infant unless the  
3 infant's parents refuse to have the testing performed pursuant to the provisions of subsection

4 (d), section five hundred fourteen of this article.

5 (b) For any infant delivered at a nonlicensed facility, including home births, the  
6 physician or other health care provider shall inform the parents of the need to obtain testing  
7 within the first month of life.

8 (c) The Secretary shall prescribe the test or tests to be administered in accordance  
9 with \_\_\_\_\_ this \_\_\_\_\_ article.

**§9-3-514. Payment for testing and screening.**

1 (a) All testing and screening required pursuant to this article shall be a covered benefit  
2 reimbursable by all health insurers except for health insurers that offer only supplemental  
3 coverage policies or policies which cover only specified diseases. All policies issued pursuant to  
4 articles fifteen, sixteen, twenty-four and twenty-five-a of chapter thirty-three of this code shall  
5 provide coverage for the testing required pursuant to this article.

6 (b) Newborn screenings pursuant to section five hundred ten of this article shall be  
7 considered a covered benefit reimbursed to the birthing facilities by Public Employees Insurance  
8 Agency, the state Children's Health Insurance Program and the Medicaid program.

9 (c) The Department shall pay for testing required pursuant to this article when the  
10 newborn infant is eligible for medical assistance pursuant to the provisions of section nine  
11 hundred sixteen, article three, chapter nine of this code.

12 (d) In the absence of a third-party payor, the parents of a newborn infant shall be  
13 informed of the testing availability and its costs and they may refuse to have the testing  
14 performed.

15 (e) Charges for the hearing tests required pursuant to this article shall be paid by the  
16 hospital or other health care facility where the infant's birth occurred.

17 (f) Nothing contained in this section may be construed to preclude the hospital or other

18 health care facility from billing the infant's parents directly.

**§9-3-515. Hearing impairment testing advisory committee established.**

1 (a) There is hereby established a West Virginia Hearing Impairment Testing  
2 Advisory Committee which shall advise the Secretary regarding the protocol, validity, monitoring  
3 and cost of hearing tests procedures required pursuant to this article.

4 (b) This committee is to meet four times per year for the initial two years and on the  
5 call of the Secretary thereafter. The Secretary, or his or her designee, shall serve as the chair  
6 and shall appoint twelve members, one representing each of the following groups:

7 (1) A representative of the health insurance industry;

8 (2) An otolaryngologist or otologist;

9 (3) An audiologist with experience in evaluating infants;

10 (4) A neonatologist;

11 (5) A pediatrician;

12 (6) A hospital administrator;

13 (7) A speech or language pathologist;

14 (8) A teacher or administrative representative from the West Virginia School of the Deaf;

15 (9) A parent of a hearing-impaired child;

16 (10) A representative from the Office of Early Intervention Services within the

17 Department;

18 (11) A representative from the State Department of Education; and

19 (12) A representative from the West Virginia Commission for the Deaf and Hard-of-

20 Hearing.

21 (c) Members of this advisory committee shall serve without compensation.

22 (d) A majority of members constitutes a quorum for the transaction of all business.



23 (e) Members shall serve for two-year terms and may not serve for more than two  
24 consecutive \_\_\_\_\_ term.

**§9-3-516. Establishment of an advisory council on maternal risk assessment.**

1 (a) There is created within the Department of Health Services, Office of Maternal, Child and  
2 Family Health an advisory council on maternal risk assessment to provide assistance in the development  
3 of a uniform maternal risk screening tool.

4 (b) The Office of Maternal, Child and Family Health is charged with convening the advisory  
5 council at least annually and providing administrative and technical assistance to the advisory council as  
6 needed. The members of the advisory council shall be appointed by the Commissioner of the Bureau for  
7 Children and Family Services.

8 (c) The advisory council shall be comprised of:

9 (1) At least one private provider of maternity services;

10 (2) At least one public provider of maternity services;

11 (3) One representative from each of the state's three medical schools;

12 (4) The Commissioner of the Bureau for Child and Family Services, or his or her designee;

13 (5) The Director of the Office of Maternal, Child and Family Health, or his or her designee;

14 (6) At least one representative of a tertiary care center;

15 (7) At least one representative of a facility with a level I or II obstetrical unit;

16 (8) At least one certified nurse midwife; and

17 (9) At least one allopathic or osteopathic physician who is a private provider of maternity services

18 at a facility with a level I or level II obstetrical unit.

**§9-3-517. Responsibilities of the advisory council on maternal risk assessment.**

1 This advisory council shall:

2 (1) Advise the Office of Maternal, Child and Family Health with respect to the operation of the  
3 program;

4 (2) Offer expert advice to the Office of Maternal, Child and Family Health on the development of a

5 uniform risk screening tool and review the tool at least annually to offer suggested updates based upon  
6 current medical knowledge;

7 (3) Provide comments to the Office of Maternal, Child and Family Health on any legislative rules  
8 necessary for the accomplishment of any requirements of this article; and

9 (4) Develop in conjunction with the Office of Maternal, Child and Family Health a statistical matrix  
10 to measure incidents of high-risk and at-risk pregnancies for planning purposes by public health officials.

**§9-3-518. Applicability of the screening tool.**

1 Once developed, all health care providers offering maternity services shall be required to utilize  
2 the uniform maternal risk screening tool in their examinations of any pregnant woman. Additionally they  
3 shall notify the woman of any high-risk condition which they identify along with any necessary referral and  
4 report the results to the Office of Maternal, Child and Family Health in the manner provided in legislative  
5 rule.

**§9-3-519. Confidentiality of screening tool.**

1 (a) The uniform maternal screening tool shall be confidential and shall not be released or  
2 disclosed to anyone including any state or federal agency for any reason other than data analysis of high-  
3 risk and at-risk pregnancies for planning purposes by public health officials.

4 (b) Proceedings, records and opinions of the advisory council are confidential and are not subject  
5 to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. Nothing in this  
6 subsection is to be construed to limit or restrict the right to discover or use in any civil or criminal  
7 proceeding anything that is available from another source and entirely independent of the proceedings of  
8 the advisory council.

9 (c) Members of the advisory council may not be questioned in any civil or criminal proceeding  
10 regarding information presented in or opinions formed as a result of a meeting of the panel. Nothing in  
11 this subsection may be construed to prevent a member of the advisory council from testifying to  
12 information obtained independently of the panel or which is public information.

**§9-3-520. Rulemaking.**

1 (a) The Secretary shall propose rules for legislative approval in accordance with the

2 provisions of article three, chapter twenty-nine-a of this code as may be needed to establish the  
3 programs, ensure compliance and assess penalties as needed to implement the provisions of this article.

4 (b) These rules may include, at a minimum;

5 (1) Establishment of a reasonable fee schedule for tests administered pursuant to this  
6 article, which shall be used to cover program costs not otherwise covered by federal grant funds  
7 specifically secured for this purpose;

8 (2) Establishment of a cost-effective testing protocol based upon available technology  
9 and national standards;

10 (3) Establishment of reporting and referral requirements;

11 (4) Establishment of a date for implementation of the testing protocol;

12 (5) A means for the Department, in cooperation with other state agencies, and with  
13 attending physicians, to provide medical, dietary and related assistance to children determined  
14 to be afflicted with any disease specified in this article and certain other diseases specified by  
15 the Department;

16 (6) A means for payment for the testing provided for in this article;

17 (7) A uniform maternal risk screening tool to identify women at risk for a preterm birth or other  
18 high-risk condition; and

19 (8) Anything further considered necessary by the Secretary to implement the provisions of this  
20 article.

**PART SIX. SOCIAL SERVICES FOR ADULTS.**

**§9-3-601. Adult protective services: organization and duties.**

1 (a) There is hereby established and continued within the Department of Human Services a  
2 system of adult protective services.

3 (b) The department shall develop a plan for a comprehensive system of adult protective services

4 including social case work, medical and psychiatric services, home care, day care, counseling, research  
5 and others to achieve the goals of this article.

6 (c) The plan offer such services as are available and appropriate in the circumstances to persons  
7 who, other than for compensation, have or intend to have the actual, physical custody and control of an  
8 incapacitated adult and, to such incapacitated adults or to adults who may request and be entitled to such  
9 protective services.

10 (d) Except as expressly provided in this article, the department may not directly or indirectly  
11 compel the acceptance of such services by any person or discriminate against a person who refuses  
12 such services.

**§9-3-602.Immunity from civil liability.**

1 No adult protective services caseworker may be held personally liable for any professional  
2 decision or action thereupon arrived at in the performance of his or her official duties as set forth in this  
3 section or agency rules promulgated thereupon: *Provided*, That nothing in this subsection protects any  
4 adult protective services worker from any liability arising from the operation of a motor vehicle or for any  
5 loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

**§9-3-603. Cooperation among agencies; termination and reduction of assistance by**  
**commissioner.**

1 The Secretary shall direct the coordination of the investigation of complaints of abuse or neglect  
2 made pursuant to this article; and the various agencies of the department, the adult protective services  
3 system, the state and regional long-term care ombudsmen, administrators of nursing homes or other  
4 residential facilities, county prosecutors and any other applicable state or federal agency shall cooperate  
5 among each other for the purposes of observing, reporting, investigating and acting upon complaints of  
6 abuse or neglect of any incapacitated adult or facility resident in this state.

**§9-3-604. Action to abate abuse, neglect or emergency.**

1 (a) The department or any reputable person may bring and maintain an action against any person  
2 having actual care, custody or control of an incapacitated adult, for injunctive relief, including a  
3 preliminary injunction, to restrain and abate any abuse or neglect of an incapacitated adult or to abate an

4 emergency situation. In any such proceeding the court shall appoint a guardian ad litem, to protect the  
5 interests of the incapacitated adult, who shall not be an employee of the state nor be a party to the  
6 proceeding nor be selected by, or in the employ of, any party to the proceeding.

7 (b) The court may by order terminate assistance granted or paid to any person found to have  
8 abused or neglected an incapacitated adult and order any such assistance to be paid to another person  
9 solely for the use and benefit of such abused or neglected person, and grant such other equitable relief  
10 as may be appropriate in the circumstances to restrain and abate such abuse or neglect.

11 (c) That in the case of an action to abate an emergency situation, the court may grant the relief  
12 authorized in section six hundred four of this article.

**§9-3-605. Emergency immediate remedial treatment; procedure.**

1 (a) Whenever a circuit court shall find in an action to abate an emergency situation that:

2 (1) There is probable cause to believe that an incapacitated adult is in an emergency situation;  
3 and

4 (2) That the person or persons having the immediate care, custody and control of such  
5 incapacitated adult refuses to take necessary steps to alleviate such emergency;

6 (3) Or that such incapacitated adult is without the actual care, custody and control of any persons;

7 It may issue an order of attachment for such incapacitated adult and direct that the peace officer  
8 executing the same deliver such incapacitated adult in his or her custody to a hospital or other safe place  
9 except a jail, for immediate remedial treatment to reduce or avoid the risk of death or serious injury.

10 (b) In the event that an order of attachment is issued pursuant to this section, any peace officer  
11 executing the order, and such employees of the department the peace officer directs to accompany him  
12 or her, may enter into the place of abode to remove such incapacitated person, notwithstanding the  
13 residence therein of other persons.

14 (c) If any employee or officer of the department shall by direct observation of an incapacitated  
15 adult not in the immediate care, custody or control of another have reasonable cause to believe that such  
16 incapacitated person is then and there in an emergency situation, then such officer or employee may offer  
17 transportation to a hospital or other safe place, other than a jail, to such incapacitated adult for immediate

18 remedial treatment to reduce or avoid the risk of death, or serious injury.

19 (d) Immediately upon delivery of any incapacitated person to such hospital or other safe place,  
20 such officer or employee shall apply to the circuit court for and the court shall appoint, and in the case of  
21 an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem who shall  
22 not be an employee of the state, nor be an interested party nor be selected by nor in the employ of any  
23 interested party, to represent the interests of such incapacitated adult. The court shall fix a time, not later  
24 than one judicial day later, to determine if such remedial treatment shall continue or such incapacitated  
25 adult should be released. A copy of that attachment and notice of such hearing shall be served on any  
26 person in whose actual care, custody and control such incapacitated adult is found. If further remedial  
27 treatment is required, application shall be promptly made to the county commission or such other proper  
28 tribunal for appropriate relief. The commitment for further remedial treatment may be continued until  
29 proceedings for such appropriate relief be concluded. Application for release from such remedial  
30 treatment may be made and granted at any time that the emergency ceases.

**§9-3-606. Payment and termination of payment for services to incapacitated adult.**

1 If any incapacitated adult:

2 (1) Requires and is granted remedial treatment for an emergency or the department determines  
3 that an incapacitated adult is;

4 (2) Abused; or

5 (3) Neglected;

6 The department may pay any assistance granted for the use and benefit of such incapacitated  
7 adult to the person actually providing care for such adult, and terminate payments to any person alleged  
8 or shown to have abused or neglected such incapacitated adult, or to whom such payments were made  
9 prior to such remedial treatment, for so long as such remedial treatment continues, or until such abuse or  
10 neglect is abated, and such incapacitated adult continues to be in the immediate care, custody and  
11 control \_\_\_\_\_ of \_\_\_\_\_ such \_\_\_\_\_ person.

**§9-3-607. Reporting procedures.**

1 (a) A report of neglect or abuse of an incapacitated adult or facility resident or of an emergency

2 situation involving such an adult shall be made immediately by telephone to the department's local adult  
3 protective services agency and shall be followed by a written report by the complainant or the receiving  
4 agency within forty-eight hours. The department shall, upon receiving any such report, take such action  
5 as may be appropriate and shall maintain a record thereof. The department shall receive such telephonic  
6 reports on its twenty-four hour, seven-day-a-week, toll-free number established to receive calls reporting  
7 cases of suspected or known adult abuse or neglect.

8 (b) A copy of any report of abuse, neglect or emergency situation shall be immediately filed with  
9 the following agencies:

10 (1) The Department of Human Services;

11 (2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

12 (3) In case of a death, to the appropriate medical examiner or coroner's office.

13 (c) If the person who is alleged to be abused or neglected is a resident of a nursing home or other  
14 residential facility, a copy of the report shall also be filed with the state or regional ombudsman and the  
15 administrator of the nursing home or facility.

16 (d) The department shall omit from such report in the first instance, the name of the person  
17 making a report, when requested by such person.

18 (e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult or  
19 facility resident or the existence of an emergency situation in an institution, nursing home or other  
20 residential facility shall be made, received and investigated in the same manner as other reports provided  
21 for in this article. In the case of a report regarding an institution, nursing home or residential facility, the  
22 department shall immediately cause an investigation to be conducted.

23 (f) Upon receipt of a written complaint, the department shall coordinate an investigation pursuant  
24 to this article and applicable state or federal laws, rules or regulations.

**§9-3-608. Mandatory reporting of incidences of abuse, neglect or emergency situation.**

1 (a) If any medical, dental or mental health professional, Christian Science practitioner, religious  
2 healer, social service worker, law-enforcement officer, humane officer, state or regional ombudsman or  
3 any employee of any nursing home or other residential facility has reasonable cause to believe that an

4 incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency  
5 situation, or if such person observes an incapacitated adult or facility resident being subjected to  
6 conditions that are likely to result in abuse, neglect or an emergency situation, the person shall  
7 immediately report the circumstances pursuant to the provisions of section eleven of this article. Nothing  
8 in this article is intended to prevent individuals from reporting on their own behalf.

9 (b) In addition to those persons and officials specifically required to report situations involving  
10 suspected abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency  
11 situation, any other person may make such a report.

12 (c) The Secretary shall develop a form for the filing of written complaints, as provided by this  
13 article, and provide these forms to all nursing homes or other residential facilities, hospitals, ombudsmen  
14 and adult protective service agencies in this state. The forms shall be designed to protect the identity of  
15 the complainant, if desired, and to facilitate the prompt filing of complaints.

16 (d) The department shall develop and implement a procedure to notify any person mandated to  
17 report suspected abuse and neglect of an incapacitated adult or facility resident of whether an  
18 investigation into the reported suspected abuse or neglect has been initiated and when the investigation  
19 is \_\_\_\_\_ completed.

**§9-3-609. Mandatory reporting suspected of animal cruelty by adult protective service workers.**

1 In the event an adult protective service worker, in response to a report mandated by this article,  
2 forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall  
3 report the suspicion and the basis therefor to the county humane officer provided under section one,  
4 article ten, chapter seven of this code within twenty-four hours of the response to the report.

**§9-3-610. Mandatory reporting to medical examiner or coroner; postmortem investigation.**

1 (a) Any person or official who is required pursuant to this article to report cases of suspected  
2 abuse or neglect and who has probable cause to believe that an incapacitated adult or facility resident  
3 has died as a result of abuse or neglect shall report that fact to the appropriate medical examiner or  
4 coroner.

5 (b) Upon the receipt of such a report, the medical examiner or coroner shall cause an



6 investigation to be made and shall report the findings to the local law-enforcement agency, the local  
7 prosecuting attorney, the department's local adult protective services agency, and, if the institution  
8 making a report is a hospital, nursing home or other residential facility, to the administrator of the facility,  
9 the state and regional long-term care ombudsman and the Office of Health Facility Licensure and  
10 Certification.

**§9-3-611. Confidentiality of records.**

1 (a) Except as otherwise provided in this section, all records of the department, state and regional  
2 long-term care ombudsmen, nursing home or facility administrators, the Office of Health Facility Licensure  
3 and certification and all protective services agencies concerning an adult or facility resident under this  
4 article are confidential and may not be released, except in accordance with the provisions of section  
5 eleven of this article.

6 (b) Unless the adult concerned is receiving adult protective services or unless there are pending  
7 proceedings with regard to the adult, the records maintained by the adult protective services agency shall  
8 be destroyed thirty years following their preparation.

9 (c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this  
10 code to the contrary, all records concerning reports of abuse, neglect or exploitation of vulnerable adults,  
11 including all records generated as a result of such reports, may be made available to:

12 (1) Employees or agents of the department who need access to the records for official business.

13 (2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect or  
14 exploitation of a vulnerable adult.

15 (3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which  
16 the alleged abuse, neglect or exploitation occurred.

17 (4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall,  
18 before permitting use of the records in connection with any court proceeding, review the records for  
19 relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the  
20 examination and use of the records or any part of the record.

21 (5) A grand jury, by subpoena, upon its determination that access to the records is necessary in

22 the conduct of its official business.

23 (6) The recognized protection and advocacy agency for the disabled of the State of West Virginia.

24 (7) The victim.

25 (8) The victim's legal representative, unless he or she is the subject of an investigation pursuant  
26 to this article.

27 (d) Notwithstanding the provisions of subsection (a) of this section or any other provision of this  
28 code to the contrary, summaries concerning substantiated investigative reports of abuse, neglect or  
29 exploitation of adults may be made available to:

30 (1) Any person who the department has determined to have abused, neglected or exploited the  
31 victim.

32 (2) Any appropriate official of the state or regional long-term care ombudsman investigating a  
33 report of known or suspected abuse, neglect or exploitation of a vulnerable adult.

34 (3) Any person engaged in bona fide research or auditing, as defined by the department.  
35 However, information identifying the subjects of the report may not be made available to the researcher.

36 (4) Employees or agents of an agency of another state that has jurisdiction to investigate known  
37 or suspected abuse, neglect or exploitation of vulnerable adults.

38 (5) A professional person when the information is necessary for the diagnosis and treatment of,  
39 and service delivery to, a vulnerable adult.

40 (6) A department administrative hearing officer when the hearing officer determines the  
41 information is necessary for the determination of an issue before the officer.

42 (e) The identity of any person reporting abuse, neglect or exploitation of a vulnerable adult may  
43 not be released, without that person's written consent, to any person other than employees of the  
44 department responsible for protective services or the appropriate prosecuting attorney or law-  
45 enforcement agency. This subsection grants protection only for the person who reported the abuse,  
46 neglect or exploitation and protects only the fact that the person is the reporter. This subsection does not  
47 prohibit the subpoena of a person reporting the abuse, neglect or exploitation when deemed necessary  
48 by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report,

49 if the fact that the person made the report is not disclosed.

**§9-3-612. Abrogation of privileged communications.**

1 The privileged status of communications between husband and wife, and with any person  
2 required to make reports pursuant to this article, except communications between an attorney and his or  
3 her client, is hereby abrogated in circumstances involving suspected or known abuse or neglect of an  
4 incapacitated adult or where the incapacitated adult is in a known or suspected emergency situation.

**§9-3-613. Reporting person's immunity from liability.**

1 (a) Any person who in good faith makes or causes to be made any report permitted or required by  
2 this article shall be immune from any civil or criminal liability which might otherwise arise solely out of  
3 making such report.

4 (b) No nursing home may discharge or in any manner discriminate against any resident, family  
5 member, legal representative or employee for the reason that he or she filed a complaint or participated in  
6 any matter or proceeding stemming from the provisions of this article.

7 (c) Violation of the prohibition contained in subsection (b) of this section by a nursing home or  
8 other residential facility constitutes grounds for the suspension or revocation of the license of the facility, if  
9 it operates under license pursuant to this code, or other appropriate measure.

**§9-3-614. Compelling production of information.**

1 (a) In order to obtain information regarding the location of an adult who is the subject of an  
2 allegation of abuse or neglect, the secretary of the department may serve, by certified mail, personal  
3 service or facsimile, an administrative subpoena on any corporation, partnership, business or  
4 organization for production of information leading to determining the location of the adult. In case of  
5 disobedience to the subpoena, adult protective services may petition any circuit court to require the  
6 production of information.

7 (b) In case of disobedience to the subpoena, in compelling the production of information the  
8 secretary may invoke the aid of:

9 (1) The circuit court with jurisdiction over the served party, if the entity served is located in this  
10 state; or

11 (2) The circuit court of the county in which the local protective services office conducting the  
12 investigation is located, if the entity served is a nonresident.

13 (c) A circuit court shall not enforce an administrative subpoena unless it finds that:

14 (1) The investigation is one the division of adult protective services is authorized to make and is  
15 being conducted pursuant to a legitimate purpose;

16 (2) The inquiry is relevant to that purpose;

17 (3) The inquiry is not too broad or indefinite;

18 (4) The information sought is not already in the possession of the division of adult protective  
19 services; and

20 (5) Any administrative steps required by law have been followed.

21 (d) If circumstances arise where the secretary, or his or her designee, determines it necessary to  
22 compel an individual to provide information regarding the location of an adult who is the subject of an  
23 allegation of abuse or neglect, the Secretary, or his or her designee, may seek a subpoena from the  
24 circuit court with jurisdiction over the individual from whom the information is sought.

**§9-3-615. Failure to report; penalty.**

1 Any person subject to the mandatory reporting provisions of this article who knowingly fails to  
2 make any report required herein or any person who knowingly prevents another person from making such  
3 a report is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100 or  
4 imprisoned in the county jail for not more than ten days, or both fined and imprisoned.

**§9-3-616. Rulemaking**

1 (a) The Secretary shall propose rules for legislative approval in accordance with the provisions of  
2 article three, chapter twenty-nine-a of this code regarding the organization and duties of the adult  
3 protective services system and the procedures to be used by the department to effectuate the purposes  
4 of this article.

5 (b) The Secretary shall design and arrange such rules to attain, or move toward the attainment, of  
6 the following goals to the extent that the secretary believes feasible under the provisions of this article  
7 within state appropriations and other funds available:

8 (1) Assisting adults who are abused, neglected or incapacitated in achieving or maintaining self-

9 sufficiency and self-support and preventing, reducing and eliminating their dependency on the state;  
10 (2) Preventing, reducing and eliminating neglect and abuse of adults who are unable to protect  
11 their own interests;  
12 (3) Preventing and reducing institutional care of adults by providing less intensive forms of care,  
13 preferably in the home;  
14 (4) Referring and admitting abused, neglected or incapacitated adults to institutional care only  
15 where other available services are inappropriate;  
16 (5) Providing services and monitoring to adults in institutions designed to assist adults in returning  
17 to community settings;  
18 (6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility  
19 residents through the joint efforts of the various agencies of the Department of Human Services, the adult  
20 protective services system, the state and regional long-term care ombudsmen, administrators of nursing  
21 homes or other residential facilities and county prosecutors;  
22 (7) Preventing, reducing and eliminating abuse and neglect of residents in nursing homes or  
23 facilities; and  
24 (8) Coordinating investigation activities for complaints of abuse and neglect of incapacitated  
25 adults and facility residents among the various agencies of the Department of Human Services, the adult  
26 protective services system, the state and regional long-term care ombudsmen, administrators of nursing  
27 homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies  
28 or officials, as appropriate.  
29 (c) The rules proposed by the secretary shall provide for the means by which the department  
30 shall cooperate with federal, state and other agencies to fulfill the objectives of the system of adult  
31 protective services.

## **PART SEVEN. BUREAU FOR ECONOMIC ASSISTANCE.**

### **§9-3-701. Creation of the Bureau for Economic Assistance.**

1 Effective the first day of July, 2019, The Bureau for Economic Assistance is created and  
2 continued within the Department of Human Services.

### **§9-3-702. Appointment of commissioner; qualifications; oath; compensation.**

1 (a) There is hereby created the position of Commissioner. The Commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the Secretary;

4 (3) Serve at the will and pleasure of the Governor;

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

8 (5) Have an appropriate educational level and reasonable administrative experience,  
9 possess management skills and have knowledge of programs designed to provide public  
10 assistance to eligible persons.

11 (b) Before entering upon the discharge of the duties as Commissioner, the  
12 Commissioner shall take and subscribe to the oath of office prescribed in section five, article IV  
13 of the Constitution of West Virginia.

14 (c) The Commissioner shall receive:

15 (1) A reasonable and competitive compensation package to be established by the  
16 Secretary; and

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

**§9-3-703. Powers and duties of the Commissioner.**

1 (a) In addition to the powers and duties set forth in any other provision of this code, the  
2 Commissioner has the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in providing public assistance to person who qualify;

5 (B) Sets forth goals and objectives for meeting those needs; and

6 (C) Contains plans of operation for achieving the stated goals and objectives, including  
7 organizational structure; and statement of requirements in personnel funds and authority for achieving the  
8 goals and objectives.

9           (2) To appoint deputies and assistants to supervise the bureau's programs and such other  
10 assistants and employees as may be necessary for the efficient operation of the bureau and all its  
11 programs.

12           (3) To delegate to any of his or her appointees, assistants or employees all powers and duties  
13 vested in the Commissioner, including the power to execute contracts and agreements in the name of the  
14 bureau as provided in this article. The Commissioner shall be responsible for the acts of such  
15 appointees, assistants and employees.

16           (4) To make periodic reports to the Secretary, Governor and to the Legislature as required by this  
17 chapter.

18           (b) The Commissioner is authorized and empowered to accept and use for the benefit of the state  
19 programs any gift or devise of any property or thing which lawfully may be given. Any gift or devise of any  
20 property or thing which lawfully may be given and whatever profit may arise from its use or investment  
21 shall be deposited in a special revenue fund with the State Treasurer, and shall be used only as specified  
22 by the donor or donors.

**§9-3-704. Organization and employees.**

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

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

6           (c) The Secretary may transfer employees and resources of the Department to the  
7 bureau as may be necessary to fulfill the duties and responsibilities of the bureau pursuant to  
8 this chapter. The Secretary may not transfer employees of other divisions and agencies within  
9 the Department to the bureau without a prior finding that the office or position held by the  
10 employee may be eliminated and until the office or position is, in fact, eliminated.

11           (d) The Commissioner, if he or she deems such action necessary, may hire legal  
12 counsel for the bureau, notwithstanding the provisions of section two, article three, chapter five

13 of this code or any other code provision to the contrary, or may request the Attorney General to  
14 appoint counsel who shall perform such duties as may be required by the bureau. The Attorney  
15 General, in pursuance of such request, may select and appoint counsel to serve during the will  
16 and pleasure of the Attorney General, and shall be paid out of any funds allocated and  
17 appropriated to the bureau.

18 (e) The Commissioner may employ such staff or employees as may be necessary to  
19 administer and enforce this chapter.

**§9-3-705. Supervisory responsibilities of the Commissioner.**

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

**§9-3-706. General duties and powers of the Bureau for Economic Assistance.**

1 (a) In carrying out the policies and procedures for enforcing the provisions of this  
2 chapter, the bureau shall have the following power and authority:

3 (1) To establish policies and procedures for governing the administration of the bureau  
4 and providing public assistance to the citizens of this state as set forth in this code;

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

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

8 (4) To act as a liaison with other state entities and private groups with an interest in  
9 economic assistance to children and families;

10 (5) To offer economic assistance services to those who meet the eligibility standards  
11 set by the bureau and the federal government through laws, rules and regulations; and



- 12 (6) To perform any other duties assigned to the bureau by the Secretary.
- 13 (b) To operate and oversee the West Virginia Works Program as set forth in the chapter.
- 14 (c) To operate and oversee the Supplement Nutrition Assistance Program codified at 7
- 15 U.S.C. 51.
- 16 (d) To operate and oversee any other economic assistance programs.

**§9-3-707. Continuation of present aid; contributions by counties.**

1 (a) Except as otherwise provided in this chapter, aid or assistance rendered under

2 existing law shall not be deemed to be discontinued.

3 (b) County commissions may contribute in-kind services or money into a special fund of

4 the department to expand the general assistance programs for citizens of its county. No part of

5 this fund shall revert to the general revenue of the state.

**§9-3-708. Application for and granting of federal-state or federal assistance.**

1 Any person domiciled in this state, who shall make, or have made in his or her behalf, an

2 application therefor and who is otherwise in all respects qualified to receive the same, shall be granted

3 federal-state assistance or federal assistance in such form and amount, to such extent, and for such

4 period, as authorized by applicable federal and state laws, rules and regulations and as determined by

5 the bureau in accordance with such laws, rules and regulations and within limits of available funds.

**§9-3-709. Application for and granting of state assistance.**

1 Any indigent person domiciled in this state, who shall make, or have made in his or her behalf, an

2 application therefor and who is otherwise in all respects qualified to receive the same, shall be granted

3 state assistance in such form and amount, to such extent, and for such period, as authorized by

4 applicable state laws, rules and regulations of the bureau and as determined by the bureau in accordance

5 with such laws, rules and regulations and within limits of available funds.

**§9-3-710. Making application, investigation and grant.**

1 (a) All persons wishing to make application for economic assistance services shall have an

2 opportunity to do so. Upon receipt of an application for economic assistance services, the bureau shall  
3 make such investigation as may be necessary and as the exigency of the case will permit to determine  
4 the eligibility of the applicant for, and the form, amount, extent, and period of, such assistance.

5 (b) When the bureau approves an application for economic assistance services, it shall fix the  
6 amount, form, extent and period of such assistance in accordance with applicable federal and state laws,  
7 rules and regulations and within the limits of available funds.

**§9-3-711. Penalties for false statements, etc.**

1 Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in  
2 obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by  
3 impersonation of any other fraudulent device:

4 (1) Any assistance to which the applicant or recipient is not entitled; or

5 (2) Any assistance in excess of that to which the applicant or recipient is justly entitled; shall upon  
6 conviction be punished as follows:

7 (A) If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall  
8 be \$500 or less, the person so convicted shall be guilty of a misdemeanor and, shall be fined not more  
9 than \$1,000 or confined in jail not exceeding one year; or

10 (B) If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall  
11 exceed \$500, the person so convicted shall be guilty of a felony and, shall be fined not more than \$5,000  
12 or confined in the penitentiary not less than one year nor more than five years.

**§9-3-712. Special Supplementary Food Program for Women, Infants and Children (WIC).**

1 (a) Effective January 1, 2019, the WIC program shall be organized within the Bureau for  
2 Economic Assistance. All employees, functions, agreements, contracts or any other  
3 matter relating to the WIC program shall transfer to the Bureau at that time.

4 (b) Vouchers or coupons or drafts authorized by the bureau in the administration of the  
5 special supplementary food program for women, infants and children, commonly known as the  
6 WIC program, under the auspices and guidelines of the United States Department of

7 Agriculture, such vouchers or coupons or drafts, when received by a vendor from a holder  
8 thereof in exchange for food, food stuffs, or authorized goods or services, may be deposited by  
9 the vendor in any federally insured bank in this state for collection and payment thereof, and  
10 such bank shall accept the same as equivalent to a negotiable instrument from a holder in due  
11 course pursuant to chapter forty-six of this code, and shall collect the funds for such vouchers or  
12 coupons so received.

13 (c) All moneys received from the United States Department of Agriculture under the WIC  
14 program, except for moneys to be used for administration, shall be deposited by the  
15 commissioner of the Bureau of Economic Assistance in a special account in a federally insured  
16 bank in this state, and notwithstanding other provisions of this code to the contrary, this special  
17 account may be funded by the commissioner of the Bureau for Economic Assistance as a  
18 special advance payment imprest funds account to be reconciled at least annually by the state  
19 Treasurer from which said bank can daily make required wire transfers to pay each day's  
20 presentments of vouchers or coupons or drafts. The commissioner of the Bureau for Economic  
21 Assistance shall select the bank by competitive bidding in the same manner as the state  
22 Treasurer selects depository banks for state funds, subject to applicable federal laws or  
23 regulations governing such selection.

24 (d) The provisions of this section enacted in the year one thousand nine hundred eighty-  
25 nine shall take effect on April 1, one thousand nine hundred ninety, except that the  
26 commissioner shall commence procedures for the selection of the bank and for implementation  
27 of the other provisions of this section upon the passage hereof.

28 (e) Nothing in this section shall make such vouchers or coupons or drafts negotiable  
29 instruments for any purpose other than expressly set forth herein or as permitted by applicable  
30 federal laws or regulations.

**§9-3-713. Assignment of support obligations.**

1           (a) Any recipient of financial assistance under the program of state and federal assistance  
2 established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act  
3 thereto, shall, as a condition of receiving assistance funded pursuant to this article assign to the  
4 Department of Human Services any right the family member may have, on behalf of the family member or  
5 of any other person for whom the family member has applied for or is receiving such assistance, to  
6 support from any other person, not exceeding the total amount of assistance so paid to the family, which  
7 accrues during the period that the family receives assistance under the program.

8           (b) Each applicant for assistance subject to the assignment established in this section shall,  
9 during the application process, be informed in writing of the nature of the assignment.

10           (c) Any payment of federal and state assistance made to, or for the benefit of, any child or  
11 children or the caretaker of a child or children creates a debt due and owing to the Department of Human  
12 Services by the person or persons responsible for the support and maintenance of the child, children or  
13 caretaker in an amount equal to the amount of assistance paid: *Provided*, That the debt is limited by the  
14 amount established in any court order or final decree of divorce if the amount in the order or decree is  
15 less than the amount of assistance paid.

16           (d) The assignment pursuant to this section shall subrogate the Department of Human Services  
17 to the rights of the child, children or caretaker to the prosecution or maintenance of any action or  
18 procedure existing under law providing a remedy whereby the Department of Human Services may be  
19 reimbursed for moneys expended on behalf of the child, children or caretaker. The Department of Human  
20 Services shall further be subrogated to the debt created by any order or decree awarding support and  
21 maintenance to, or for the benefit of, any child, children or caretaker included within the assignment under  
22 this section and shall be empowered to receive money judgments and endorse any check, draft, note or  
23 other negotiable document in payment thereof.

24           (e) The assignment created pursuant to this section shall be released upon closure of the  
25 assistance case and the termination of assistance payments except for support and maintenance  
26 obligations accrued and owing at the time of closure which are necessary to reimburse the department for

27 any balance of assistance payments made.

28 (f) The Department of Human Services may, at the election of the recipient, continue to receive  
29 support and maintenance moneys on behalf of the recipient following closure of the assistance case and  
30 shall distribute the moneys to the caretaker, child or children.

**§9-3-714. Authority to examine witnesses, administer oaths and take affidavits.**

1 The Secretary, the Commissioner and employees of the department may administer  
2 oaths, examine witnesses and take and certify affidavits in any matter or thing pertaining to the  
3 business of the department.

**§9-3-715. Authority to subpoena witnesses and documents when investigating the provision of assistance programs.**

1 The Secretary and the Commissioner and every duly appointed hearing examiner may  
2 apply, on behalf of any party, to the circuit court of the county in which a hearing is to be held, or  
3 the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of  
4 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to  
5 compel the attendance of witnesses or the production of documents, before any hearing or  
6 administrative tribunal convened to consider suspension or termination of any person or  
7 corporation from providing services under the public assistance programs administered by the  
8 department. The application for a subpoena duces tecum shall state with particularity any  
9 papers or documents requested and upon hearing, the applicant or party shall notify the court or  
10 judge, as the case may be, of the necessity therefor in such hearing. The court or judge  
11 thereof, prior to issuing the requested subpoena or subpoena duces tecum, may make any  
12 order which justice requires to protect a party or person from annoyance, embarrassment,  
13 oppression or undue burden or expense. The party who applies for the subpoena or subpoena  
14 duces tecum shall pay the sheriff's fees required for service of these documents.

**PART EIGHT. WEST VIRGINIA WORKS ACT.**

**§9-3-801. Legislative findings; purpose.**

1 (a) The Legislature hereby finds and declares that:

2 (1) The entitlement of any person to receive federal-state cash assistance is hereby discontinued;

3 (2) At-risk families are capable of becoming self-supporting;

4 (3) An assistance program should both expect and assist a parent and caretaker-relatives in at-  
5 risk families to support their dependent children and children for which they are caretakers;

6 (4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be a  
7 positive role model;

8 (5) Every parent or caretaker-relative who receives cash assistance has a responsibility to  
9 participate in an activity to help them prepare for, obtain and maintain gainful employment;

10 (6) For a parent or caretaker-relative who receives cash assistance and for whom full-time work is  
11 not feasible, participation in some activity is required to further himself or herself, his or her family or his or  
12 her community;

13 (7) The state should promote the value of work and the capabilities of individuals;

14 (8) Job development efforts should enhance the employment opportunities of participants;

15 (9) Education is the key to achieving and maintaining life-long self-sufficiency; and

16 (10) An assistance program should be structured to achieve a clear set of outcomes; deliver  
17 services in an expedient, effective and efficient manner; and maximize community support for  
18 participants.

19 (b) The goals of the program are to achieve more efficient and effective use of public assistance  
20 funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance  
21 programs to emphasize employment and personal responsibility. The success of the program is to be  
22 evaluated on the following activities, including, but not limited to: Job entry, job retention, federal work  
23 participation requirements and completion of educational activities.

**§9-3-802. Authorization for program.**

1           (a) The secretary shall conduct the West Virginia Works Program in accordance with this article  
2 and any applicable regulations promulgated by the Secretary of the federal Department of Health and  
3 Human Services in accordance with federal block-grant funding or similar federal funding stream. This  
4 program shall expend only the funds appropriated by the Legislature to establish and operate the  
5 program or any other funds available to the program; establish administrative due process procedures for  
6 reduction or termination proceedings; and implement any other procedures necessary to accomplish the  
7 purpose of this article.

8           (b) The West Virginia Works Program authorized pursuant to this article does not create an  
9 entitlement to that program or any services offered within that program, unless entitlement is created  
10 pursuant to a federal law or regulation. The West Virginia Works Program and each component of that  
11 program established by this article or the expansion of any component established pursuant to federal  
12 law or regulation is subject to the annual appropriation of funds by the Legislature.

**§9-3-803.           West           Virginia           Works           Program           fund.**

1           There is continued a special account within the state Treasury to be known as the "West Virginia  
2 Works Program Fund". Expenditures from the fund shall be used exclusively to meet the necessary  
3 expenditures of the program, including wage reimbursements to participating employers, temporary  
4 assistance for needy families, payments for support services, employment-related child care payments,  
5 transportation expenses and administrative costs directly associated with the operation of the program.  
6 Moneys paid into the account shall be from specific annual appropriations of funds by the Legislature.

**§9-3-804. Program participation.**

1           (a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance and work  
2 eligible individuals shall participate in the West Virginia Works Program in accordance with the provisions  
3 of this article. The level of participation, services to be delivered and work requirements shall be defined  
4 through legislative rules established by the secretary.

5           (b) Any individual exempt under the provisions of this article may participate in the activities and  
6 programs offered through the West Virginia Works Program.

7 (c) Support services other than cash assistance through the West Virginia Works Program may  
8 be provided to at-risk families to assist in meeting the work requirements or to eliminate the need for cash  
9 assistance.

10 (d) Cash assistance through the West Virginia Works Program may be provided to an at-risk  
11 family if the combined family income, as defined in this article, is below the income test levels established  
12 by the department, subject to the following:

13 (1) Any adult member of an at-risk family who receives supplemental security income shall be  
14 excluded from the benefit group;

15 (2) Within the limits of funds appropriated therefor, an at-risk family that includes a married man  
16 and woman and dependent children of either one or both may receive an additional cash assistance  
17 benefit in an amount of \$100 or less; and

18 (3) An at-risk family shall receive an additional cash assistance benefit in the amount of \$25  
19 regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk  
20 family, as allowed by federal law.

**§9-3-805. Work requirements.**

1 (a) Unless otherwise exempted by the provisions of this article, the West Virginia Works Program  
2 shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the  
3 age of twenty years or more, to work or attend an educational or training program for at least the  
4 minimum number of hours per week required by federal law under the work participation rate  
5 requirements for all families in order to receive any form of cash assistance. Participation in any  
6 education or training activity, as defined in this article, shall be counted toward satisfaction of the work  
7 requirement imposed by this section to the extent permissible under federal law and regulation and the  
8 participant demonstrates adequate progress toward completion of the program. In accordance with  
9 federal law or regulation, the work, education and training requirements of this section are waived for any  
10 qualifying participant with a child under six years of age if the participant is unable to obtain appropriate  
11 and available child care services.



12           (b) The department and representatives of the Higher Education Policy Commission and the  
13 West Virginia Council for Community and Technical College Education shall develop and implement a  
14 plan to use and expand the programs available at the state's community and technical colleges, colleges  
15 and universities to assist beneficiaries or participants who are enrolled, or wish to become enrolled, in  
16 vocational-educational training not to exceed twelve months with respect to any individual to meet the  
17 work requirements of this section. Vocational-educational training shall be supervised daily and on an  
18 ongoing \_\_\_\_\_ basis.

**§9-3-806. Exemptions.**

1           The secretary shall establish by rule categories of persons exempt, but the exemption applies  
2 only to the work requirements of the program. A person who is exempt from the work requirements may  
3 participate voluntarily in work activities. The categories of exemptions are limited to the following:

- 4           (1) Undocumented aliens and aliens under the five-year ban;  
5           (2) Parents, or at state option on a case-by-case basis, anyone receiving supplemental security  
6 income;  
7           (3) A parent who is providing medically necessary care for a disabled family member who resides  
8 in the home and is not a full-time student;  
9           (4) Minor parents who are not head of household (spouses of the head of household); and  
10          (5) \_\_\_\_\_ Grandparents \_\_\_\_\_ and \_\_\_\_\_ other \_\_\_\_\_ nonparental \_\_\_\_\_ caretakers.

**§9-3-807. Personal responsibility contract.**

1           (a)(1) Every eligible adult beneficiary and work eligible individual shall participate in a program  
2 orientation, family assessments and in the development, and subsequent revisions, of a personal  
3 responsibility contract. The contract shall be defined based on the program time limits, support services  
4 available, work requirements and family assessments.

5           (2) The participant's contract shall include the following requirements:

6           (A) That the participant develop and maintain, with the appropriate health care provider, a  
7 schedule of preventive care for his or her dependent child or children, including routine examinations and

8 immunizations;

9 (B) Assurance of school attendance for school-age children under his or her care;

10 (C) Assurance of properly supervised child care, including after-school care;

11 (D) Establishment of paternity or active pursuit of child support, or both, if applicable and if  
12 considered necessary; and

13 (E) Nutrition or other counseling, parenting or family-planning classes.

14 (3) If the participant is a teenage parent, he or she may work, but the contract shall include the  
15 requirements that the participant:

16 (A) Remain in an educational activity to complete high school, obtain a general equivalency  
17 diploma or obtain vocational training and make satisfactory scholastic progress;

18 (B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and

19 (C) Live at home with his or her parent or guardian or in some other adult-supervised  
20 arrangements if he or she is an unemancipated minor.

21 (4) If the participant is under the age of twenty years and does not have a high school diploma or  
22 its equivalent, the contract shall include requirements to participate in mandatory education or training  
23 which, if the participant is unemployed, may include a return to high school, with satisfactory scholastic  
24 progress required.

25 (b) In order to receive cash assistance, the participant shall enter into a personal responsibility  
26 contract. If the participant refuses to sign the personal responsibility contract, the participant and family  
27 members are ineligible to receive cash assistance. A participant who alleges that the terms of a personal  
28 responsibility contract are inappropriate based on his or her individual circumstances may request, and  
29 shall be provided, a fair and impartial hearing in accordance with administrative procedures established  
30 by the Department of Health and Compliance as set forth in article two of this chapter and due process of  
31 law. A participant who signs a personal responsibility contract or complies with a personal responsibility  
32 contract does not waive his or her right to request and receive a hearing pursuant to this subsection.

33 (c) Personal responsibility contracts shall be drafted by the department on a case-by-case basis;

34 take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated  
35 periodically, but not less than on an annual basis; and, in the discretion of the department, amended on a  
36 periodic \_\_\_\_\_ basis.

**§9-3-808. Participation limitation; exceptions.**

1 The length of time a participant may receive cash assistance through the West Virginia Works  
2 Program may not exceed a period longer than sixty months, except in circumstances as defined by the  
3 Secretary.

**§9-3-809. Breach of contract; notice; sanctions.**

1 (a) The department may terminate cash assistance benefits to an at-risk family if it finds any of  
2 the following:

3 (1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

4 (2) A substantial breach by the beneficiary of the requirements and obligations set forth in the  
5 personal responsibility contract and any amendments or addenda to the contract; or

6 (3) A violation by the beneficiary of any provision of the personal responsibility contract or any  
7 amendments or addenda to the contract, this article, or any rule or policy promulgated by the secretary  
8 pursuant to this article.

9 (b) In the event the department determines that benefits received by the beneficiary are subject to  
10 reduction or termination, written notice of the reduction or termination and the reason for the reduction or  
11 termination shall be deposited in the United States mail, postage prepaid and addressed to the  
12 beneficiary at his or her last-known address at least thirteen days prior to the termination or reduction.  
13 The notice shall state the action being taken by the department and grant to the beneficiary a reasonable  
14 opportunity to be heard at a fair and impartial hearing before the Department of Health and Compliance  
15 as set forth in article two of this chapter and in accordance with administrative procedures established by  
16 that department and due process of law.

17 (c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has the  
18 burden of proving that his or her benefits were improperly reduced or terminated and shall bear his or her

19 own costs, including attorneys' fees.

20 (d) The secretary shall promulgate emergency rules and legislative rules, pursuant to article  
21 three, chapter twenty-nine-a of this code, setting forth the schedule of sanctions to be imposed when a  
22 beneficiary has violated any provision of this article, of his or her personal responsibility contract or any  
23 amendment or addendum to the contract, or any applicable department rule. In developing these rules,  
24 the secretary is directed to make those sanctions graduated and sufficiently stringent, when compared to  
25 those of contiguous states, so as to discourage persons from moving from such states to this state to take  
26 advantage of lesser sanctions being imposed for the same or similar violations by the secretary. The  
27 secretary shall also promulgate legislative rules setting forth what constitutes de minimis violations and  
28 those violations subject to sanctions and maximum penalties.

**§9-3-810. Diversionary assistance allowance in lieu of monthly cash assistance.**

29 (a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from  
30 the state, the secretary may issue one-time diversionary assistance allowances to families in an amount  
31 not to exceed the equivalent of three months of cash assistance in order to enable the families to become  
32 immediately self-supporting.

33 (b) The secretary shall establish by rule the standards to be considered in making diversionary  
34 assistance allowances.

35 (c) Nothing in this section may be construed to require that the department or any assistance  
36 issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter forty-  
37 six-a of this code.

**§9-3-811. Subsidized employment.**

1 (a) To the extent that resources are available, an employer may be paid a subsidy by the  
2 department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to hire the  
3 West Virginia Works Program participant at the end of the subsidized period. If the employer does not  
4 hire the participant at the end of the subsidized period, the program may not use that employer for  
5 subsidized employment for the next twelve months.

6 (b) If the department determines that an employer has demonstrated a pattern of discharging  
7 employees hired pursuant to the provisions of this section subsequent to the expiration of the subsidized  
8 period without good cause, the employer shall no longer be eligible for participation in the subsidized  
9 employment program for a period to be determined by the department.

**§9-3-812. Transitional assistance.**

1 The West Virginia Works Program may provide transitional assistance in the form of supportive  
2 services.

**§9-3-813. Interagency coordination.**

1 (a) The Legislature encourages the development of a system of coordinated services, shared  
2 information and streamlined application procedures between the program and the other agencies within  
3 various departments of state government to implement the provisions of this article. The secretary shall  
4 coordinate activities between the program and the following agencies:

5 (1) The Bureau for Child Support Enforcement for the purpose of establishing paternity,  
6 promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job search  
7 assistance and determining eligibility for cash assistance and support services;

8 (2) The Bureau for Public Health for the purpose of determining appropriate immunization  
9 schedules, delivery systems and verification procedures; and

10 (3) The Bureau for Medical Services for the purpose of reporting eligibility for medical assistance  
11 and transitional benefits.

12 (b) The secretary may require the coordination of procedures and services with any other agency  
13 he or she considers necessary to implement this program. All agencies coordinating services with the  
14 department shall, when provided with access to department records or information, abide by state and  
15 federal confidentiality requirements including the provisions of this article.

16 (c) The secretary shall propose any rules, including emergency rules, necessary for the  
17 coordination of various agency activities in the implementation of this section.

**§9-3-814. Intergovernmental coordination.**

1           (a) The Commissioner of the Bureau of Employment Programs and the superintendent of the  
2 Department of Education shall assist the secretary in the establishment of the West Virginia Works  
3 Program. Before implementation of this program, each department shall address in its respective plan the  
4 method in which its resources will be devoted to facilitate the identification of or delivery of services for  
5 participants and shall coordinate its respective programs with the department in the provision of services  
6 to participants and their families. Each county board of education shall designate a person to coordinate  
7 with the local Department of Human Services office the board's services to participant families and that  
8 person shall work to achieve coordination at the local level.

9           (b) The secretary and the superintendent shall develop a plan for program implementation to  
10 occur with the use of existing state facilities and county transportation systems within the project areas  
11 whenever practicable. This agreement shall include, but not be limited to, the use of buildings, grounds  
12 and buses. Whenever possible, the supportive services, education and training programs should be  
13 offered at the existing school facilities.

14           (c) The commissioner shall give priority to participants of the West Virginia Works Program within  
15 the various programs of the Bureau of Employment Programs. The secretary and the commissioner shall  
16 develop reporting and monitoring mechanisms between their respective agencies.

**§9-3-815. Public-private partnerships.**

1           The secretary may enter into agreements with any private, nonprofit, charitable or religious  
2 organizations to promote the development of the community support services necessary for the effective  
3 implementation of this program, including cooperative arrangements with private employers of former  
4 program participants for the purpose of obtaining and maintaining employer-based family health  
5 insurance coverage for former participants and their spouses and dependent children through direct  
6 payments to the employers out of funds appropriated for the cooperative agreements.

**§9-3-816. Relationship with other law.**

1           (a) If any provision of this article conflicts with any other provision of this code or rules, the  
2 provisions of this article shall supersede such provisions. The provisions of this article shall not

3 supersede any provisions which are required or mandated by federal law.

4 (b) Any reference in this code or rules to "aid to families with dependent children" means  
5 "temporary assistance for needy families" or any successor state program funded under Part A, Title IV of  
6 the Social Security Act.

**§9-3-817. Confidentiality, fines and penalties.**

1 (a) Except as otherwise provided in this code or rules, all records and information of the  
2 department regarding any beneficiary or beneficiary's family members, including the Supplemental  
3 Nutrition Assistance Program, child support and Medicaid records, are confidential and shall not be  
4 released, except under the following circumstances:

5 (1) If permissible under state or federal rules or regulations;

6 (2) Upon the express written consent of the beneficiary or his or her legally authorized  
7 representative;

8 (3) Pursuant to an order of any court of record of this state or the United States based upon a  
9 finding that the information is sufficiently relevant to a proceeding before the court to outweigh the  
10 importance of maintaining the confidentiality established by this section. All confidential records and  
11 information presented to the court shall, after review be sealed by the clerk and shall, not be open to any  
12 person except upon order of the court upon good cause being shown for the confidential records and  
13 information to be opened; or

14 (4) To a department or division of the state or other entity, pursuant to the terms of an interagency  
15 or other agreement which specifically references this section and extends its requirements for  
16 confidentiality to the other entity receiving the records or information, its agents and employees.

17 (b) Any person who knowingly and willfully releases or causes to be released the confidential  
18 records and information described in this section, except under the specific circumstances enumerated in  
19 this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or  
20 confined in the county or regional jail for not more than six months, or both.

**§9-3-818. West Virginia Works Separate State College Program; eligibility; special revenue**

account.

1           (a) There is established the West Virginia Works Separate State College Program. The program  
2 shall provide funding for participants who are enrolled in post-secondary courses leading to a two or four  
3 year degree. There is created within the state Treasury a special revenue account to be known as the  
4 "West Virginia Works Separate State College Program Fund". Expenditures from the fund shall be for the  
5 purposes set forth in this section and are not authorized from collections but are to be made only in  
6 accordance with appropriations by the Legislature and in accordance with the provisions of article three,  
7 chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this  
8 code. Necessary expenditures include wage reimbursements to participating employers, temporary  
9 assistance for needy families, payments for support services, employment-related child care payments,  
10 transportation expenses and administrative costs directly associated with the operation of the program.

11           (b) All eligible adults attending post-secondary courses leading to a two or four year degree and  
12 who are not participating in vocational education training, as that term is defined in this article, shall be  
13 enrolled in the West Virginia Works Separate State College Program. Participants in the program shall  
14 not be required to engage in more than ten hours per week of federally defined work activities. The work,  
15 education and training requirements of this article are waived for any qualifying participant with a child  
16 under six years of age if the participant is unable to obtain appropriate and available child care services.  
17 All other requirements of West Virginia Works apply to program administration for adults enrolled in the  
18 program.

19           (c) The Department of Human Services shall work with the Higher Education Policy Commission,  
20 as set forth in article one-b, chapter eighteen-b of this code, and the Council for Community and  
21 Technical College Education, as set forth in article two-b, chapter eighteen-b of this code, to develop and  
22 implement a plan to use and expend funds for the programs available at the state's community and  
23 technical colleges and colleges and universities to assist participants who are enrolled, or wish to become  
24 enrolled, in two and four year degree programs of post-secondary education to meet the work  
25 requirements of this article.



**§9-3-819. West Virginia Works Separate State Two-Parent Families Program.**

1           (a) There is established the West Virginia Works Separate State Two-Parent Families Program.  
2           The program shall provide funding for participants who are a two-parent family as that term is defined in  
3           this article. There is created within the state Treasury a special revenue account to be known as the  
4           “West Virginia Works Separate State Two-Parent Program Fund”. Expenditures from the fund shall be for  
5           the purposes set forth in this section and are not authorized from collections but are to be made only in  
6           accordance with appropriations by the Legislature and in accordance with the provisions of article three,  
7           chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this  
8           code. Necessary expenditures include wage reimbursements to participating employers, temporary  
9           assistance for third party needy families, payments for support services, employment-related child care  
10           payments, transportation expenses and administrative costs directly associated with the operation of the  
11           program.

12           (b) All eligible two parent families, as that term is defined in this article, shall enroll in the West  
13           Virginia Works Separate State Two-Parent Families Program. All requirements of West Virginia Works  
14           shall apply to program administration for two-parent families enrolled in the program.

**§9-3-820. State's participation in federal work incentive program.**

1           (a) West Virginia acknowledges that the Congress of the United States has enacted  
2           legislation amending the Social Security Act to permit states to establish work incentive  
3           programs. The secretary may transfer moneys from any appropriate public assistance grant  
4           account under his or her control to the special fund, administered by the United States  
5           Secretary of Labor. Any moneys transferred by the secretary to the special fund shall be  
6           considered as money expended for grants. The secretary may promulgate rules, establish  
7           plans and perform any other acts necessary to implement this state's participation in the  
8           aforesaid work incentive program.

9           (b) The secretary shall cooperate and coordinate his or her activities with the  
10 Commissioner of the Bureau of Employment Programs.

**§9-3-821. Effective date of transfer.**

1           Effective July 1, 2019, the West Virginia Works Program shall transfer and become under the  
2 administrative functions of the Department of Human Services.

**PART NINE. DRUG SCREENING.**

**§9-3-901. Pilot program for drug screening of applicants for cash assistance.**

1           (a) As used in this section:

2           “Applicant” means a person who is applying for benefits from the Temporary Assistance  
3 for Needy Families Program.

4           “Board of Review” means the board established in article four, chapter nine of this code.

5           “Caseworker” means a person employed by the department with responsibility for  
6 making a reasonable suspicion determination during the application process for Temporary  
7 Assistance for Needy Families.

8           “Child Protective Services” means the agency within the department responsible for  
9 investigating reports of child abuse and neglect as required in section eight hundred two, article  
10 two, chapter forty-nine of this code.

11           “Department” means the Department of Human Services.

12           “Drug screen” or “drug screening” means any analysis regarding substance abuse  
13 conducted by the Department of Human Services on applicants for assistance from the  
14 Temporary Assistance for Needy Families program.

15           “Drug test” or “drug testing” means a drug test which tests urine for Amphetamines  
16 (amphetamine and methamphetamine) Cocaine, Marijuana, Opiates (codeine and morphine),

17 Phencyclidine, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Expanded  
18 Opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

19 “Secretary” means the secretary of the Department of Human Services, or his or her  
20 designee.

21 “Temporary Assistance for Needy Families Program” means assistance provided  
22 through ongoing cash benefits pursuant to 42 U. S. C. §601, et seq., operated in West Virginia  
23 as the West Virginia Works Program pursuant to this article.

24 (b) Subject to federal approval, the secretary shall implement and administer a three  
25 year pilot program to drug screen any adult applying for assistance from the Temporary  
26 Assistance for Needy Families Program. The secretary shall seek the necessary federal  
27 approval immediately following the enactment of this section and the program shall begin within  
28 sixty days of receiving federal approval.

29 (c) Reasonable suspicion exists if:

30 (1) A case worker determines, based upon the result of the drug screen, that the  
31 applicant demonstrates qualities indicative of substance abuse based upon the indicators of the  
32 drug screen; or

33 (2) An applicant has been convicted of a drug-related offense within the three years  
34 immediately prior to an application for Temporary Assistance for Needy Families Program and  
35 whose conviction becomes known as a result of a drug screen as set forth in this section.

36 (d) Presentation of a valid prescription for a detected substance that is prescribed by a  
37 health care provider authorized to prescribe a controlled substance is an absolute defense for  
38 failure of any drug test administered under the provisions of this section.

39 (e) Upon a determination by the case worker of reasonable suspicion as set forth in this  
40 section an applicant shall be required to complete a drug test. The cost of administering the

41 drug test and initial substance abuse testing program is the responsibility of the Department of  
42 Human Services. Any applicant whose drug test results are positive may request that the drug  
43 test specimen be sent to an alternative drug-testing facility for additional drug testing. Any  
44 applicant who requests an additional drug test at an alternative drug-testing facility shall be  
45 required to pay the cost of the alternative drug test.

46 (f) Any applicant who has a positive drug test shall complete a substance abuse  
47 treatment and counseling program and a job skills program approved by the secretary. An  
48 applicant may continue to receive benefits from the Temporary Assistance for Needy Families  
49 program while participating in the substance abuse treatment and counseling program or job  
50 skills program. Upon completion of both a substance abuse treatment and counseling program  
51 and a job skills program, the applicant is subject to periodic drug screening and testing as  
52 determined by the secretary in rule. Subject to applicable federal laws, any applicant for  
53 Temporary Assistance for Needy Families program who fails to complete, or refuses to  
54 participate in, the substance abuse treatment and counseling program or job skills program as  
55 required under this subsection is ineligible to receive Temporary Assistance for Needy Families  
56 until he or she is successfully enrolled in substance abuse treatment and counseling and job  
57 skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a  
58 second substance abuse treatment and counseling program and job skills program. He or she  
59 shall be suspended from the Temporary Assistance for Needy Families program for a period of  
60 twelve months, or until he or she completes both a substance abuse treatment and counseling  
61 program and a job skills program. Upon a third positive drug test an applicant shall be  
62 permanently terminated from the Temporary Assistance for Needy Families Program subject to  
63 applicable federal law.

64 (g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

65           (h) The secretary shall order an investigation and home visit from Child Protective  
66 Services on any applicant whose benefits are suspended and who has not designated a  
67 protective payee or whose benefits are terminated due to failure to pass a drug test. This  
68 investigation and home visit may include a face-to-face interview with the child, if appropriate;  
69 the development of a protection plan; and, if necessary for the health and well-being of the child,  
70 may also involve law enforcement. This investigation and home visit shall be followed by a  
71 report detailing recommended action which Child Protective Services shall undertake. Child  
72 Protective Services is responsible for providing, directing or coordinating the appropriate and  
73 timely delivery of services to any child who is the subject of any investigation and home visit  
74 conducted pursuant to this section. In cases where Child Protective Services determines that  
75 the best interests of the child requires court action, they shall initiate the appropriate legal  
76 proceeding.

77           (i) Any other adult members of a household that includes a person declared ineligible for  
78 the Temporary Assistance for Needy Families program pursuant to this section shall, if  
79 otherwise eligible, continue to receive Temporary Assistance for Needy Families benefits.

80           (j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for  
81 Needy Families program may be affected by a parent's failure to pass a drug test.

82           (2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance  
83 for Needy Families program, the dependent child's eligibility is not affected and an appropriate  
84 protective payee shall be designated to receive benefits on behalf of the child.

85           (3) The parent may choose to designate another person as a protective payee to receive  
86 benefits for the minor child. The designated person shall be an immediate family member, or if  
87 an immediate family member is not available or declines the option, another person may be  
88 designated.

89 (4) The secretary shall screen and approve the designated person.

90 (k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits  
91 pursuant to subsection (f) of this section due to a failure to participate in a substance abuse  
92 treatment and counseling program or a job skills program who can later document successful  
93 completion of a drug treatment program approved by the secretary may reapply for benefits six  
94 months after the completion of the substance abuse treatment and counseling program or job  
95 skills program. An applicant who has met the requirements of this subdivision and reapplies is  
96 also required to submit to a drug test and is subject to the provisions of subsection (f) of this  
97 section.

98 (2) An applicant may reapply only once pursuant to the exceptions contained in this  
99 subsection.

100 (3) The cost of any drug screen or test and drug treatment provided under subsection (k)  
101 is the responsibility of the individual being screened and receiving treatment.

102 (l) An applicant who is denied assistance under this section may request a review of the  
103 denial by the Board of Review. The results of a drug screen or test are admissible without  
104 further authentication or qualification in the review of denial by the Board of Review and in any  
105 appeal. The Board of Review shall provide a fair, impartial and expeditious grievance and  
106 appeal process to applicants who have been denied Temporary Assistance for Needy Families  
107 pursuant to the provisions of this section. The Board of Review shall make findings regarding  
108 the denial of benefits and issue a decision which either verifies the denial or reverses the  
109 decision to deny benefits. Any applicant adversely affected or aggrieved by a final decision or  
110 order of the Board of Review may seek judicial review of that decision.

111 (m) The secretary shall ensure the confidentiality of all drug screen and drug test results  
112 administered as part of this program. Drug screen and test results shall be used only for the

113 purpose of determining eligibility for the Temporary Assistance for Needy Families program. At  
114 no time may drug screen or test results be released to any public or private person or entity or  
115 any law-enforcement agency, except as otherwise authorized by this section.

116 (n) The secretary shall promulgate emergency rules pursuant to the provisions of article  
117 three, chapter twenty-nine-a to prescribe the design, operation and standards for the  
118 implementation of this section.

119 (o) A person who intentionally misrepresents any material fact in an application filed  
120 under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof,  
121 shall be punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail  
122 not to exceed six months, or by both fine and confinement.

123 (p) The secretary shall report to the Joint Committee on Government and Finance by  
124 December 31, 2016, and annually after that until the conclusion of the pilot program on the  
125 status of the federal approval and pilot program described in this section. The report shall  
126 include, but is not limited to:

127 (1) The total number of applicants who were deemed ineligible to receive benefits under  
128 the program due to a positive drug test for controlled substances;

129 (2) The number of applicants for whom there was a reasonable suspicion due to a  
130 conviction of a drug-related offense within the five years prior to an application for assistance;

131 (3) The number of those applicants that receive benefits after successful completion of a  
132 drug treatment program as specified in this section; and

133 (4) The total cost to operate the program.

134 (q) Should federal approval not be given for any portion of the program as set forth in  
135 this section, the secretary shall implement the program to meet the federal objections and  
136 continue to operate a three year pilot program consistent with the purpose of this section.

137 (r) For the purposes of the pilot program contained in this section, pursuant to the authority and  
138 option granted by 21 U. S. C. §862a(d)(1)(A) to the states, West Virginia hereby exempts all persons  
139 domiciled within the state from the application of 21 U. S. C. §862a(a).

## **PART TEN. BUREAU FOR MEDICAL SERVICES.**

### **§9-3-1001. Creation of the Bureau for Medical Services.**

1 Effective the first day of July, 2019, The Bureau for Medical Services is created and  
2 continued within the Department of Human Services.

### **§9-3-1002. Appointment of commissioner; qualifications; compensation.**

1 (a) There is created the position of Commissioner. The Commissioner shall:

2 (1) Be appointed by the Governor with advice and consent of the Senate;

3 (2) Report directly to the Secretary;

4 (3) Serve at the will and pleasure of the Governor;

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

8 (5) Have an appropriate educational level and administrative experience, possess  
9 management skills and have knowledge of insurance, specifically publicly provided insurance.

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

13 (c) The Commissioner shall receive:

14 (1) A reasonable and competitive compensation package to be established by the  
15 Secretary; and

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



**§9-3-1003. Powers and duties of the Commissioner.**

1 (a) In addition to the powers and duties set forth in any other provision of this code, the  
2 Commissioner shall have the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in providing medical assistance to person who qualify;

5 (B) Sets forth goals and objectives for meeting those needs; and

6 (C) Contains plans of operation for achieving the stated goals and objectives, including  
7 organizational structure; and statement of requirements in personnel funds and authority for achieving the  
8 goals and objectives.

9 (2) To appoint deputies and assistants to supervise the Bureau's programs and such other  
10 assistants and employees as may be necessary for the efficient operation of the Bureau and all its  
11 programs.

12 (3) To delegate to any of his or her appointees, assistants or employees all powers and duties  
13 vested in the Commissioner, including the power to execute contracts and agreements in the name of the  
14 Bureau as provided in this article. The Commissioner shall be responsible for the acts of such  
15 appointees, assistants and employees.

16 (4) To make periodic reports to the Secretary, Governor and to the Legislature as required by this  
17 chapter.

18 (b) The Commissioner is authorized and empowered to accept and use for the benefit of the  
19 Medicaid program any gift or devise of any property or thing which lawfully may be given. Any gift or  
20 devise of any property or thing which lawfully may be given and whatever profit may arise from its use or  
21 investment shall be deposited in a special revenue fund with the State Treasurer, and shall be used only  
22 as specified by the donor or donors.

**§9-3-1004. Organization and employees.**

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

4 (b) The Commissioner shall employ a sufficient number of employees so as to provide

5 for the effective and efficient operation of the Bureau.

6 (c) The Secretary may transfer employees and resources of the Department to the  
7 Bureau as may be necessary to fulfill the duties and responsibilities of the Bureau pursuant to  
8 this chapter. The Secretary may not transfer employees of other divisions and agencies within  
9 the Department to the Bureau without a prior finding that the office or position held by the  
10 employee may be eliminated and until the office or position is, in fact, eliminated.

11 (d) The Commissioner, if he or she deems such action necessary, may hire legal  
12 counsel for the Bureau, notwithstanding the provisions of section two, article three, chapter five  
13 of this code or any other code provision to the contrary, or may request the Attorney General to  
14 appoint counsel who shall perform such duties as may be required by the Bureau. The Attorney  
15 General, in pursuance of such request, may select and appoint counsel to serve at the will and  
16 pleasure of the Attorney General, and shall be paid out of any funds allocated and appropriated  
17 to the Bureau.

18 (e) The Commissioner may employ such staff or employees as may be necessary to  
19 administer and enforce this chapter.

**§9-3-1005. Supervisory responsibilities of the Commissioner.**

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

**§9-3-1006. General duties and powers of the Bureau for Medical Services.**

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

3 (1) To establish policies and procedures for governing the administration of the Bureau  
4 and the awarding of medical assistance;

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

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

8 (4) To act as a liaison with other state entities and private groups with an interest in  
9 medical assistance;

10 (5) To offer medical assistance to persons who meet the eligibility standards set by the  
11 Bureau and the federal government through laws, rules and regulations; and

12 (6) To perform any other duties assigned to the Bureau by the Secretary.

**§9-3-1007. Bureau of Medical Services information.**

1 (a) The Bureau of Medical Services shall publish all informational bulletins, health plan advisories,  
2 and guidance published by the department concerning the Medicaid program on the department's  
3 website.

4 (b) The Bureau shall publish all Medicaid state plan amendments and any related  
5 correspondence within twenty-four hours of receipt of the correspondence submission to the Centers for  
6 Medicare and Medicaid Services.

7 (c) The Bureau shall publish all formal responses by the Centers for Medicare and Medicaid  
8 Services regarding any state plan amendment on the department's website within twenty-four hours of  
9 receipt \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_ correspondence.

**§9-3-1008. Continuation of present aid; contributions by counties.**

1 (a) Except as otherwise provided in this chapter, aid or assistance rendered under  
2 existing law shall not be deemed to be discontinued.

3 (b) County commissions may contribute in-kind services or money into a special fund of  
4 the department to expand the general assistance programs for citizens of its county. No part of  
5 this fund shall revert to the general revenue of the state.

**§9-3-1009. Application for and granting of federal-state or federal assistance.**

1 Any person domiciled in this state, who shall make, or have made in his or her behalf, an  
2 application and who is otherwise qualified to receive assistance shall be granted federal-state  
3 assistance or federal assistance in such form and amount, to such extent, and for such period,  
4 as authorized by applicable federal and state laws, rules and regulations and as determined by  
5 the Department in accordance with such laws, rules and regulations and within limits of  
6 available funds.

**§9-3-1010. Investigation and grant.**

1 (a) Upon receipt of an application for any class of assistance, the Bureau shall make an  
2 investigation as may be necessary and as the exigency of the case will permit to determine the  
3 eligibility of the applicant for, and the form, amount, extent, and period of, such assistance.

4 (b) When the Bureau approves an application for medical assistance, it shall fix the  
5 amount, form, extent and period of the assistance in accordance with applicable federal and  
6 state laws, rules and regulations and within the limits of available funds.

**§9-3-1011. Penalties for false statements, etc.**

1 Any person who obtains or attempts to obtain, or aids or abets an applicant or recipient in  
2 obtaining or attempting to obtain, by means of a willfully false statement or misrepresentation or by  
3 impersonation of any other fraudulent device:

4 (1) Any class of assistance to which the applicant or recipient is not entitled; or

5 (2) Any class of assistance in excess of that to which the applicant or recipient is justly entitled;  
6 shall upon conviction be punished as follows:

7 (A) If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall  
8 be \$500 or less, the person so convicted shall be guilty of a misdemeanor and, shall be fined not more  
9 than \$1,000 or confined in jail not exceeding one year; or

10 (B) If the aggregate value of all funds or other benefits obtained or attempted to be obtained shall

11 exceed \$500, the person so convicted shall be guilty of a felony and, shall be fined not more than \$5,000  
12 or confined in the penitentiary not less than one year nor more than five years.

**§9-3-1012. Exemption of grants from certain taxes and claims.**

1 Grants of all classes of assistance received under the provisions of this chapter shall be  
2 exempted from the collection of taxes except sales taxes, from levy of execution, garnishment,  
3 suggestion, and any other legal process.

**§9-3-1013. Medical services fund.**

1 (a) The special fund known as the "Medical Services Fund" is continued.

2 (b) The fund shall consist of payments made into the fund out of state appropriations for  
3 medical services to recipients of specified classes of assistance and such federal grants-in-aid  
4 as are made available for specified classes of assistance. Any balance in the fund at the end of  
5 any fiscal year shall remain in the fund and shall not expire or revert. Payments shall be made  
6 out of the fund upon requisition of the commissioner by means of a warrant signed by the  
7 Auditor and Treasurer.

8 (c) Recipients of those classes of assistance as are specified by the Department,  
9 consistent with applicable federal laws, rules and regulations, shall be entitled to have costs of  
10 necessary medical services paid out of the fund, in the manner and amounts, to the extent, and  
11 for the period determined from time to time to be feasible by the Commissioner pursuant to  
12 legislative rules established by him or her. The legislative rules shall comply with requirements  
13 of applicable federal laws, rules and regulations and shall be established on the basis of money  
14 available for the purpose, the number of recipients, the experience with respect to the incidence  
15 of illness, disease, accidents, and other causes among the recipients causing them to require  
16 medical services and the costs thereof, the amounts which recipients require otherwise in order  
17 to maintain a subsistence compatible with decency and health, and any other factor considered

18 relevant and proper by the commissioner. The legislative rules respecting qualifications shall  
19 permit the expenditure of state funds to pay for care rendered in any birthing center licensed  
20 under the provisions of article two-e, chapter sixteen of this code, by a licensed nurse midwife or  
21 midwife as this term is defined in article fifteen, chapter thirty of this code.

**§9-3-1014. Limitation on use of funds.**

1 (a) No funds from the Medicaid program accounts may be used to pay for the  
2 performance of an abortion by surgical or chemical means unless on the basis of the physician's  
3 best clinical judgment, there is:

4 (1) A medical emergency that so complicates a pregnancy as to necessitate an  
5 immediate abortion to avert the death of the mother or for which a delay will create grave peril of  
6 irreversible loss of major bodily function or an equivalent injury to the mother: *Provided*, That an  
7 independent physician concurs with the physician's clinical judgment; or

8 (2) Clear clinical medical evidence that the fetus has severe congenital defects or  
9 terminal disease or is not expected to be delivered; or

10 (3) The individual is a victim of incest or the individual is a victim of rape when the rape  
11 is reported to a law-enforcement agency.

12 (b) The Legislature intends that the state's Medicaid program not provide coverage for  
13 abortion on demand and that abortion services be provided only as expressly provided in this  
14 section.

**§9-3-1015. Coverage for patient cost of clinical trials.**

1 (a) The provisions of this section apply to health plans regulated by this article.

2 (b) This section does not apply to a policy, plan or contract paid for under Title XVIII of  
3 the Social Security Act.

4 (c) A policy, plan or contract subject to this section shall provide coverage for patient  
5 cost to a member in a clinical trial, as a result of:

6 (1) Treatment provided for a life-threatening condition; or

7 (2) Prevention of, early detection of or treatment studies on cancer.

8 (d) The coverage under subsection (c) of this section is required if:

9 (1)(A) The treatment is being provided or the studies are being conducted in a Phase II,  
10 Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

11 (B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for  
12 any other life-threatening condition and has therapeutic intent;

13 (2) The treatment is being provided in a clinical trial approved by:

14 (A) One of the national institutes of health;

15 (B) An NIH cooperative group or an NIH center;

16 (C) The FDA in the form of an investigational new drug application or investigational  
17 device exemption;

18 (D) The federal department of Veterans Affairs; or

19 (E) An institutional review board of an institution in the state which has a multiple project  
20 assurance contract approved by the office of protection from research risks of the national  
21 institutes of health;

22 (3) The facility and personnel providing the treatment are capable of doing so by virtue of  
23 their experience, training and volume of patients treated to maintain expertise;

24 (4) There is no clearly superior, noninvestigational treatment alternative;

25 (5) The available clinical or preclinical data provide a reasonable expectation that the  
26 treatment will be more effective than the noninvestigational treatment alternative;

27 (6) The treatment is provided in this state. If the treatment is provided outside of this  
28 state, the treatment must be approved by the payor designated in subsection (a) of this section;

29 (7) Reimbursement for treatment is subject to all coinsurance, copayment and  
30 deductibles and is otherwise subject to all restrictions and obligations of the health plan; and

31 (8) Reimbursement for treatment by an out of network or noncontracting provider shall  
32 be reimbursed at a rate which is no greater than that provided by an in network or contracting  
33 provider. Coverage shall not be required if the out of network or noncontracting provider will not  
34 accept this level of reimbursement.

35 (e) Payment for patient costs for a clinical trial is not required by the provisions of this  
36 section, if:

37 (1) The purpose of the clinical trial is designed to extend the patent of any existing drug,  
38 to gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage  
39 relating to additional clinical indications for an existing drug; or

40 (2) The purpose of the clinical trial is designed to keep a generic version of a drug from  
41 becoming available on the market; or

42 (3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated  
43 or repackaged version of an existing drug.

44 (f) Any provider billing a third party payor for services or products provided to a patient in  
45 a clinical trial shall provide written notice to the payor that specifically identifies the services as  
46 part of a clinical trial.

47 (g) Notwithstanding any provision in this section to the contrary, coverage is not required  
48 for Phase I of any clinical trial.

**§9-3-1016. Maternity and infant care.**



1           (a) The Bureau shall:

2           (1) Extend the Medicaid coverage to pregnant women and their newborn infants to one  
3 hundred fifty percent of the federal poverty level.

4           (2) Participate in the Medicaid program for indigent children and pregnant women  
5 established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA),  
6 Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-504,  
7 and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203.

8           (3) As provided under COBRA, SOBRA, and OBRA, infants shall be included under the  
9 Medicaid coverage with all children eligible for Medicaid coverage, whose family incomes are at  
10 or below one hundred percent of the federal poverty level and continuing until such children  
11 reach the age of eight years.

12           (4) Elect the federal options provided under COBRA, SOBRA, and OBRA, impacting  
13 pregnant women and children below the poverty level. No provision in this article shall restrict  
14 the Bureau in exercising new options provided by, or to be in compliance with, new federal  
15 legislation that further expands eligibility for children and pregnant women.

16           (5) Shall increase to no less than \$600 the reimbursement rates under the Medicaid  
17 program for prenatal care, delivery and post-partum care.

18           (b) In order to be in compliance with the provisions of OBRA, through legislative rules,  
19 the Bureau shall ensure that pregnant women and children whose incomes are above the  
20 Temporary Assistance to Needy Families (TANF) payment level are not required to apply for  
21 entitlements under the TANF program as a condition of eligibility for Medicaid coverage.  
22 Further, the department shall develop a short, simplified pregnancy/pediatric application of no  
23 more than three pages, paralleling the simplified OBRA standards.

24 (c) Any woman who establishes eligibility pursuant to this section shall continue to be  
25 treated as an eligible individual without regard to any change in income of the family of which  
26 she is a member until the end of the sixty day period beginning on the last day of her  
27 pregnancy.

**§9-3-1017. Requiring substance abuse treatment providers to give pregnant woman priority  
access to services.**

1 Substance abuse treatment or recovery service providers that accept Medicaid shall give  
2 pregnant women priority in accessing services and shall not refuse access to services solely due to  
3 pregnancy as long as the provider's services are appropriate for pregnant women.

**§9-3-1018. Authority to examine witnesses, administer oaths and take affidavits.**

1 The Secretary, the Commissioner and employees of the Department may administer  
2 oaths, examine witnesses and take and certify affidavits in any matter or thing pertaining to the  
3 business of the department and the Bureau.

**§9-3-1019. Authority to subpoena witnesses and documents when investigating the  
provision of medical assistance programs.**

1 The Secretary and the Commissioner and every duly appointed hearing examiner may  
2 apply, on behalf of any party, to the circuit court of the county in which the hearing is to be held,  
3 or the circuit court in which the subpoena or subpoena duces tecum is to be served, or the  
4 judge of either such court in vacation, for the issuance of a subpoena or subpoena duces tecum  
5 to compel the attendance of witnesses or the production of documents, before any hearing or  
6 administrative tribunal convened to consider suspension or termination of any person or  
7 corporation from providing services under the medical assistance programs administered by the  
8 Department. The application for a subpoena duces tecum shall state with particularity any  
9 papers or documents requested and upon hearing, the applicant or party shall notify the court or

10 judge, as the case may be, of the necessity therefor in such hearing. The court or judge  
11 thereof, prior to issuing the requested subpoena or subpoena duces tecum, may make any  
12 order which justice requires to protect a party or person from annoyance, embarrassment,  
13 oppression or undue burden or expense. The party who applies for the subpoena or subpoena  
14 duces tecum shall pay the sheriff's fees required for service of these documents.

**§9-3-1020. Collection of copayments by health care providers; penalties.**

1 (a) The Secretary and/or the Commissioner shall institute a program which requires the  
2 payment and collection of copayments. The program shall conform with Section 447.53,  
3 Chapter 42 of the Code of Federal Regulations, and the amount of the copayments shall be  
4 determined in accordance with the provisions of Sections 447.54 and 447.55, Chapter 42 of the  
5 Code of Federal Regulations. The secretary shall complete all federal requirements necessary  
6 to implement this section, including the submission of any amendment to the state Medicaid  
7 plan.

8 (b) Any individual or entity receiving reimbursement from this state under the medical  
9 assistance program of the Social Security Act is required to collect the copayments: *Provided,*  
10 That in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no  
11 individual or entity shall refuse care or services to any Medicaid-eligible individual because that  
12 individual is unable to pay the copayment. The amount of copayments collected shall be  
13 reported to the Secretary.

14 (c) A person, firm, corporation or other entity who willfully, by means of a false statement  
15 or representation, or by concealment of any material fact, or by other fraudulent scheme, device  
16 or artifice on behalf of himself or herself, itself or others, fails to attempt to collect copayments  
17 as required by this section, shall be liable for payment to the Department of a civil money  
18 penalty in the amount of \$100 for each occurrence of willful failure to collect a required  
19 copayment.

20 (d) If it comes to the attention of the secretary or commissioner that a person or other  
21 entity is failing to attempt to collect copayments as mandated, the matter shall be referred to the  
22 Medicaid Fraud Control Unit for investigation and referral for prosecution pursuant to the  
23 provisions of this chapter.

**§9-3-1021. Preferred drug list and drug utilization review.**

1 (a) The Legislature finds that it is a public necessity that trade secrets, rebate amounts,  
2 percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in  
3 records, as well as any meetings at which this information is negotiated or discussed need  
4 confidentiality to insure the most significant rebates available for the state. Information  
5 pertaining to similar agreements with the federal government and negotiated by pharmaceutical  
6 manufacturers is confidential pursuant to 42 U.S.C. 1396r-8.

7 (b) A rebate as a percentage of average manufacture price is confidential under federal  
8 law and the federal rebate could be made known if not protected by state law. Because of the  
9 protection afforded by federal law, if this information is not protected by state law, manufacturers  
10 will not be willing to offer a rebate in West Virginia.

11 (c) Further, the Legislature finds that the number and value of supplemental rebates  
12 obtained by the department or Bureau will increase, to the benefit of Medicaid recipients, if  
13 information related to the supplemental rebates is protected in the records of the department  
14 and Bureau and in meetings in which this information is disclosed because manufacturers will  
15 be assured they will not to be placed at a competitive disadvantage by exposure of this  
16 information.

17 (d) The Secretary and/or the Commissioner may develop a preferred drug list, in  
18 accordance with federal law, which shall consist of federally approved drugs. The Department or

19 Bureau, through administration of the Medicaid program, may reimburse, where applicable and  
20 in accordance with federal law, entities providing and dispensing prescription drugs from the  
21 preferred drug list.

22 (e) The Secretary or Commissioner may negotiate and enter into agreements with  
23 pharmaceutical manufacturers for supplemental rebates for Medicaid or reimbursable drugs.

24 (f) The provisions of article three, chapter five-a of this code do not apply to any contract  
25 or contracts entered into under this section.

26 (g) Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and  
27 supplemental rebates which are contained in the department's or bureau's records and those of  
28 its agents with respect to supplemental rebate negotiations and which are prepared pursuant to  
29 a supplemental rebate agreement are confidential and exempt from all of article one, chapter  
30 twenty-nine-b of this code.

31 (h) Those portions of any meetings of the committee at which trade secrets, rebate  
32 amounts, percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed  
33 for discussion or negotiation of a supplemental rebate agreement are exempt from all of article  
34 nine-a, chapter six of this code.

35 (i) The Secretary or Commissioner shall monitor and evaluate the effects of this  
36 provision on Medicaid recipients, the Medicaid program, physicians and pharmacies.

37 (j) The Commissioner shall implement a drug utilization review program to assure that  
38 prescribing and dispensing of drug products result in the most rational cost-effective medication  
39 therapy for Medicaid patients.

40 (k) Any moneys received in supplemental rebates will be deposited in the Medical  
41 Services Fund.

42 (l) Within the limits of federal and state law, the Secretary may consolidate preferred  
43 drug lists for the Medicaid agency, the Children’s Health Insurance Program and the Public  
44 Employees Insurance Agency for purposes of streamlined administration and cost savings.

**§9-3-1022. Medicaid program; chronic kidney disease; evaluation and classification.**

1 (a) Any enrollee in Medicaid who is eligible for services and who has a diagnosis of  
2 diabetes or hypertension or, who has a family history of kidney disease, shall receive coverage  
3 for an evaluation for chronic kidney disease through routine clinical laboratory assessments of  
4 kidney function.

5 (b) Any enrollee who has received a diagnosis of kidney disease shall be classified as a  
6 chronic kidney patient.

7 (c) The diagnostic criteria used to define chronic kidney disease should be those  
8 generally recognized through clinical practice guidelines which identify chronic kidney disease  
9 or its complications based on the presence of kidney damage and level of kidney function.

10 (d) Medicaid providers shall be educated by the Bureau for Public Health in an effort to  
11 increase the rate of evaluation and treatment for chronic kidney disease. Providers should be  
12 made aware of:

13 (1) Managing risk factors, which prolong kidney function or delay progression to kidney  
14 replacement therapy;

15 (2) Managing risk factors for bone disease and cardiovascular disease associated with  
16 chronic kidney disease;

17 (3) Improving nutritional status of chronic kidney disease patients; and

18 (4) Correcting anemia associated with chronic kidney disease.

**§9-3-1023. Annual report to Joint Committee on Government and Finance regarding treatment for autism spectrum disorders provided by the Bureau for Medical Services.**

1        On or before January 1 each year, the Bureau shall file an annual report with the Joint  
2 Committee on Government and Finance describing the number of enrolled individuals with  
3 autism spectrum disorder, including the fiscal and administrative impact of treatment of autism  
4 spectrum disorders, and any recommendations the agency may have as to changes in law or  
5 policy related to such disorder. In addition, the bureau shall provide such other information as  
6 may be requested by the Joint Committee on Government and Finance as it may from time to  
7 time request.

**§9-3-1024. Medicaid managed care reporting.**

1        (a) Beginning January 1, 2016, and annually thereafter, the Bureau for Medical Services shall  
2 submit an annual report by May of each year to the Joint Committee on Government and Finance and the  
3 Legislative Oversight Commission on Health and Human Resources Accountability that includes, but is  
4 not limited to, the following information for all managed care organizations:

5        (1) The name and geographic service area of each managed care organization that has  
6 contracted with the bureau.

7        (2) The total number of health care providers in each managed care organization broken down by  
8 provider type and specialty and by each geographic service area.

9        (3) The monthly average and total of the number of members enrolled in each organization  
10 broken down by eligibility group.

11        (4) The percentage of clean claims paid each provider type within thirty calendar days and the  
12 average number of days to pay all claims for each managed care organization

13        (5) The number of claims denied or pended by each managed care organization.

14        (6) The number and dollar value of all claims paid to non-network providers by claim type for each  
15 managed care organization.

16 (7) The number of members choosing the managed care organization and the number of  
17 members auto-enrolled into each managed care organization, broken down by managed care  
18 organization.

19 (8) The amount of the average per member per month payment and total payments paid to each  
20 managed care organization.

21 (9) A comparison of nationally recognized health outcomes measures as required by the  
22 contracts the managed care organizations have with the bureau.

23 (10) A copy of the member and provider satisfaction survey report for each managed care  
24 organization.

25 (11) A copy of the annual audited financial statements for each managed care organization.

26 (12) A brief factual narrative of any sanctions levied by the department against a managed care  
27 network.

28 (13) The number of members, broken down by each managed care organization, filing a  
29 grievance or appeal and the total number and percentage of grievances or appeals that reversed or  
30 otherwise resolved a decision in favor of the member.

31 (14) The number of members receiving unduplicated outpatient emergency services and urgent  
32 care services, broken down by managed care organization.

33 (15) The number of total inpatient Medicaid days broken down by managed care organization and  
34 aggregated by facility type.

35 (16) The following information concerning pharmacy benefits broken down by each managed  
36 care organization and by month:

37 (A) Total number of prescription claims;

38 (B) Total number of prescription claims denied;

39 (C) Average adjudication time for prescription claims;

40 (D) Total number of prescription claims adjudicated within thirty days;

41 (E) Total number of prescription claims adjudicated within ninety days;



42 (F) Total number of prescription claims adjudicated after thirty days; and  
43 (G) Total number of prescription claims adjudicated after ninety days.  
44 (17) The total number of authorizations by service.  
45 (18) Any other metric or measure which the Bureau of Medical Services deems appropriate for  
46 inclusion in the report.  
47 (19) For those managed care plans that are accredited by a national accreditation organization  
48 they shall report their most recent annual quality ranking for their Medicaid plans offered in West Virginia.  
49 (20) The medical loss ratio and the administrative cost of each managed care organization and  
50 the amount of money refunded to the state if the contract contains a medical loss ratio.  
51 (b) The report required in subsection (a) of this section shall also include information regarding  
52 fee-for-service providers that is comparable to that required in subsection (a) of this section for managed  
53 care organizations: *Provided*, That any report regarding Medicaid fee for service should be designed to  
54 determine the medical and pharmacy costs for those benefits similar to ones provided by the managed  
55 care organizations and the data shall be reflective of the population served.  
56 (c) The report required in subsection (a) of this section shall also include for each of the five most  
57 recent fiscal years, annual cost information for both managed care organizations and fee-for-service  
58 providers of the Medicaid program expressed in terms of:  
59 (1) Aggregate dollars expended by both managed care organizations and fee-for-service  
60 providers of the Medicaid programs per fiscal years; and  
61 (2) Annual rate of cost inflation from prior fiscal year for both managed care organizations and  
62 fee-for-service providers of the Medicaid program.

## **PART ELEVEN. MEDICAID UNCOMPENSATED CARE FUND.**

### **§9-3-1101. Legislative findings.**

1 The Legislature finds and declares the following:

2           (1) Federal Medicaid laws encourage special recognition of disproportionate share  
3 hospitals for Medicaid reimbursement purposes.

4           (2) These same federal laws permit and encourage the state to fund the Medicaid  
5 program through flexible means, including public and private contributions to serve as the state  
6 share for purposes of federal financial participation.

7           (3) Because of state budget constraints, moneys paid to disproportionate share hospitals  
8 under the Medicaid program have not been sufficient to allow the hospitals to recover adequate  
9 reimbursement for the costs associated with providing appropriate services to Medicaid clients  
10 of this state.

11           (4) The policy of this state is to encourage disproportionate share hospitals to continue  
12 providing health care services to the needy citizens of West Virginia; such encouragement and  
13 support are increasingly important when combined with federal financial participation.

14           (5) Cost shifting is a serious problem and it is the intent of the Legislature to reduce cost  
15 shifting.

**§9-3-1102. Creation of Medicaid uncompensated care fund.**

1           (a) There is continued in the State Treasury a special revolving fund known as the  
2 “Medicaid Uncompensated Care Fund”. All moneys deposited or accrued in this fund shall be  
3 used exclusively:

4           (1) To provide the state's share of the federal Medicaid program funds in order to  
5 improve inpatient payments to disproportionate share hospitals; and

6           (2) To cover administrative cost incurred by the Department and the Bureau and  
7 associated with the Medicaid program and this fund. No expenditures may be made to cover  
8 said administrative costs except as appropriated by the Legislature.

9 (b) Moneys from the following sources may be placed into the fund:

10 (1) All public funds transferred by any public agency to the Medicaid program for deposit  
11 in the fund as contemplated or permitted by applicable federal Medicaid laws;

12 (2) All private funds contributed, donated or bequeathed by corporations, individuals or  
13 other entities to the fund as contemplated and permitted by applicable federal Medicaid laws;

14 (3) Interest which accrued on amounts in the fund from sources identified in subdivisions  
15 (1) and (2) of this subsection; and

16 (4) Federal financial participation matching the amounts referred to in subdivisions (1),  
17 (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

18 (c) Any balance remaining in the "Medicaid Uncompensated Care Fund" at the end of  
19 any state fiscal year shall not revert to the State Treasury but shall remain in this fund and shall  
20 be used only in a manner consistent with this article.

21 (d) Moneys received into the fund shall not be counted or credited as part of the  
22 legislative general appropriation to the state Medicaid program.

23 (e) The fund shall be administered by the Bureau. Moneys shall be disbursed from the  
24 fund on a quarterly basis. The secretary and/or commissioner shall implement the provisions of  
25 this article prior to the receipt of any transfer, contribution, donation or bequest from any public  
26 or private source.

27 (f) All moneys expended from the fund after receipt of federal financial participation shall  
28 be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share  
29 hospitals. Except for the payment of administrative costs as provided in this section,  
30 appropriation from this fund for any other purposes is void.

**§9-3-1103. Medical services trust fund.**

1           (a) The Legislature finds that certain dedicated revenues should be preserved in trust for  
2 the purpose of stabilizing the state's Medicaid program and providing services for future  
3 federally mandated population groups in conjunction with federal reform.

4           (b) There is continued a special account within the Department, which shall be an  
5 interest-bearing account and may be invested in the manner permitted by section nine, article  
6 six, chapter twelve of this code, designated the Medical Services Trust Fund. Funds paid into  
7 the account shall be derived from the following sources:

8           (1) Transfers, by intergovernmental transfer, from the hospital services revenue account  
9 provided in chapter sixteen of this code;

10           (2) All interest or return on investment accruing to the fund;

11           (3) Any gifts, grants, bequests, transfers or donations which may be received from any  
12 governmental entity or unit or any person, firm, foundation or corporation; and

13           (4) Any appropriations by the Legislature which may be made for this purpose.

14           (c) Expenditures from the fund are limited to the following:

15           (1) Payment of backlogged billings from providers of Medicaid services when cash-flow  
16 problems within the medical services fund do not permit payment of providers within federally  
17 required time limits; and

18           (2) Funding for services to future federally mandated population groups in conjunction  
19 with federal health care reform: *Provided*, That other Medicaid funds have been exhausted for  
20 the federally mandated expansion.

21           (3) Payment of the required state match for Medicaid disproportionate share payments in  
22 order to receive federal financial participation in the disproportionate share hospital program.

23 (d) Expenditures from the fund solely for the purposes set forth in subsection (c) of this  
24 section shall be authorized in writing by the Governor, who shall determine in his or her  
25 discretion whether any expenditure shall be made, based on the best interests of the state as a  
26 whole and its citizens, and shall designate the purpose of the expenditure. Upon authorization  
27 signed by the Governor, funds may be transferred to the Medical Services Fund: *Provided,*  
28 That all expenditures from the “Medical Services Trust Fund” shall be reported forthwith to the  
29 Joint Committee on Government and Finance.

**§9-3-1104. Expansion of coverage to children and terminally ill.**

1 The Department shall:

2 (1) Provide a streamlined application form, which shall be no longer than two pages, for  
3 all families applying for medical coverage for children under any of the programs set forth in this  
4 section; and

5 (2) Provide the option of hospice care to terminally ill West Virginians who otherwise  
6 qualify for Medicaid.

7 (3) Accelerate the Medicaid option for coverage of Medicaid to all West Virginia children  
8 whose family income is below one hundred percent of the federal poverty guideline.

**§9-3-1105. Legislative reports.**

1 (a) The Secretary shall make an annual report to the Legislature on the use of the  
2 Medicaid Uncompensated Care Fund.

3 (b) The Health Care Authority shall make an annual report to the Legislature on the  
4 impact of improved Medicaid inpatient payments resulting from the fund on nongovernmental  
5 payor health care costs.

## **PART TWELVE. MEDICAID BUY-IN PROGRAM.**

### **§9-3-1201. Legislative findings.**

1           (a) The Legislature finds that there are many individuals in this state who have  
2 disabilities that qualify them for state or federal assistance and who are nonetheless willing and  
3 able to enter the workforce, but do not do so out of fear of losing essential medical care. As a  
4 result, the state realizes increased costs in fully supporting these disabled individuals who, in  
5 turn, suffer under an additional disability of being deprived of the additional income, dignity and  
6 self-sufficiency derived by being engaged in competitive employment.

7           (b) The Legislature finds that establishing a Medicaid buy-in program for certain  
8 individuals with disabilities will assist them in becoming independent of medical assistance by  
9 enabling them to enter the workforce without fear of losing essential medical care.

### **§9-3-1202. Medicaid buy-in program; funding.**

1           (a) The Medicaid buy-in program for working individuals with disabilities is continued to  
2 provide Medicaid benefits to individuals who are disabled and employed, as authorized pursuant  
3 to Section 201 of the federal Ticket to Work and Work Incentives Improvement Act of 1999 (P.L.  
4 106-170, 42 U.S.C. 1396, et seq.).

5           (b) Funding for the buy-in program shall be from funds appropriated by the Legislature,  
6 premiums paid, enrollment fees and any federal matching funding available to the program.

### **§9-3-1203. Eligibility guidelines.**

1           (a) To be eligible to participate in the buy-in program an individual shall:

2           (1) Be a resident of the State of West Virginia;

3           (2) Have a disability that is defined and determined by the Social Security  
4 Administration, the Department or the Bureau;

5 (3) Be at least sixteen years of age but not more than sixty-four years of age;

6 (4) Be engaged in competitive employment, including self-employment or nontraditional  
7 work that results in remuneration at or above minimum wage in an integrated setting;

8 (5) Have countable resources that do not exceed the resource limit for the supplemental  
9 security income program;

10 (6) Have countable income that does not exceed two hundred fifty percent of the federal  
11 poverty level;

12 (7) Have total countable unearned income, using the social security income program  
13 methodology, that does not exceed the federal benefit rate plus the general income exclusion;

14 and

15 (8) Except as provided in this article, not have countable resources that exceed the  
16 resource limits for the federal supplemental security income program.

17 (b) The Secretary or Commissioner shall establish a method of providing notice of the  
18 availability of participation in the Medicaid buy-in program. The Secretary or Commissioner  
19 shall develop all forms and notices necessary to implement the provisions of this article,  
20 including forms for application to the program, determination of eligibility and continued  
21 participation and notices that advise all eligible buy-in participants of the rights, benefits,  
22 obligations and participation requirements of the program, including, but not limited to, notice of  
23 fees, premiums, premium adjustments, periodic review, length of time for which benefits may be  
24 paid and disqualifying factors.

**§9-3-1204. Exceptions to qualifying factors.**

1 (a) An individual who is enrolled in the buy-in program and who no longer meets the  
2 eligibility requirements of the basic coverage group due to an improvement in the individual's

3 medical condition may continue to be eligible for Medicaid coverage under the buy-in program if  
4 the individual meets the following requirements:

5 (1) The individual continues to have a severe medically determinable impairment as  
6 determined by the Department or the Bureau and as defined and recognized by federal law;

7 (2) The individual is employed and earning a monthly wage that is not less than the  
8 federal minimum hourly wage times forty;

9 (3) The individual does not have income or countable resources in excess of the limits  
10 established for the basic coverage group;

11 (4) The individual is at least sixteen years of age and less than sixty-five years of age;

12 (5) The individual pays any premiums or other cost sharing required pursuant to this  
13 chapter; and

14 (6) The individual meets all other eligibility requirements of this section.

15 (b) An individual who is enrolled in the buy-in program and who is unable to maintain  
16 employment for involuntary reasons, including temporary leave due to a health problem or  
17 involuntary termination, may continue to be eligible for Medicaid coverage under the buy-in  
18 program if the individual meets the following requirements:

19 (1) Within thirty days after the date on which the individual becomes unemployed, the  
20 individual, or an authorized representative of the individual, submits a written request to the  
21 office that the individual's Medicaid coverage be continued;

22 (2) The individual maintains a connection to the workforce during the individual's  
23 continued eligibility period by participating in at least one of the following activities:

24 (A) Enrollment in a state or federal vocational rehabilitation program;

25 (B) Enrollment or registration with the office of workforce development;



- 26 (C) Participation in a transition from school-to-work program;  
27 (D) Participation with an approved provider of employment services;  
28 (E) Provision of documentation from the individual's employer that the individual is on  
29 temporary involuntary leave;  
30 (F) The individual does not have income or countable resources in excess of the limits  
31 established by this section;  
32 (G) The individual is at least sixteen years of age and less than sixty-five years of age;  
33 (H) The individual pays any premiums or other cost sharing required by this section; and  
34 (I) The individual meets all other eligibility requirements of this section.  
35 (c) The Department or Bureau shall continue Medicaid coverage under the buy-in  
36 program for an individual described in subsection (b) of this section for up to six months from  
37 the date of the individual's involuntary loss of employment.  
38 (d) If an individual is ineligible for continued coverage under the buy-in program because  
39 he or she fails to meet the requirements of subsection (b) of this section or has already fulfilled  
40 twelve months of continuing eligibility, the individual shall be required to meet the eligibility  
41 requirements of another available Medicaid program in order to continue to be eligible for  
42 Medicaid benefits.

**§9-3-1205. Fees, premiums and periodic reviews.**

- 1 (a) The Department or Bureau shall charge a \$50 enrollment fee to all participants in the  
2 Medicaid buy-in program. Upon payment of the enrollment fee, the first month's premium  
3 payment is waived. Medicaid coverage begins on the first day of the month following payment  
4 of the enrollment fee.

5 (b) The Department or Bureau shall develop a sliding scale of premiums for individuals  
6 participating in the buy-in program. The sliding scale shall:

7 (1) Be based on the annual gross income of the individual; and

8 (2) Provide for a minimum premium of \$15 and a maximum monthly premium not to  
9 exceed three and one-half percent of the individual's gross monthly income.

10 (c) Subject to the minimum and maximum amounts described in this section, the  
11 Department or Bureau may annually adjust the scale of premiums charged for participation in  
12 the Medicaid buy-in program.

13 (d) The Department or Bureau shall biannually review the amount of the premium that an  
14 individual is required to pay pursuant to this section.

15 (e) The Department or Bureau may increase the premium required only after conducting  
16 a review.

17 (f) The Department or Bureau shall decrease the premium that an eligible buy-in  
18 participant is required to pay if:

19 (1) The individual notifies the office of a change in income or family size; and

20 (2) The sliding scale adopted by the Department applied to the individual's changed  
21 circumstances prescribes a premium for the individual that is lower than the premium the  
22 individual is paying.

23 (g) The Department or Bureau shall establish administrative procedures regarding  
24 premiums for the buy-in program, including:

25 (1) The effect of nonpayment of a premium; and

26 (2) The collection of premiums.

27 (h) The Department or Bureau shall establish criteria to base the biannual  
28 redetermination of disability required for an individual participating in the buy-in program on the  
29 individual's medical evidence, including evidence of physical or mental impairment.

30 (i) In conducting the biannual redetermination described in this section, the Department  
31 or Bureau may not determine that an individual participating in the buy-in program is no longer  
32 disabled solely on the individual's:

33 (1) Participation in employment;

34 (2) Earned income; or

35 (3) Income from self-employment.

**§9-3-1206. Benefits of the Medicaid buy-in program.**

1 (a) Except as otherwise provided in this article, an eligible buy-in participant shall receive  
2 the same benefits that he or she would otherwise receive as a recipient of Medicaid benefits,  
3 including home health care services.

4 (b) Except as otherwise provided in this article, an eligible buy-in participant is subject to  
5 the same obligations and requirements, including cost sharing, that he or she would otherwise  
6 be subject to as recipient of Medicaid benefits.

**§9-3-1207. Analytical criteria and reporting requirements.**

1 (a) The Secretary or Commissioner shall establish criteria to determine the effectiveness  
2 of the Medicaid buy-in program and continued Medicaid coverage through Section 1619 of the  
3 federal Social Security Act (42 U.S.C. §1382h). The criteria shall include an analysis of the  
4 following:

5 (1) The number of individuals with disabilities who are:

6 (A) Enrolled in the buy-in program; or

7 (B) Receiving Medicaid through Section 1619 of the federal Social Security Act (42  
8 U.S.C. §1382h);

9 (2) The amount of state revenues resulting from premiums paid by participants in the  
10 buy-in program; and

11 (3) The amount of state costs incurred as a result of implementing the buy-in program,  
12 including administrative costs and costs of providing services.

13 (b) In addition to the criteria required pursuant to this section, the secretary may  
14 establish criteria to determine the following:

15 (1) Comparative costs of Medicaid funded services for participants in the buy-in program  
16 and work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C.  
17 §1382h) before and after employment;

18 (2) The number of supplemental security income and social security disability insurance  
19 recipients in West Virginia who are no longer dependent on, or who have reduced dependence  
20 on, public assistance or health care entitlement services, other than Medicaid or the Children's  
21 Health Insurance Program, due to participation in the buy-in program or work incentives created  
22 through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h);

23 (3) The number of individuals with severe disabilities who are no longer dependent on,  
24 or who have reduced dependence on, public benefits or services, other than Medicaid or the  
25 Children's Health Insurance Program, due to income or support services received through  
26 participation in the buy-in program or work incentives created through Section 1619 of the  
27 federal Social Security Act (42 U.S.C. §1382h); and

28 (4) The change in the number of buy-in program participants or participants in work  
29 incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h)

30 who have health care needs and related services covered through employer based benefit  
31 programs.

32 (c) In evaluating the effectiveness of the state's work incentives initiatives for individuals  
33 with disabilities, the Secretary or Commissioner:

34 (1) Shall collaborate with other state agencies on data collection; and

35 (2) May consult with an independent contractor to collect data on the criteria required by  
36 this section.

37 (d) The Department, the Bureau, Secretary and Commissioner shall provide an annual  
38 report of its evaluation of the Medicaid buy-in program performed pursuant to the requirements  
39 of this section to the Joint Committee on Government and Finance no later than December 31  
40 of each year.

**§9-3-1208. Advisory council; rulemaking.**

1 (a) The Secretary or Commissioner shall establish a Medicaid buy-in program advisory  
2 council, consisting of representatives from the state Medicaid agency, the state rehabilitation  
3 agency, the Bureau of Child and Family Services, the West Virginia Statewide Independent  
4 Living Council, the West Virginia State Rehabilitation Council, the West Virginia Developmental  
5 Disabilities Council, the West Virginia Mental Health Planning Council and the Center for  
6 Excellence in Disabilities at West Virginia University.

7 (b) The Secretary or commissioner shall submit legislative rules for review and input to  
8 the advisory council prior to release for public comment and shall consider any  
9 recommendations of the advisory council before adopting final rules.

10           (c) The Secretary or commissioner shall propose legislative rules for legislative approval  
11 in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be  
12 needed to administer and maintain the Medicaid buy-in program.

**PART THIRTEEN. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**

**§9-3-1301. Medicaid Fraud Control Unit; powers and duties.**

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

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

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

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

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

13           (5) To employ and train personnel to achieve the purposes of this article and to employ  
14 legal counsel, investigators, Auditors and clerical support personnel and other personnel as are  
15 deemed necessary from time to time to accomplish the purposes herein.

**§9-3-1302. Investigations; procedure.**

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

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

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

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

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

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

**§9-3-1303. Agency lawyers assisting prosecutors.**

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

**§9-3-1304. Applications for medical assistance; false statements or representations;**  
**criminal penalties.**

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

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

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

10 (d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty  
11 of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than



12 one nor more than ten years, or shall be fined not to exceed \$10,000 or both fined and  
13 imprisoned.

**§9-3-1305. Bribery; false claims; conspiracy; criminal penalties.**

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

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

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

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

**§9-3-1306. Venue for criminal offenses.**

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

3 (1) The defendant is conducting business; or

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

**§9-3-1307. Civil remedies.**

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

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

11           (c) A civil action pursuant to this section may be prosecuted and maintained on behalf of  
12 the Department by the Attorney General and the Attorney General's assistants or a prosecuting  
13 attorney and the prosecuting attorney's assistants or by any attorney in contract with or  
14 employed by the Department to provide such representation.

**§9-3-1308. Liability of employees of the department.**

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

**§9-3-1309. Licensing of vehicles for use by the Medicaid fraud control unit.**

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

**§9-3-1310. Remedies and penalties not exclusive.**

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

**PART FOURTEEN. ASSIGNMENT OF RIGHTS.**

**§9-3-1401. Assignment of rights.**

1           (a) Submission of an application to the department for medical assistance is, as a matter  
2 of law, an assignment of the right of the applicant or his or her legal representative to recover  
3 from third parties past medical expenses paid for by the Medicaid program.

4           (b) At the time an application for medical assistance is made, the department shall  
5 include a statement along with the application that explains that the applicant has assigned all of  
6 his or her rights as provided in this section and the legal implications of making this assignment.

7           (c) This assignment of rights does not extend to Medicare benefits.

8           (d) This section does not prevent the recipient or his or her legal representative from  
9 maintaining an action for injuries or damages sustained by the recipient against any third-party  
10 and from including, as part of the compensatory damages sought to be recovered, the amounts  
11 of his or her past medical expenses.

12           (e) The department shall be legally subrogated to the rights of the recipient against the  
13 third party.

14           (f) The department shall have a priority right to be paid first out of any payments made to  
15 the recipient for past medical expenses before the recipient can recover any of his or her own  
16 costs for medical care.

17           (g) A recipient is considered to have authorized all third-parties to release to the

18 department information needed by the department to secure or enforce its rights as assignee  
19 pursuant \_\_\_\_\_ to \_\_\_\_\_ this \_\_\_\_\_ chapter.

**§9-3-1402. Notice requirement for claims and civil actions.**

1 (a) A recipient's legal representative shall provide notice to the department within 60  
2 days of asserting a claim against a third party. If the claim is asserted in a formal civil action, the  
3 recipient's legal representative shall notify the department within 60 days of service of the  
4 complaint and summons upon the third party by causing a copy of the summons and a copy of  
5 the complaint to be served on the department as though it were named a party defendant.

6 (b) If the recipient has no legal representative and the third party knows or reasonably  
7 should know that a recipient has no representation then the third party shall provide notice to  
8 the department within sixty days of receipt of a claim or within thirty days of receipt of  
9 information or documentation reflecting the recipient is receiving Medicaid benefits, whichever is  
10 later in time.

11 (c) In any civil action implicated by this section, the department may file a notice of  
12 appearance and shall thereafter have the right to file and receive pleadings, intervene and take  
13 other action permitted by law.

14 (d) The department shall provide the recipient and the third party, if the recipient is  
15 without legal representation, notice of the amount of the purported subrogation lien within thirty  
16 days of receipt of notice of the claim. The department shall provide related supplements in a  
17 timely manner, but no later than fifteen days after receipt of a request for same.

**§9-3-1403. Notice of settlement requirement.**

1 (a) A recipient or his or her representative shall notify the department of a settlement  
2 with a third-party and retain in escrow an amount equal to the amount of the subrogation lien

3 asserted by the department. The notification shall include the amount of the settlement being  
4 allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the  
5 receipt of any such notice, the department shall notify the recipient of its consent or rejection of  
6 the proposed allocation. If the department consents, the recipient or his or her legal  
7 representation shall issue payment out of the settlement proceeds in a manner directed by the  
8 secretary or his or her designee within 30 days of consent to the proposed allocation.

9 (b) If the total amount of the settlement is less than the department's subrogation lien,  
10 then the settling parties shall obtain the department's consent to the settlement before finalizing  
11 the settlement. The department shall advise the parties within 30 days and provide a detailed  
12 itemization of all past medical expenses paid by the department on behalf of the recipient for  
13 which the department seeks reimbursement out of the settlement proceeds.

14 (c) If the department rejects the proposed allocation, the department shall seek a judicial  
15 determination within 30 days and provide a detailed itemization of all past medical expenses  
16 paid by the department on behalf of the recipient for which the department seeks  
17 reimbursement out of the settlement proceeds.

18 (1) If judicial determination becomes necessary, the trial court is required to hold an  
19 evidentiary hearing. The recipient and the department shall be provided ample notice of the  
20 same and be given just opportunity to present the necessary evidence, including fact witness  
21 and expert witness testimony, to establish the amount to which the department is entitled to be  
22 reimbursed pursuant to this section.

23 (2) The department shall have the burden of proving by a preponderance of the  
24 evidence that the allocation agreed to by the parties was improper. For purposes of appeal, the  
25 trial court's decision should be set forth in a detailed order containing the requisite findings of

26 fact and conclusions of law to support its rulings.

27 (d) Any settlement by a recipient with one or more third-parties which would otherwise  
28 fully resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be  
29 exempt from the provisions of this section.

30 (e) Nothing herein prevents a recipient from seeking judicial intervention to resolve any  
31 dispute as to allocation prior to effectuating a settlement with a third party.

**§9-3-1404. Department failure to respond to notice of settlement.**

1 If the department fails to appropriately respond to a notification of settlement, the amount  
2 to which the department is entitled to be paid from the settlement shall be limited to the amount  
3 of the settlement the recipient has allocated toward past medical expenses.

**§9-3-1405. Penalty for failure to notify the department.**

1 A legal representative acting on behalf of a recipient or third party that fails to comply  
2 with the provisions of this section is liable to the department for all reimbursement amounts the  
3 department would otherwise have been entitled to collect pursuant to this section but for the  
4 failure to comply. Under no circumstances may a pro se recipient be penalized for failing to  
5 comply with the provisions of this section.

**§9-3-1406. Miscellaneous provisions relating to trial.**

1 (a) Where an action implicated by this section is tried by a jury, the jury may not be  
2 informed at any time as to the subrogation lien of the department.

3 (b) Where an action implicated by this section is tried by judge or jury, the trial judge  
4 shall, or in the instance of a jury trial, require that the jury, identify precisely the amount of the  
5 verdict awarded that represents past medical expenses.

6 (c) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction

7 of the judgment any damages awarded for past medical expenses be withheld and paid directly  
8 to the department, not to exceed the amount of past medical expenses paid by the department  
9 on \_\_\_\_\_ behalf \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_ recipient.

**§9-3-1407. Attorneys' fees.**

1 Irrespective of whether an action or claim is terminated by judgment or settlement  
2 without trial, from the amount required to be paid to the department there shall be deducted the  
3 reasonable costs and attorneys' fees attributable to the amount in accordance with, and in  
4 proportion to, the fee arrangement made between the recipient and his or her attorney of record  
5 so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees.  
6 If there is no recovery, the department shall under no circumstances be liable for any costs or  
7 attorneys' \_\_\_\_\_ fees \_\_\_\_\_ expended \_\_\_\_\_ in \_\_\_\_\_ the \_\_\_\_\_ matter.

**§9-3-1408. Class actions and multiple plaintiff actions not authorized.**

1 Nothing in this article shall authorize the department to institute a class action or multiple  
2 plaintiff action against any manufacturer, distributor or vendor of any product to recover medical  
3 care \_\_\_\_\_ expenditures \_\_\_\_\_ paid \_\_\_\_\_ for \_\_\_\_\_ by \_\_\_\_\_ the \_\_\_\_\_ Medicaid \_\_\_\_\_ program.

**§9-3-1409. Secretary's authority.**

1 The secretary or his or her designee may compromise, settle and execute a release of  
2 any claim relating to the department's right of subrogation, in whole or in part.

**§9-3-1410. Notice of action or claim.**

1 (a) If either the recipient or the department brings an action or claim against a third  
2 person, the recipient, his or her attorney or the Department shall, within thirty days of filing the  
3 action, give to the other written notice of the action or claim by certified mail. This notice shall  
4 contain the name of the third person and the court in which the action is brought.

5 (b) If the department institutes said action, the notice shall advise the recipient of their  
6 right to bring such action in their own name, in which they may include as a part of their claim  
7 the sums claimed by the department.

8 (c) Proof of the notice shall be filed in said action subject to the notice and intent  
9 procedure as outlined in this article. If an action or claim is brought by either the recipient or the  
10 Department, the other may, at any time before trial, become a party to the action, or shall  
11 consolidate his or her action or claim with the other if brought independently: *Provided, That*  
12 this consolidation or entry as a party does not delay the proceedings.

**§9-3-1411. Release of information.**

1 (a) All recipients of medical assistance under the Medicaid program are considered to  
2 have authorized all third parties, including, but not limited to, insurance companies and  
3 providers of medical care, to release to the department information needed by the department to  
4 secure or enforce its rights as assignee under this chapter.

5 (b) As a condition of doing business in the state, health insurers, including self-insured  
6 plans, group health plans as defined in §6074(a) of the Employee Retirement Income Security  
7 Act of 1974, service benefit plans, third-party administrators, managed care organizations,  
8 pharmacy benefit managers or other parties that are by statute, contract or agreement, legally  
9 responsible for payment of a claim for a health care item or service are required to comply with  
10 the following:

11 (1) Upon the request of the Bureau, or its contractor, provide information to determine  
12 the period that the service recipients, their spouse or dependents may be or may have been  
13 covered by the health insurer, including the nature of the coverage that is or was provided by  
14 the health insurer, the name, address, date of birth, Social Security number, group number,



15 identifying number of the plan, and effective and termination dates. The information shall be  
16 provided in a format suitable for electronic data matches, conducted under the direction of the  
17 Bureau no less than monthly or as prescribed by the Secretary or the Commissioner. The health  
18 insurer must respond within sixty working days after receipt of a written request for enrollment  
19 data from the department, the Bureau or its contractor;

20 (2) Accept the right of the Bureau of recovery and the assignment to the state of any  
21 right of an individual or other entity to payment from the party for an item or service for which  
22 payment has been made by the Bureau;

23 (3) Respond to any inquiry by the Bureau regarding a claim for payment for any health  
24 care item or service that is submitted not later than three years after the date of the provision of  
25 the health care item or service; and

26 (4) Accept a claim submitted by the Bureau regardless of the date of submission of the  
27 claim, the type or format of the claim form, lack of preauthorization or the failure to present  
28 proper documentation at the point-of-sale that is the basis of the claim. The claim shall be  
29 submitted by the Bureau within the three-year period beginning on the date on which the item or  
30 service was furnished and any action by the Bureau to enforce its right with respect to the claim  
31 shall be commenced within six years of the Bureau submission of the claim.

**§9-3-1412. Right of the department to recover medical assistance.**

1 (a) Upon the death of a person who was fifty-five years of age or older at the time the  
2 person received assistance consisting of nursing facility services, home and community-based  
3 services, and related hospital and prescription drug services, the department, in addition to any  
4 other available remedy, may file a claim or lien against the estate of the recipient for the total  
5 amount of medical assistance provided by Medicaid for nursing facility services, home and

6 community-based services, and related hospital and prescription drug services provided for the  
7 benefit of the recipient. Claims so filed shall be classified as, and included in, the class of debts  
8 due the state.

9 (b) The Department may recover pursuant to subsection (a) only after the death of the  
10 individual's surviving spouse, if any and only after such time as the individual has no surviving  
11 children under the age of twenty-one, or when the individual has no surviving children who meet  
12 the Social Security Act's definition of blindness or permanent and total disability.

13 (c) The state shall have the right to place a lien upon the property of individuals who are  
14 inpatients in a nursing facility, intermediate care facility for individuals with an intellectual  
15 disability or other medical institution who, after notice and an opportunity for a hearing, the state  
16 has deemed to be permanently institutionalized. This lien shall be in an amount equal to  
17 Medicaid expenditures for services provided by a nursing facility, intermediate care facility for  
18 individuals with an intellectual disability or other medical institution, and shall be rendered  
19 against the proceeds of the sale of property except for a minimal amount reserved for the  
20 individual's personal needs. Any such lien dissolves upon that individual's discharge from the  
21 medical institution. The secretary has authority to compromise or otherwise reduce the amount  
22 of this lien in cases where enforcement would create a hardship.

23 (d) No lien may be imposed on an individual's home when the home is the lawful  
24 residence of:

25 (1) The spouse of the individual;

26 (2) The individual's child who is under the age of twenty-one;

27 (3) The individual's child meets the Social Security Act's definition of blindness or  
28 permanent and total disability; or

29 (4) The individual's sibling has an equity interest in the home and was residing in the  
30 home for a period of at least one year immediately before the date of the individual's admission  
31 to a medical institution.

32 (e) The filing of a claim, pursuant to this section, neither reduces or diminishes the  
33 general claims of the department, except that the department may not receive double recovery  
34 for the same expenditure. The death of the recipient neither extinguishes or diminishes any  
35 right of the department to recover. Nothing in this section affects or prevents a proceeding to  
36 enforce a lien pursuant to this section or a proceeding to set aside a fraudulent conveyance.

37 (f) Any claim or lien imposed pursuant to this section is effective for the full amount of  
38 medical assistance provided by Medicaid for nursing facility services, home and community-  
39 based services, and related hospital and prescription drug services. The lien attaches and is  
40 perfected automatically as of the beginning date of medical assistance, the date when a  
41 recipient first receives treatment for which the department may be obligated to provide medical  
42 assistance. A claim may be waived by the department, if the department determines, pursuant  
43 to applicable federal law and rules and regulations, that the claim will cause substantial hardship  
44 to the surviving dependents of the deceased.

## **PART FIFTEEN. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.**

### **§9-3-1501. Expansion of health care coverage to children; creation of program; legislative directives.**

1 (a) It is the intent of the Legislature to expand access to health services for eligible children and to  
2 pay for this coverage by using private, state and federal funds to purchase those services or purchase  
3 insurance coverage for those services. To achieve this intention, the West Virginia Children's Health  
4 Insurance Program is created subject to federal funding. The program shall be administered by the  
5 Bureau for Medical Services within the Department of Human Services in accordance with the provisions

6 of this article and the applicable provisions of Title XXI of the Social Security Act of 1997. Participation in  
7 the program may be made available to families of eligible children, subject to eligibility criteria and  
8 processes to be established, which does not create an entitlement to coverage in any person. Nothing in  
9 this article requires any appropriation of State General Revenue Funds for the payment of any benefit  
10 provided in this article. In the event that this article conflicts with the requirements of federal law, federal  
11 law governs.

12 (b) In developing a Children's Health Insurance Program that operates with the highest degree of  
13 simplicity and governmental efficiency, the board shall avoid duplicating functions available in existing  
14 agencies and may enter into interagency agreements for the performance of specific tasks or duties at a  
15 specific or maximum contract price.

16 (c) In developing benefit plans, the board may consider any cost savings, administrative efficiency  
17 or other benefit to be gained by considering existing contracts for services with state health plans and  
18 negotiating modifications of those contracts to meet the needs of the program.

19 (d) In order to enroll as many eligible children as possible in the program created by this article  
20 and to expedite the effective date of their health insurance coverage, the board shall develop and  
21 implement a plan whereby applications for enrollment may be taken at any primary care center or other  
22 health care provider, as determined by the director, and transmitted electronically to the program's offices  
23 for eligibility screening and other necessary processing. The board may use any funds available to it in  
24 the development and implementation of the plan, including grant funds or other private or public moneys.

**§9-3-1502. Reporting requirements.**

1 (a) Annually on January 1, the director shall report to the Governor and the Legislature regarding  
2 the number of children enrolled in the program or programs; the average annual cost per child per  
3 program; the estimated number of remaining uninsured children; and the outreach activities for the  
4 previous year. The report shall include any information that can be obtained regarding the prior insurance  
5 and health status of the children enrolled in programs created pursuant to this article. The report shall  
6 include information regarding the cost, quality and effectiveness of the health care delivered to enrollees

7 of this program; satisfaction surveys; and health status improvement indicators. The agency, in  
8 conjunction with other state health and insurance agencies, shall develop indicators designed to measure  
9 the quality and effectiveness of children's health programs, which information shall be included in the  
10 annual report.

11 (b) On a quarterly basis, the director shall provide reports to the Legislative Oversight  
12 Commission on Health and Human Resources Accountability on the number of children served, including  
13 the number of newly enrolled children for the reporting period and current projections for future enrollees;  
14 outreach efforts and programs; statistical profiles of the families served and health status indicators of  
15 covered children; the average annual cost of coverage per child; the total cost of children served by  
16 provider type, service type and contract type; outcome measures for children served; reductions in  
17 uncompensated care; performance with respect to the financial plan; and any other information as the  
18 Legislative Oversight Commission on Health and Human Resources Accountability may require.

**§9-3-1503. Children's health policy board created; qualifications and removal of members;**  
**powers; duties; meetings; and compensation.**

1 (a) There is hereby created the West Virginia children's health insurance board, which shall  
2 consist of the director of the Public Employees Insurance Agency, the Secretary of Human Services, or  
3 his or her designee, and six citizen members appointed by the Governor, one of whom shall represent  
4 children's interests and one of whom shall be a certified public accountant, to assume the duties of the  
5 office immediately upon appointment, pending the advice and consent of the Senate. A member of the  
6 Senate, as appointed by the Senate president and a member of the House of Delegates, as appointed by  
7 the Speaker of the House of Delegates, shall serve as nonvoting members.

8 (b) Of the five citizen members first appointed, one shall serve one year, two shall serve two  
9 years and two shall serve three years. All subsequent appointments shall be for terms of three years,  
10 except that an appointment to fill a vacancy shall be for the unexpired term only: *Provided*, That the  
11 citizen member to be appointed upon the reenactment of this section during the regular session of the  
12 Legislature, two thousand eighteen, shall serve a term which corresponds to the term of the member

13 initially appointed to serve one year. Three of the citizen members shall have at least a bachelor's degree  
14 and experience in the administration or design of public or private employee or group benefit programs  
15 and the children's representative shall have experience that demonstrates knowledge in the health,  
16 educational and social needs of children.

17 (c) No more than three citizen members may be members of the same political party and no  
18 board member shall represent or have a pecuniary interest in an entity reasonably expected to compete  
19 for contracts under this article. Members of the board shall assume the duties of the office immediately  
20 upon appointment.

21 (d) The director of the agency shall serve as the chairperson of the board. No member may be  
22 removed from office by the Governor except for official misconduct, incompetence, neglect of duty,  
23 neglect of fiduciary duty or other specific responsibility imposed by this article or gross immorality.  
24 Vacancies in the board shall be filled in the same manner as the original appointment.

25 (e) The purpose of the board is to develop plans for health services or health insurance that are  
26 specific to the needs of children and to bring fiscal stability to this program through development of an  
27 annual financial plan designed in accordance with the provisions of this article.

28 (f) Notwithstanding any other provisions of this code to the contrary, any insurance benefits  
29 offered as a part of the programs designed by the board are exempt from the minimum benefits and  
30 coverage requirements of articles fifteen and sixteen, chapter thirty-three of this code.

31 (g) The board may consider adopting the maximum period of continuous eligibility permitted by  
32 applicable federal law, regardless of changes in a family's economic status, so long as other group  
33 insurance does not become available to a covered child.

34 (h) The board shall meet at the time and place as specified by the call of the chairperson or upon  
35 the written request to the chairperson by at least two members. Notice of each meeting shall be given in  
36 writing to each member by the chairperson at least three days in advance of the meeting. Four voting  
37 members shall constitute a quorum.

38 (i) For each day or portion of a day spent in the discharge of duties pursuant to this article, the

39 board shall pay each of its citizen members the same compensation and expense reimbursement as is  
40 paid to members of the Legislature for their interim duties.

**§9-3-1504. Director of the Children's Health Insurance Program; qualifications; powers and duties.**

1 (a) An agency director shall be appointed by the Governor, with the advice and consent of the  
2 Senate, and shall be responsible for the implementation, administration and management of the  
3 Children's Health Insurance Program created under this article. The director shall have at least a  
4 bachelor's degree and a minimum of three years' experience in health insurance administration. The  
5 Director shall report directly to the Commissioner of the Bureau for Medical Services as set forth in this  
6 article.

7 (b) The director shall employ any administrative, technical and clerical employees that are  
8 required for the proper administration of the program and for the work of the board. He or she shall  
9 present recommendations and alternatives for the design of the annual plans and other actions  
10 undertaken by the board in furtherance of this article.

11 (c) The director is responsible for the administration and management of the program and has the  
12 power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in this  
13 article may be construed as limiting the director's otherwise lawful authority to manage the program on a  
14 day-to-day basis.

15 (d) The director has exclusive authority to execute any contracts that are necessary to effectuate  
16 the provisions of this article: *Provided*, That the board shall approve all contracts for the provision of  
17 services or insurance coverage under the program. The provisions of article three, chapter five-a of this  
18 code, relating to the division of purchasing of the department of finance and administration, shall not  
19 apply to any contracts for any health insurance coverage, health services, or professional services  
20 authorized to be executed under the provisions of this article: *Provided, however*, That before entering  
21 into any contract the director shall invite competitive bids from all qualified entities and shall deal directly  
22 with those entities in presenting specifications and receiving quotations for bid purposes. The director  
23 shall award those contracts on a competitive basis taking into account the experience of the offering

24 agency, corporation, insurance company or service organization. Before any proposal to provide benefits  
25 or coverage under the plan is selected, the offering agency, corporation, insurance company or service  
26 organization shall provide assurances of utilization of essential community health service providers to the  
27 greatest extent practicable. In evaluating these factors, the director may employ the services of  
28 independent, professional consultants. The director shall then award the contracts on a competitive basis.

29 (e) The director shall issue requests for proposals on a regional or statewide basis from essential  
30 community health service providers for defined portions of services under the children's health insurance  
31 plan and shall, to the greatest extent practicable, either contract directly with, or require participating  
32 providers to contract with, essential community health service providers to provide the services under the  
33 plan.

34 (f) Subject to the advice and consent of the board, the director may require reinsurance of primary  
35 contracts, as contemplated in the provisions of sections fifteen and fifteen-a, article four, chapter thirty-  
36 three of this code.

**§9-3-1505. Financial plans requirements.**

1 (a) *Benefit plan design.* -- All financial plans required by this section shall establish: (1) The  
2 design of a benefit plan or plans; (2) the maximum levels of reimbursement to categories of health care  
3 providers; (3) any cost containment measures for implementation during the applicable fiscal year; and  
4 (4) the types and levels of cost to families of covered children. To the extent compatible with simplicity of  
5 administration, fiscal stability and other goals of the program established in this article, the financial plans  
6 may provide for different levels of costs based on ability to pay.

7 (b) *Actuary requirements.* — Any financial plan, or modifications, approved or proposed by the  
8 board shall be submitted to and reviewed by an actuary before final approval. The financial plan shall be  
9 submitted to the Governor and the Legislature with the actuary's written professional opinion that all  
10 estimated program and administrative costs of the agency under the plan, including incurred but  
11 unreported claims, will not exceed ninety percent of the funding available to the program for the fiscal  
12 year for which the plan is proposed and that the financial plan allows for no more than thirty days of



13 accounts payable to be carried over into the next fiscal year. This actuarial requirement is in addition to  
14 any requirement imposed by Title XXI of the Social Security Act of 1997.

15 (c) Annual plans. -- The board shall review implementation of its current financial plan in light of  
16 actual experience and shall prepare an annual financial plan for each fiscal year during which the board  
17 remains in existence. For each fiscal year, the Governor shall provide an estimate of requested  
18 appropriations and total funding available to the board no later than October 15, preceding the fiscal year.  
19 The board shall afford interested and affected persons an opportunity to offer comment on the plan at a  
20 public meeting of the board and, in developing any proposed plan under this article, shall solicit  
21 comments in writing from interested and affected persons. The board shall submit its final, approved  
22 financial plan, subject to the actuarial requirements of this article, to the Governor and to the Legislature  
23 no later than January 1, preceding the fiscal year. The financial plan for a fiscal year becomes effective  
24 and shall be implemented by the director on July 1, of that fiscal year. Annual plans developed pursuant  
25 to this subsection are subject to the provisions of subsections (a) and (b) of this section and the following  
26 guidelines:

27 (1) The aggregate actuarial value of the plan established as the benchmark plan should be  
28 considered as a targeted maximum or limitation in developing the benefits package;

29 (2) All estimated program and administrative costs, including incurred but not reported claims,  
30 shall not exceed ninety percent of the funding available to the program for the applicable fiscal year; and

31 (3) The state's interest in achieving health care services for all its children at less than two  
32 hundred percent of the federal poverty guideline shall take precedence over enhancing the benefits  
33 available under this program.

34 (d) The provisions of chapter twenty-nine-a of this code do not apply to the preparation, approval  
35 and implementation of the financial plans required by this section.

36 (e) The board shall meet no less than once each quarter to review implementation of its current  
37 financial plan and, using actuarial data, shall make those modifications to the plan that are necessary to  
38 ensure its fiscal stability and effectiveness of service. The board may not increase the types and levels of

39 cost to families of covered children during its quarterly review except in the event of a true emergency.  
40 The board may not expand the population of children to whom the program is made available except in its  
41 annual plan: *Provided*, That upon the effective date of this article, the board may expand coverage to any  
42 child eligible under the provisions of Title XXI of the Social Security Act of 1997: *Provided, however*, That  
43 the board shall implement cost-sharing provisions for children who may qualify for such expanded  
44 coverage and whose family income exceeds one hundred fifty percent of the federal poverty guideline.  
45 Such cost-sharing provisions may be imposed through any one or a combination of the following:  
46 enrollment fees, premiums, copayments and deductibles.

47 (f) The board may develop and implement programs that provide for family coverage and/or  
48 employer subsidies within the limits authorized by the provisions of Title XXI of the Social Security Act of  
49 1997 or the federal regulations promulgated thereunder: *Provided*, That any family health insurance  
50 coverage offered by or through the program shall be structured so that the board assumes no financial  
51 risk: *Provided, however*, That families covered by any insurance offered by or through the program shall  
52 be subject to cost-sharing provisions which may include, without limitation, enrollment fees, premiums,  
53 copayments and/or deductibles, as determined by the board, which shall be based on ability to pay:  
54 *Provided further*, That enrollment fees or premiums, if imposed, may be paid, in whole or in part, through  
55 employer subsidies or other private funds or public funds, subject to availability, all as allowed by  
56 applicable state and federal law.

57 (g) For any fiscal year in which legislative appropriations differ from the Governor's estimate of  
58 general and special revenues available to the agency, the board shall, within thirty days after passage of  
59 the budget bill, make any modifications to the plan necessary to ensure that the total financial  
60 requirements of the agency for the current fiscal year are met.

**§9-3-1506. Coverage for patient cost of clinical trials.**

1 (a) The provisions of this section apply to the health plans regulated by this part.

2 (b) This section does not apply to a policy, plan or contract paid for under Title XVIII of the Social  
3 Security Act.

4           (c) A policy, plan or contract subject to this section shall provide coverage for patient cost to a  
5 member in a clinical trial, as a result of:

6           (1) Treatment provided for a life-threatening condition; or  
7           (2) Prevention of, early detection of or treatment studies on cancer.

8           (d) The coverage under subsection (c) of this section is required if:

9           (1)(A) The treatment is being provided or the studies are being conducted in a Phase II, Phase III  
10 or Phase IV clinical trial for cancer and has therapeutic intent; or

11           (B) The treatment is being provided in a Phase II, Phase III or Phase IV clinical trial for any other  
12 life-threatening condition and has therapeutic intent;

13           (2) The treatment is being provided in a clinical trial approved by:

14           (A) One of the national institutes of health;  
15           (B) An NIH cooperative group or an NIH center;  
16           (C) The FDA in the form of an investigational new drug application or investigational device  
17 exemption;

18           (D) The federal department of Veterans Affairs; or

19           (E) An institutional review board of an institution in the state which has a multiple project  
20 assurance contract approved by the office of protection from research risks of the national institutes of  
21 health;

22           (3) The facility and personnel providing the treatment are capable of doing so by virtue of their  
23 experience, training and volume of patients treated to maintain expertise;

24           (4) There is no clearly superior, noninvestigational treatment alternative;

25           (5) The available clinical or preclinical data provide a reasonable expectation that the treatment  
26 will be more effective than the noninvestigational treatment alternative;

27           (6) The treatment is provided in this state: *Provided*, That, if the treatment is provided outside of  
28 this state, the treatment must be approved by the payor designated in subsection (a) of this section;

29           (7) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles and is

30 otherwise subject to all restrictions and obligations of the health plan; and

31 (8) Reimbursement for treatment by an out of network or noncontracting provider shall be  
32 reimbursed at a rate which is no greater than that provided by an in network or contracting provider.  
33 Coverage shall not be required if the out of network or noncontracting provider will not accept this level of  
34 reimbursement.

35 (e) Payment for patient costs for a clinical trial is not required by the provisions of this section, if:

36 (1) The purpose of the clinical trial is designed to extend the patent of any existing drug, to gain  
37 approval or coverage of a metabolite of an existing drug, or to gain approval or coverage relating to  
38 additional clinical indications for an existing drug; or

39 (2) The purpose of the clinical trial is designed to keep a generic version of a drug from becoming  
40 available on the market; or

41 (3) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or  
42 repackaged version of an existing drug.

43 (f) Any provider billing a third party payor for services or products provided to a patient in a clinical  
44 trial shall provide written notice to the payor that specifically identifies the services as part of a clinical  
45 trial.

46 (g) Notwithstanding any provision in this section to the contrary, coverage is not required for  
47 Phase I of any clinical trial.

**§9-3-1507. Modified benefit plan for children of families of low income between two hundred and three hundred percent of the poverty level.**

1 The Legislature finds:

2 (1) That there exists a number of families of low to moderate income without access to affordable  
3 health insurance coverage, whose children are denied plan participation because their family income  
4 exceeds two hundred percent of the federal poverty level;

5 (2) That this exclusion imposes a heavy burden on many families by forcing them to elect whether  
6 to spend money on their children's health care or for their food, clothing and educational needs;

7 (3) That a plan should be developed and considered whereby children in families with an income  
8 between two hundred and three hundred percent of the federal poverty level would contribute  
9 approximately twenty to twenty-five percent of the actual cost of coverage resulting in no additional cost  
10 to state government; and

11 (4) (A) That, while the primary goal of any plan will be the improvement of health care for these  
12 children, a successful plan for extending this coverage will benefit the state by improving the economy by  
13 allowing parents of these children to spend more for goods and services and by lowering future medical  
14 expenditures, uncompensated care and the other long-term adverse economic effects related to having a  
15 segment of the adult population which has been deprived of adequate medical care during childhood.

16 (B) The board is directed to conduct a study of all available means to develop a viable, modified  
17 plan to enroll the children of those families having a level of income between two hundred and three  
18 hundred percent of the federal poverty level and to consider that such a plan should charge an affordable  
19 premium and may be phased in over a two-year period.

20 (C) The board is further directed to study total program costs related to the implementation of a  
21 viable modified plan to expand coverage with the design requiring no additional state dollars and to study  
22 the long-term effect on the state budget.

23 (D) The board is directed to report its findings and recommendations to the Joint Committee on  
24 Government and Finance at its monthly meeting of August, 2004.

**§9-3-1508. Modified benefit plan implementation.**

1 (a) Upon approval by the Centers for Medicare and Medicaid Services, the board shall implement  
2 a benefit plan for uninsured children of families with income between two hundred and three hundred  
3 percent of the federal poverty level.

4 (b) The benefit plans offered pursuant to this section shall include services determined to be  
5 appropriate for children, but may vary from those currently offered by the board.

6 (c) The board shall structure the benefit plans for this expansion to include premiums,  
7 coinsurance or copays and deductibles. The board shall develop the cost sharing features in such a

8 manner as to keep the program fiscally stable without creating a barrier to enrollment. Such features may  
9 include different cost-sharing features within this group based upon the percentage of the federal poverty  
10 level.

11 (d) Provider reimbursement schedules shall be no lower than the reimbursement provided for the  
12 same services under the plans offered in article sixteen, chapter five of this code.

13 (e) All provisions of this article are applicable to this expansion unless expressly addressed in this  
14 section.

15 (f) Nothing in this section may be construed to require any appropriation of State General  
16 Revenue Funds for the payment of any benefit provided pursuant to this section, except for the state  
17 appropriation used to match the federal financial participation funds. In the event that federal funds are no  
18 longer authorized for participation by individuals eligible at income levels above two hundred percent, the  
19 board shall take immediate steps to terminate the expansion provided for in this section and notify all  
20 enrollees of such termination. In the event federal appropriations decrease for the programs created  
21 pursuant to Title XXI of the Social Security Act of 1997, the board is directed to make those decreases in  
22 this expansion program before making changes to the programs created for those children whose family  
23 income is less than two hundred percent of the federal poverty level.

24 (g) The board is directed to report no less than quarterly to the Legislative Oversight Commission  
25 on Health and Human Resources Accountability on the development, implementation and progress of the  
26 expansion authorized in this section.

**§9-3-1509. Coverage for treatment of autism spectrum disorders.**

1 (a) To the extent that the diagnosis, evaluation and treatment of autism spectrum disorders are  
2 not already covered by this agency, on or after January 1, 2012, a policy, plan or contract subject to this  
3 section shall provide coverage for such diagnosis, evaluation and treatment, for individuals ages eighteen  
4 months to eighteen years. To be eligible for coverage and benefits under this section, the individual must  
5 be diagnosed with autism spectrum disorder at age eight or younger. Such policy shall provide coverage  
6 for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed

7 psychologist and in accordance with a treatment plan developed from a comprehensive evaluation by a  
8 certified behavior analyst for an individual diagnosed with autism spectrum disorder.

9 (b) The coverage shall include, but not be limited to, applied behavior analysis. Applied behavior  
10 analysis shall be provided or supervised by a certified behavior analyst. The annual maximum benefit for  
11 applied behavior analysis required by this subsection shall be in an amount not to exceed \$30,000 per  
12 individual, for three consecutive years from the date treatment commences. At the conclusion of the third  
13 year, coverage for applied behavior analysis required by this subsection shall be in an amount not to  
14 exceed \$2,000 per month, until the individual reaches eighteen years of age, as long as the treatment is  
15 medically necessary and in accordance with a treatment plan developed by a certified behavior analyst  
16 pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be  
17 construed as limiting, replacing or affecting any obligation to provide services to an individual under the  
18 Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time, or other  
19 publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for  
20 services provided by public school personnel.

21 (c) The certified behavior analyst shall file progress reports with the agency semiannually. In  
22 order for treatment to continue, the agency must receive objective evidence or a clinically supportable  
23 statement of expectation that:

24 (1) The individual's condition is improving in response to treatment; and

25 (2) A maximum improvement is yet to be attained; and

26 (3) There is an expectation that the anticipated improvement is attainable in a reasonable and  
27 generally predictable period of time.

28 (d) On or before January 1 each year, the agency shall file an annual report with the Joint  
29 Committee on Government and Finance describing its implementation of the coverage provided pursuant  
30 to this section. The report shall include, but shall not be limited to, the number of individuals in the plan  
31 utilizing the coverage required by this section, the fiscal and administrative impact of the implementation,  
32 and any recommendations the agency may have as to changes in law or policy related to the coverage

33 provided under this section. In addition, the agency shall provide such other information as may be  
34 requested by the Joint Committee on Government and Finance as it may from time to time request.

35 (e) For purposes of this section, the term:

36 (1) "Applied Behavior Analysis" means the design, implementation, and evaluation of  
37 environmental modifications using behavioral stimuli and consequences, to produce socially significant  
38 improvement in human behavior, including the use of direct observation, measurement, and functional  
39 analysis of the relationship between environment and behavior.

40 (2) "Autism spectrum disorder" means any pervasive developmental disorder, including autistic  
41 disorder, Asperger's Syndrome, Rett syndrome, childhood disintegrative disorder, or Pervasive  
42 Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of  
43 Mental Disorders of the American Psychiatric Association.

44 (3) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst  
45 Certification Board or certified by a similar nationally recognized organization.

46 (4) "Objective evidence" means standardized patient assessment instruments, outcome  
47 measurements tools or measurable assessments of functional outcome. Use of objective measures at the  
48 beginning of treatment, during and after treatment is recommended to quantify progress and support  
49 justifications for continued treatment. The tools are not required, but their use will enhance the justification  
50 for continued treatment.

51 (f) To the extent that the application of this section for autism spectrum disorder causes an  
52 increase of at least one percent of actual total costs of coverage for the plan year the agency may apply  
53 additional cost containment measures.

54 (g) To the extent that the provisions of this section require benefits that exceed the essential  
55 health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L.  
56 No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall  
57 not be required of the West Virginia Children's Health Insurance Program.

**§9-3-1510. West Virginia children's health fund.**



1 (a) There is hereby created in the state Treasury a special revolving fund to be known as the  
2 "West Virginia children's health fund", which shall be an interest-bearing account. All moneys deposited or  
3 accrued in this fund shall be used exclusively:

4 (1) To provide the state's share of the children's health fund;

5 (2) To cover administrative costs associated with the children's health program; and

6 (3) To cover outreach activities.

7 (b) Moneys from the following sources may be placed into the fund:

8 (1) All public funds appropriated by the Legislature or transferred by any public agency as  
9 contemplated or permitted by applicable federal program laws;

10 (2) All private moneys contributed by corporations, individuals or other entities to the fund as  
11 contemplated and permitted by applicable federal and state laws;

12 (3) Any accrued interest; and

13 (4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3)  
14 of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

15 (c) Any balance remaining in the children's health fund at the end of any state fiscal year shall not  
16 revert to the state Treasury but shall remain in this fund and shall be used only in a manner consistent  
17 with this article.

18 (d) Notwithstanding the provisions of section two, article two, chapter twelve of this code, funds of  
19 the West Virginia children's health fund may not be redesignated for any purpose other than those set  
20 forth in this subsection. All state and private moneys received by the program shall be deposited in the  
21 West Virginia consolidated investment pool with the West Virginia Investment Management Board, with  
22 the interest income a proper credit to all such funds.

**§9-3-1511. Termination and reauthorization.**

1 (a) The program established in this article abrogates and shall be of no further force and effect,  
2 without further action by the Legislature, upon the occurrence of any of the following:

3 (1) The date of entry of a final judgment or order by a court of competent jurisdiction which

4 disallows the program;

5 (2) The effective date of any reduction in annual federal funding levels below the amounts  
6 allocated and/or projected in Title XXI of the Social Security Act of 1997;

7 (3) The effective date of any federal rule or regulation negating the purposes or effect of this  
8 article; or

9 (4) For purposes of subdivisions (2) and (3) of this subsection, if a later effective date for such  
10 reduction or negation is specified, such date will control.

11 (b) Upon termination of the board and notwithstanding any provisions to the contrary, the director  
12 may change the levels of costs to covered families only in accordance with rules proposed to the  
13 Legislature pursuant to the provisions of chapter twenty-nine-a of this code.

**§9-3-1512. Public-private partnerships.**

1 The board and the director are authorized to work in conjunction with a nonprofit corporation  
2 organized pursuant to the corporate laws of the state, structured to permit qualification pursuant to  
3 section 501(c) of the Internal Revenue Code for purposes of assisting the children's health program and  
4 funded from sources other than the state or federal government. Members of the board may sit on the  
5 board of directors of the private nonprofit corporation.

**§9-3-1513. Assignment of rights; right of subrogation by children's health insurance agency to the**  
**rights of recipients of medical assistance; rules as to effect of subrogation.**

1 (a) Submission of an application to the children's health insurance agency for medical assistance  
2 is, as a matter of law, an assignment of the right of the applicant or legal representative thereof, to  
3 recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the  
4 extent of the cost of children's health insurance agency services paid for by the children's health  
5 insurance agency program. This assignment of rights does not extend to Medicare benefits. At the time  
6 the application is made, the children's health insurance agency shall include a statement along with the  
7 application that explains that the applicant has assigned his or her rights and the legal implications of  
8 making an assignment as provided in this section.

9           (b) If medical assistance is paid or will be paid to a provider of medical care on behalf of a  
10 recipient of medical assistance because of any sickness, injury, disease or disability, and another person  
11 is legally liable for the expense, either pursuant to contract, negligence or otherwise, the children's health  
12 insurance agency shall have a right to recover full reimbursement from any award or settlement for the  
13 medical assistance from the other person, or from the recipient of the assistance if he or she has been  
14 reimbursed by the other person. The children's health insurance agency shall be legally assigned the  
15 rights of the recipient against the person so liable, but only to the extent of the reasonable value of the  
16 medical assistance paid and attributable to the sickness, injury, disease or disability for which the  
17 recipient has received damages. When an action or claim is brought by a medical assistance recipient or  
18 by someone on his or her behalf against a third party who may be liable for the injury, disease, disability  
19 or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the  
20 claim of the children's health insurance agency for reimbursement of an amount sufficient to reimburse  
21 the children's health insurance agency the full amount of benefits paid on behalf of the recipient under the  
22 medical assistance program for the injury, disease, disability or death of the medical assistance recipient.  
23 The claim of the children's health insurance agency assigned by the recipient may not exceed the amount  
24 of medical expenses for the injury, disease, disability or death of the recipient paid by the children's health  
25 insurance agency on behalf of the recipient. The right of subrogation created in this section includes all  
26 portions of the cause of action, by either settlement, compromise, judgment or award, notwithstanding  
27 any settlement allocation or apportionment that purports to dispose of portions of the cause of action not  
28 subject to the subrogation. Any settlement, compromise, judgment or award that excludes or limits the  
29 cost of medical services or care does not preclude the children's health insurance agency from enforcing  
30 its rights under this section. The children's health insurance agency may compromise, settle and execute  
31 a release of any claim, in whole or in part.

32           (c) Nothing in this section shall be construed so as to prevent the recipient of medical assistance  
33 from maintaining an action for injuries received by them against any other person and from including  
34 therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his or

35 her medical expenses, even though the person received medical assistance in the payment of the  
36 medical expenses, in whole or in part.

37 (d) If the action be tried by a jury, the jury is not to be informed as to the interest of the children's  
38 health insurance agency, if any, and the fact is not to be disclosed to the jury at any time. The trial judge  
39 shall, upon the entry of judgment on the verdict, direct that an amount equal to the amount of medical  
40 assistance given be withheld and paid over to the children's health insurance agency. Irrespective of  
41 whether the case be terminated by judgment or by settlement without trial, from the amount required to be  
42 paid to the children's health insurance agency there shall be deducted the attorney fees attributable to the  
43 amount in accordance with and in proportion to the fee arrangement made between the recipient and his  
44 or her attorney of record so that the children's health insurance agency shall bear the pro rata portion of  
45 the attorney fees. Nothing in this section shall preclude any person who has received medical assistance  
46 from settling any cause of action which he or she may have against another person and delivering to the  
47 children's health insurance agency, from the proceeds of the settlement, the sums received by him or her  
48 from the children's health insurance agency or paid by the children's health insurance agency for his or  
49 her medical assistance. If the other person is aware of or has been informed of the interest of the  
50 children's health insurance agency in the matter, it shall be the duty of the person to whose benefit the  
51 release inures to withhold so much of the settlement as may be necessary to reimburse the children's  
52 health insurance agency to the extent of its interest in the settlement. No judgment, award of or  
53 settlement in any action or claim by a medical assistance recipient to recover damages for injuries,  
54 disease or disability, in which the children's health insurance agency has interest, shall be satisfied  
55 without first giving the children's health insurance agency notice and reasonable opportunity to establish  
56 its interest. The children's health insurance agency shall have sixty days from receipt of written notice to  
57 advise the recipient or his or her representative in writing of the children's health insurance agency's  
58 desire to establish its interest through the assignment. If no written intent is received within the sixty-day  
59 period, then the recipient may proceed and in the event of full recovery forward to the children's health  
60 insurance agency the portion of the recovery proceeds less the children's health insurance agency's

61 share of attorney's fees and costs expended in the matter. In the event of less than full recovery the  
62 recipient and the children's health insurance agency shall agree as to the amount to be paid to the  
63 children's health insurance agency for its claim. If there is no recovery, the children's health insurance  
64 agency shall under no circumstances be liable for any costs or attorney's fees expended in the matter. If,  
65 after being notified in writing of a subrogation claim and possible liability of the recipient, guardian,  
66 attorney or personal representative for failure to subrogate the children's health insurance agency, a  
67 recipient, his or her guardian, attorney or personal representative disposes of the funds representing the  
68 judgment, settlement or award, without the written approval of the children's health insurance agency, that  
69 person shall be liable to the children's health insurance agency for any amount that, as a result of the  
70 disposition of the funds, is not recoverable by the children's health insurance agency. In the event that a  
71 controversy arises concerning the subrogation claims by the children's health insurance agency, an  
72 attorney shall interplead, pursuant to rule twenty-two of the rules of civil procedure, the portion of the  
73 recipient's settlement that will satisfy the children's health insurance agency exclusive of attorney's fees  
74 and costs regardless of any contractual arrangement between the client and the attorney.

75 (e) Nothing contained herein shall authorize the children's health insurance agency to institute a  
76 class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to  
77 recover children's health insurance agency care expenditures paid for by the children's health insurance  
78 agency \_\_\_\_\_ program.

**PART SIXTEEN. MISCELLANEOUS PROVISIONS RELATIVE TO HUMAN SERVICES.**

**§9-3-1601. Information and referral services.**

1 (a) Each local office shall compile, maintain and post a current list of donated food banks  
2 and other emergency food providers in the area served by the local SNAP office and refer  
3 individuals who need food to local programs that may be able to provide assistance.

4 (b) The department shall use its existing statewide toll free telephone number to provide  
5 emergency food information and to refer needy individuals to local programs that may be able to  
6 provide assistance. The department shall publish the telephone number for referrals in the  
7 emergency telephone numbers section of local telephone books. The department shall display  
8 this telephone number in all its offices that issue food stamps.

**§9-3-1602. Exemption of grants from certain taxes and claims.**

1 Grants of all classes of public assistance received under the provisions of this article shall be  
2 exempted from the collection of taxes except sales taxes, from levy of execution, garnishment,  
3 suggestion, and any other legal process.

**§9-3-1603. Release of liens and reassignment of insurance policies.**

1 All liens and claims upon real and personal property and all assignments of insurance policies,  
2 imposed, existing or made under the provisions of chapter one, acts of the Legislature, first extraordinary  
3 session, one thousand nine hundred thirty-six, chapter one hundred five, acts of the Legislature, regular  
4 session, one thousand nine hundred thirty-nine, chapter seventy-four, acts of the Legislature, regular  
5 session, one thousand nine hundred forty-one, chapter one hundred twenty-four, acts of the Legislature,  
6 regular session, one thousand nine hundred forty-seven, and chapter one hundred forty-three, acts of the  
7 Legislature, regular session, one thousand nine hundred fifty-three, which have not been released or  
8 reassigned, shall be released or reassigned by the secretary by the preparation, execution and  
9 acknowledgment of a release of each lien or claim and by the delivery of such release to the person or  
10 persons entitled thereto for recordation and by a reassignment of each such insurance policy to the  
11 person or persons entitled thereto.

**§9-3-1604. Recipient of assistance not a pauper.**

1 A recipient of any class of assistance shall not be deemed a pauper by reason of the receipt of  
2 such assistance.

**§9-3-1605. Recipients of cash grants.**

1           (a) Within such limitations as may be imposed by applicable federal laws, rules and regulations,  
2 the department shall make available for public inspection by the thirtieth day of each month a separate  
3 alphabetical list of the names and addresses of all persons receiving any class of public assistance in the  
4 form of cash grants during the preceding month, together with the amounts of such cash grants. This  
5 information shall be delivered to the clerk of each county court in the state who shall immediately file the  
6 same in his or her office with respect to persons receiving such cash grants as residents of that county.  
7 Such information shall be retained in the files of said clerks of the county courts for a period of two years  
8 from the date of receipt thereof. All information other than names, addresses and amounts of such cash  
9 grants shall be considered as confidential.

10           (b) It shall be unlawful, for commercial or political purposes of any nature, for any person or  
11 persons, body, association, firm, corporation or other agency to solicit, disclose, receive, make use of, or  
12 to authorize, knowingly permit, participate in, or acquiesce in the use of, any lists of names of, or any  
13 information concerning, persons applying for or receiving any class of assistance, directly or indirectly  
14 derived from the records, papers, files, or communications of the department or acquired in the course of  
15 performance of official duties. The violation of this provision is a misdemeanor, punishable upon  
16 conviction, by a fine of not more than \$1,000 or imprisonment of not more than six months, or both.

17           (c) For the protection of applicants and recipients of public assistance, the department shall be  
18 required to establish reasonable rules and regulations governing the custody, use and preservation of the  
19 records, papers, files and communications of the department.

**§9-3-1606. Visitation by county employees.**

1           Health officers, physicians, and nurses employed by the county shall, at the request of the  
2 Commissioner of the Bureau for Children and Families, make home visits to persons applying for, or  
3 receiving, benefits pursuant to this article.

**§9-3-1607. Liability of relatives for support.**

1           (a) The relatives of an indigent person, who are of sufficient ability, shall be liable to support such  
2 person in the manner required by the Department of Human Services and to pay the expenses of burial

3 when he or she dies, in the following order:

4 (1) The children.

5 (2) The father.

6 (3) The brothers and sisters.

7 (4) The mother.

8 (b) The Commissioner of the Bureau for Children and Families may proceed by motion in the  
9 circuit court of the county in which the indigent person may be, against one or more of the relatives liable.

10 (c) If a relative so liable does not reside in this state and has no estate or debts due him or her  
11 within the state by means of which the liability can be enforced against him or her, the other relatives shall  
12 be liable as provided by this section, but a relative shall not be compelled to receive the indigent person in  
13 his or her own home.

14 (d) If it appears that a relative liable for the support of an indigent person is unable wholly to  
15 support him or her, but is able to contribute toward his or her support, the court may assess upon the  
16 relative the proportion which he or she shall be required to contribute either to the past expense incurred  
17 by the department or to the future support. The court may assess the residue upon the relatives in the  
18 order of their liability.

19 (e) Payment with interest and costs may be enforced by execution.

**§9-3-1608. Funeral expenses for indigent persons; filing of affidavit to certify indigency; penalties**  
**for false swearing; payment by department.**

1 (a) The Department of Human Services shall pay for reasonable funeral service expenses for  
2 indigent persons, in an amount not to exceed \$1,250.

3 (b) For purposes of this section, the indigency of a deceased person is determined by the filing of  
4 an affidavit with the department, in a form provided by and determined in accordance with the income  
5 guidelines as set forth by the department:

6 (1) Signed by the heir or heirs-at-law which states that the estate of the deceased person is  
7 pecuniarily unable to pay the costs associated with a funeral; or



8           (2) Signed by the county coroner or the county health officer, the attending physician or other  
9 person signing the death certificate or the state medical examiner stating that the deceased person has  
10 no heirs or that heirs have not been located after a reasonable search and that the deceased person had  
11 no estate or the estate is pecuniarily unable to pay the costs associated with a funeral.

12           (c) Payment shall be made by the department to the person or persons who have furnished the  
13 services and supplies for the indigent person's funeral expenses or to the persons who have advanced  
14 payment for same, as the department may determine, pursuant to appropriations for expenditures made  
15 by the Legislature for such purpose.

16           (d) For purposes of this section, "reasonable funeral service expenses" means expenses for  
17 services provided by a funeral director for the disposition of human remains.

18           (e) Any person who knowingly swears falsely in an affidavit required by this section shall be guilty  
19 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in the  
20 county or regional jail for a period of not more than six months, or both.

## **PART SEVENTEEN. MISCELLANEOUS PROVISIONS RELATED TO MEDICAID.**

### **§9-3-1701. Agreements between the Secretary and three higher education institutions.**

1           Any contract, agreement or memorandum of understanding between the secretary and West  
2 Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for services is  
3 exempt from the provisions of article three, chapter five-a of this code.

### **§9-3-1702. Medicaid-certified nursing homes; screening of applicants and residents for mental illness; reimbursement of hospitals.**

1           (a) The Department or the Bureau shall cause individuals applying for admission to or  
2 residing in a Medicaid-certified nursing home to be screened as required by the Omnibus  
3 Budget Reconciliation Act of 1987.

4 (b) Hospitals shall receive administrative day payment at a rate set by the Medicaid  
5 agency to reimburse the hospitals for days required for the screening of Medicaid eligible  
6 patients required by subsection (a) of this section.

7 (c) The Secretary may promulgate rules pursuant to the provision of article three,  
8 chapter twenty-nine-a of this code to implement this section.

**§9-3-1703. Nonprofit agency or facility, in receipt of Medicaid moneys; annual  
accounting.**

1 Any nonprofit health care agency or facility which receives Medicaid moneys shall  
2 provide an annual accounting of that facility's or provider's receipts and disbursements,  
3 including the total salaries of all employees and administrators. One copy shall be submitted to  
4 the Joint Committee on Government and Finance and one copy shall be submitted to the Health  
5 Care Authority on or before the January 15 for the preceding year.

**§9-3-1704. Advisory council.**

1 (a) The Medicaid Advisory Council is continued and has those advisory powers and  
2 duties as are granted and imposed by this section and elsewhere by law.

3 (b) The advisory council shall consist of not less than nine members, nor more than  
4 fifteen members, all but four of whom shall be appointed by the Commissioner of the Bureau of  
5 Medical Services and serve until replaced or reappointed on a rotating basis.

6 (c)(1) The Commissioner of the Bureau of Public Health and the Commissioner of  
7 Bureau for Medical Services are members ex officio.

8 (2) The co-chairs of the Legislative Oversight Commission on Health and Human  
9 Resources Accountability, or their designees, are nonvoting ex officio members.

10 (3) The remaining members comprising the council consist of:

11 (A) One member of recognized ability in the field of medicine and surgery with respect to  
12 whose appointment the state Medical Association shall be afforded the opportunity of making  
13 nomination of three qualified persons;

14 (B) One member of recognized ability in the field of dentistry with respect to whose  
15 appointment the state Dental Association shall be afforded the opportunity of nominating three  
16 qualified persons;

17 (C) One member chosen from a list of three persons nominated by the West Virginia  
18 Primary Care Association;

19 (D) One member chosen from a list of three persons nominated by the Behavioral Health  
20 Providers Association of West Virginia; and

21 (E) The remaining members chosen from persons of recognized ability in the fields of  
22 hospital administration, nursing and allied professions and from consumers groups, including  
23 Medicaid recipients, members of the West Virginia Directors of Senior and Community Services,  
24 labor unions, cooperatives and consumer- sponsored prepaid group practices plans.

25 (d) The council shall meet on call of the state Medicaid Agency.

26 (e) Each member of the advisory council shall receive reimbursement for reasonable  
27 and necessary travel expenses for each day actually served in attendance at meetings of the  
28 council in accordance with the state's travel regulations. Requisitions for the expenses shall be  
29 accompanied by an itemized statement, which shall be filed with the auditor and preserved as a  
30 public record.

31 (f) The advisory council shall assist the state Medicaid Agency in the establishment of  
32 rules, standards and bylaws necessary to carry out the provisions of this section and shall serve  
33 as consultants to the state Medicaid Agency in carrying out the provisions of this section.

1 **§9-3-1705. Secretary to develop Medicaid monitoring and case management.**

2 (a) The Secretary shall:

3 (1) Develop a managed care system to monitor the services provided by the Medicaid  
4 program to individual clients;

5 (2) Develop an independent referral service, including the review of individual cases for  
6 abuses of the program; and

7 (3) Develop a schedule for implementation of the managed care and independent  
8 referral system. The managed care system shall focus on, but not be limited to, the behavioral  
9 health and mental health services.

10 (b) In addition thereto, and in accordance with applicable federal Medicaid laws, the  
11 Secretary shall prepare recommendations, to be submitted to the Joint Committee on  
12 Government and Finance.

13 (c) In developing recommendations the Secretary shall consider as options the following:

14 (1) Review of Medicaid services which are optional under federal Medicaid law and  
15 identification of services to be retained, reduced or eliminated;

16 (2) The elimination, reduction or phase-out of:

17 (A) Services which are not generally available to West Virginia citizens not covered  
18 under the state's Medicaid program; or

19 (B) Services which are not generally covered under group policies of insurance made  
20 available to employees of employers within the state;

21 (3) The elimination or reduction of services, or reduction of provider reimbursement  
22 rates, for identified services of marginal utility;

23 (4) Higher reimbursement rates for primary and preventive care;

24 (5) Changes in fee structure, which may include a system of prospective payments, and  
25 may include establishment of global fees for identified services or diagnoses including maternity  
26 care;

- 27 (6) Utilization caps for certain health care procedures;
- 28 (7) Restriction of coverage for cosmetic procedures;
- 29 (8) Identification of excessive use of certain health care procedures by individuals and a  
30 policy to restrict excessive use;
- 31 (9) Identification of services which reduce the need for more costly options for necessary  
32 care and retention or expansion of those programs;
- 33 (10) Identification of services for which preauthorization is a requirement for Medicaid  
34 reimbursement;
- 35 (11) Recommendations relating to the development of a demonstration project on long-  
36 term care, which demonstration project may be limited to patients with Alzheimer's disease;
- 37 (12) A policy concerning the department's procedures for compliance, monitoring and  
38 inspection; and
- 39 (13) Such other options as may be developed.
- 40 (d) The Secretary shall utilize in-state health care facilities for inpatient treatment when  
41 such facilities are available. Prior authorization, consistent with applicable federal law, shall be  
42 required for out-of-state inpatient treatment.
- 43 (e) The Secretary shall report to the Joint Committee on Government and Finance on  
44 the development and implementation of Medicaid programs that provide incentives to working  
45 persons. The secretary shall consider:
- 46 (1) Subsidies for low income working persons;
- 47 (2) Individual or small employer buy-ins to the state Medicaid Fund;
- 48 (3) Prospective payment systems for primary care physicians in underserved areas; and
- 49 (4) A system to improve monitoring of collections, expenditures, service delivery and  
50 utilization.

51 (f) The Secretary shall report quarterly to the Joint Committee on Government and  
52 Finance regarding provider and facility compliance with federal and state Medicaid laws,  
53 including, but not limited to, the following:

54 (1) The number of inspections conducted during the previous quarter;

55 (2) Description of programs, services and facilities reviewed;

56 (3) Findings; and

57 (4) Recommendations for corrections.

58 (g) The Secretary shall, upon federal certification of the claims management system,  
59 ensure that the claims management system processing Medicaid claims provides detailed  
60 quarterly financial reports to the Legislative Oversight Commission on Health and Human  
61 Resources Accountability.

**§9-3-1706. Visitation by county employees.**

1 Health officers, physicians, and nurses employed by the county shall, at the request of the  
2 Commissioner of the Bureau for Medical Services, make home visits to persons applying for, or receiving  
3 benefits, pursuant this to article.

**§9-3-1707. Medicaid program compact.**

1 (a) The Secretary of the Department of Human Services shall contact West Virginia's surrounding  
2 states to discuss the creation of a compact. This compact would enable each states' health care  
3 providers to be eligible to be paid for services provided to the other states' Medicaid participants.

4 (b) The Secretary shall provide a report on the creation of a Medicaid compact to the Legislative  
5 Oversight Commission on Health and Human Resources Accountability before October 31, 2019.

**§9-3-1708. Supplemental Medicaid reimbursement.**

1 (a) A ground emergency medical transportation services provider, owned or operated by  
2 the state or a city, a county, or city and county, that provides services to Medicaid beneficiaries  
3 is eligible for supplemental reimbursement.

4 (b) An eligible provider's supplemental reimbursement shall be calculated and paid as  
5 follows:

6 (1) The supplemental reimbursement to an eligible provider shall be equal to the amount  
7 of federal financial participation received as a result of the claims submitted.

8 (2) In no instance, may the amount certified, when combined with the amount received  
9 from all other sources of reimbursement from the Medicaid program, exceed one hundred  
10 percent of actual costs, as determined pursuant to the Medicaid State Plan, for ground  
11 emergency medical transportation services.

12 (3) The supplemental Medicaid reimbursement shall be distributed exclusively to eligible  
13 providers under a payment methodology based on ground emergency medical transportation  
14 services provided to Medicaid beneficiaries by eligible providers on a per-transport basis or  
15 other federally permissible basis. The Department of Human Services shall obtain approval from  
16 the Centers for Medicare and Medicaid Services for the payment methodology to be used, and  
17 may not make any payment pursuant to this section prior to obtaining that approval.

18 (c) No funds may be expended from the state fund, general revenue for any  
19 supplemental reimbursement paid under this section.

20 (d) The nonfederal share of the supplemental reimbursement submitted to the federal  
21 Centers for Medicare and Medicaid Services for purposes of claiming federal financial  
22 participation may be paid only with funds from the governmental entities.

23 (e) Participation in the program by an eligible provider described in this section is  
24 voluntary.

25 (f) If an applicable governmental entity elects to seek supplemental reimbursement  
26 pursuant to this section on behalf of an eligible provider, the governmental entity shall:

27 (1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code  
28 of Federal Regulations, that the claimed expenditures for the ground emergency medical  
29 transportation services are eligible for federal financial participation;

30 (2) Provide evidence supporting the certification as specified by the Department of Public  
31 Insurance;

32 (3) Submit data as specified by the Department of Human Services to determine the  
33 appropriate amounts to claim as expenditures qualifying for federal financial participation; and

34 (4) Keep, maintain, and have readily retrievable, any records specified by the  
35 Department of Human Services to fully disclose reimbursement amounts to which the eligible  
36 provider is entitled, and any other records required by the federal Centers for Medicare and  
37 Medicaid Services.

38 (g) (1) The Department of Human Services shall promptly seek any necessary federal  
39 approvals for the implementation of this section. The Department of Human Services may limit  
40 the program to those costs that are allowable expenditures under Title XIX of the federal Social  
41 Security Act (42 U.S.C. 1396 et seq.). If federal approval is not obtained for implementation of  
42 this section, this section may not be implemented.

43 (2) The Department of Human Services shall submit claims for federal financial  
44 participation for the expenditures for the services that are allowable expenditures under federal  
45 law.

46 (3) The Department of Human Services shall, on an annual basis, submit any necessary  
47 materials to the federal government to provide assurances that claims for federal financial  
48 participation will include only those expenditures that are allowable under federal law.

49 (4) Notwithstanding the provisions of subdivision (1) of this subsection, the Department  
50 of Human Services shall, prior to seeking federal approval of any supplemental reimbursement  
51 pursuant to this section, attempt to maximize the number of qualified group emergency medical  
52 transportation service providers eligible to receive the supplemental reimbursement. These  
53 emergency medical transportation service providers would include:



54 (A) Any not-for-profit emergency medical transport providers not owned by the state or a  
55 city, a county, or a city and county;

56 (B) Any voluntary emergency transportation service providers not owned by the state or  
57 a city, a county, or a city and county; and

58 (C) All other emergency medical transportation service providers licensed pursuant to  
59 the provisions of article four-c, chapter sixteen of this code.

**§9-3-1709. Long-Term Care Partnership Program.**

1 (a) The Bureau shall establish a long-term care partnership program in order to provide  
2 for the financing of long-term care through a combination of private insurance and Medicaid in  
3 accordance with federal requirements on qualified state long-term care insurance partnerships.

4 (b) The Bureau shall file a state plan amendment, pursuant to Title XIX of the United  
5 States Social Security Act and any amendments thereto, to the United States Department of  
6 Health and Human Services to establish that the assets an individual owns and may retain  
7 under Medicaid and still qualify for benefits under Medicaid at the time the individual applies for  
8 benefits is increased dollar-for-dollar for each dollar paid out under the individuals's long-term  
9 care insurance policy if the individual is a beneficiary of a qualified long-term care partnership  
10 program policy.

11 (c) An individual who is a beneficiary of a West Virginia long-term care partnership  
12 program and meets eligibility requirements is eligible for assistance under the state's medical  
13 assistance program using the asset disregard as provided under subsection (b).

14 (d) The Bureau shall pursue reciprocal agreements with other states to extend the asset  
15 disregard to West Virginia residents who purchased long-term care partnership policies in other  
16 states that are compliant with Title VI, Section 6021 of the Federal Deficit Reduction Act of  
17 2005, PL 109-171, and any applicable federal regulations or guidelines.

18 (e) Upon diminishment of assets below the anticipated remaining benefits under a long-  
19 term care partnership program policy, certain assets of an individual, as provided under  
20 subsection (b), shall not be considered when determining any of the following:

21 (1) Medicaid eligibility;

22 (2) The amount of any Medicaid payment;

23 (3) Any subsequent recovery by the state of a payment for medical services or long-term  
24 care services.

25 (f) If the long-term care partnership program is discontinued, an individual who  
26 purchased a West Virginia long-term care partnership program policy before the date the  
27 program was discontinued shall be eligible to receive asset disregard if allowed as provided by  
28 Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005, PL 109-171.

## **ARTICLE FOUR. OFFICE OF INSPECTOR GENERAL.**

### **PART ONE. INVESTIGATIONS OF FRAUD AND ABUSE**

#### **§9-4-101. Creation of the Office of Inspector General.**

1 Effective the first day of July, 2019, The Office of Inspector General is created and  
2 continued. The Office of Inspector General shall investigate fraud and abuse in state assistance  
3 programs for purposes of bringing criminal actions based upon these investigations.

#### **§9-4-102. Appointment of Inspector General; qualifications; oath; compensation.**

1 (a) There is created the position of Inspector General. The Inspector General shall:

2 (1) Be appointed by the Governor and subject to the provisions of article six, chapter  
3 twenty-nine of this code;

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

7 (3) Be an attorney licensed to practice in this state pursuant to the provision of article

8 two, chapter thirty of this code.

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

12 (c) The Inspector General shall receive:

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

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

16 (d) The Inspector General and all employees of the Office of Inspector General shall be  
17 governed by the classified service provisions of article six, chapter twenty-nine of this code and  
18 rules promulgated pursuant thereto.

**§9-4-103. Powers and duties of the Inspector General.**

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

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

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

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

11 (4) Holding public hearings, as needed and mandated by this code;

12 (5) Data collection, as needed and mandated by this code;

13 (6) To develop and maintain a state plan which:

14 (A) Sets forth needs of the state in providing investigations into fraud, misuse and waste;

15 (B) Provide procedures and requirements for licensing of healthcare facilities;

16 (C) Sets forth goals and objectives for meeting those needs; and

17 (D) Contains plans of operation for achieving the stated goals and objectives, including  
18 organizational structure and statement of requirements in personnel funds and authority for achieving the  
19 goals and objectives.

20 (7) To appoint deputies and assistants to supervise the programs of the Office of Inspector  
21 General and such other assistants and employees as may be necessary for the efficient operation of the  
22 office and all its programs;

23 (8) To delegate to any of his or her appointees, assistants or employees all powers and duties  
24 vested in the Inspector General. The Inspector General shall be responsible for the acts of such  
25 appointees, assistants and employees;

26 (9) To refer criminal matters to the various county prosecuting attorneys and/or the Attorney  
27 General necessary for the filing and prosecution of criminal actions of cases of fraud and abuse relating  
28 to medical and public assistance as provided in section one hundred eight of this article;

29 (10) Perform all other duties and functions as required by this code and are reasonably  
30 necessary or essential to affect the express objectives and purpose of this article; and

31 (11) To make periodic reports to the Attorney General, Governor and to the Legislature as  
32 required by this chapter.

**§9-4-104. Organization and employees.**

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

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

6 (c) The Inspector General, if he or she deems such action necessary, may hire legal  
7 counsel for the office, notwithstanding the provisions of section two, article three, chapter five of

8 this code or any other code provision to the contrary, or may request the Attorney General to  
9 appoint counsel who shall perform such duties as may be required by the office. The Attorney  
10 General, in pursuance of such request, may select and appoint counsel to serve at the will and  
11 pleasure of the Attorney General, and shall be paid out of any funds allocated and appropriated  
12 to the office.

**§9-4-105. Supervisory responsibilities of the Inspector General.**

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

**§9-4-106. General powers and duties of the Office of Inspector General.**

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

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

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

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

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

**§9-4-107. Organization of Investigation and Fraud Management Division.**

(a) The Inspector General shall organize and operate an Investigation and Fraud Management  
Division. If the Inspector General has credible information that indicates a person has engaged in an act  
or activity related to any program, bureau, benefit or intra-agency employee misconduct of the following  
departments which is subject to prosecution, it may conduct an investigation to determine if the act has

been committed. These departments shall include the Department of Health and Compliance and the Department of Human Services.

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

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

(d) If documents necessary to an investigation of the Investigation and Fraud Management Division appear to be located outside the state, the documents shall be made available by the person or entity within the jurisdiction of the state having control over such documents either at a convenient location within the state or, upon payment of necessary expenses to the department for transportation and inspection, at the place outside the state where these documents are maintained.

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

(f) The Investigation and Fraud Management Division may not make public the name or identity of a person whose acts or conduct is investigated pursuant to this article or the facts

disclosed in an investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this code or federal law.

**§9-4-108. Referral for prosecution.**

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

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

(c) In addition to all other powers and duties granted the Attorney General in article three, chapter five and elsewhere in this code, the Attorney General is granted concurrent jurisdiction with the county prosecuting attorney to criminally prosecute matters related to fraud and abuse within the medical and public assistance programs operated by the state. The Attorney General shall only have the power to criminally prosecute any matter referred to that office by the Office of Inspector General.

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

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

(f) All money collected from any settlement or recovery as a result of any prosecution related to a

referral from the Office of Inspector General shall be deposited in a special account in the State Treasury to be known as the "Inspector General Recovery Fund". Expenditures from the fund shall be for the purposes of funding the Office of Inspector General and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, 2019 expenditures are authorized from collection rather than pursuant to appropriation by the Legislature.

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

## **PART TWO. LICENSING OF HEALTH CARE FACILITIES.**

### **§9-4-201. Creation of Office of Health Facility Licensure and Certification.**

1 Effective the first day of July, 2019, within the Office of Inspector General shall be  
2 created and continued the Office of Health Facility Licensure and Certification.

### **§9-4-202. Powers and duties of the Office of Health Facility Licensure and Certification.**

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

5 (1) Alzheimer's and Dementia Special Care Units and Programs licensed pursuant to the  
6 provisions of article five-R of chapter sixteen of this code;

7 (2) Assisted living residences licensed pursuant to the provisions of article five-D of chapter  
8 sixteen of this code;

9 (3) Behavioral health facilities and centers, including but not limited to intermediate care facilities  
10 for individuals with intellectual disabilities, licensed pursuant to the provisions of article nine of chapter  
11 twenty-seven of this code and article seventeen of chapter twenty-seven of this code;

12 (4) Birthing centers licensed pursuant to the provisions of article two-C of chapter sixteen of this



13 code:

14 (5) Chronic pain management clinics licensed pursuant to the provisions of article five-H of  
15 chapter sixteen of this code;

16 (6) Hospice facilities licensed pursuant to the provisions of article five-I of chapter sixteen of this  
17 code;

18 (7) Hospitals and similar facilities licensed pursuant to the provisions of article five-B of chapter  
19 sixteen of this code;

20 (8) Legally unlicensed health care homes regulated pursuant to the provisions of article five-E of  
21 chapter sixteen of this code;

22 (9) Medical adult day care centers regulated pursuant to the provisions of article five-B of chapter  
23 sixteen of this code and section four, article one of chapter sixteen of this code;

24 (10) Medication administration by unlicensed personnel regulated pursuant to the provisions of  
25 article five-O of chapter sixteen of this code;

26 (11) Medication-Assisted treatment facilities licensed pursuant to the provisions of article five-Y of  
27 chapter sixteen of this code;

28 (12) Nurse aide abuse registry regulated pursuant to the provisions of chapter nine and sixteen of  
29 this code;

30 (13) Nursing homes licensed pursuant to the provisions of article five-C of chapter sixteen of this  
31 code;

32 (14) Nonprofit corporations for conservator services licensed pursuant to the provisions of article  
33 one of chapter forty-four-A of this code;

34 (15) Residential care communities licensed pursuant to the provisions of article five-N of chapter  
35 sixteen of this code; and

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

38 (b) Other duties of the Office of Health Facility Licensure and Certification may be assigned by

39 the \_\_\_\_\_ Secretary.

**§9-4-203. License from Office of Inspector General; regulations.**

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

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

13 (c) The Office of Health Facility Licensure and Certification has authority to investigate  
14 and inspect any licensed hospital, center or institution, or part of any licensed hospital, center or  
15 institution, and the Office of Health Facility Licensure and Certification may revoke the license of  
16 any hospital, center or institution, or part of any hospital, center or institution, for good cause  
17 after reasonable notice to the Chief Executive Officer or other person in charge of the hospital,  
18 center \_\_\_\_\_ or \_\_\_\_\_ institution.

**PART 3. BOARD OF REVIEW.**

1 **§9-4-301. Creation of Board of Review; purpose.**

1 (a) Effective July 1, 2019, the Board of Review is established and continued within the

2 Office of Inspector General.

3 (b) The board is to functions to provide a fair, impartial, and expeditious hearing process  
4 to applicants, recipients and providers who feel themselves aggrieved by the actions of the  
5 Department of Health and Compliance, the Department of Healthcare Facilities and the  
6 Department of Human Services.

**§9-4-302. Organization of the Board of Review.**

1 (a) There is organized within the Office of Inspector General a Board of Review. The  
2 board shall consist of a chairman who shall be appointed by the secretary. The Inspector  
3 General may assign as many assistants or employees as he or she may determine as  
4 necessary and as may be required by federal laws and rules respecting state assistance,  
5 federal-state assistance and federal assistance.

6 (b) The board shall have such powers of a review nature and such additional powers as  
7 may be granted to it by the secretary and as may be required by federal laws and rules  
8 respecting federal-state assistance and federal assistance.

**§9-4-303. Judicial review of decisions of contested cases.**

1 (a) The Board of Review as provided in this article shall provide a fair, impartial and  
2 expeditious grievance and appeal process to applicants or recipients of state assistance, federal  
3 assistance or federal-state assistance as defined in this article. The Board of Review shall  
4 provide a fair, impartial and expeditious grievance and appeal process to applicants, recipients  
5 and providers of services.

6 (b) Any party adversely affected or aggrieved by a final decision or order of the Board of  
7 Review may seek judicial review of that decision.

8 (c) Proceedings for review shall be instituted by filing a petition, at the election of the  
9 petitioner, in either the circuit court of Kanawha County, West Virginia, or in the circuit court of

10 the county in which the petitioner or any one of the petitioners resides or does business, or with  
11 the judge thereof in vacation, within thirty days after the date upon which such party received  
12 notice of the final order or decision of the board. A copy of the petition shall be served upon the  
13 appropriate department and all other parties of record by registered or certified mail. The  
14 petition shall state whether the appeal is taken on questions of law or questions of fact, not both.  
15 No appeal bond is required to effect any such appeal.

16 (d) The filing of the petition for appeal does not stay or supersede enforcement of the  
17 final decision or order of the Board of Review or the appropriate department. The appropriate  
18 department may voluntarily stay such enforcement and the appellant, at any time after the filing  
19 of the petition for appeal, may apply to the circuit court of Kanawha County, or in the circuit  
20 court of the county in which the petitioner or any one of the petitioners resides or does business,  
21 for a stay of or to supersede the final decision or order. Pending the appeal, the circuit court  
22 may grant a stay or supersede the order upon such terms as it considers proper.

23 (e) Within fifteen days after receipt of a copy of the petition by the Board of Review of the  
24 appropriate department, or within such further time as the court may allow, the Board of Review  
25 shall prepare and transmit to the circuit court of Kanawha County, or in the circuit court of the  
26 county in which the petitioner or any one of the petitioners resides or does business, the original  
27 or a certified copy of the entire record of the proceeding under review. All records prepared and  
28 transmitted that involve a minor shall be filed under seal. This shall include a transcript of all  
29 reported testimony and all exhibits, papers, motions, documents, evidence, records, agency  
30 staff memoranda and data used in consideration of the case, all briefs, memoranda, papers and  
31 records considered by the department in the underlying proceeding and a statement of matters  
32 officially noted. By stipulation of the parties, the record may be shortened. In the event the  
33 complete record is not filed with the court within the time provided for in this section, the

34 appellant may apply to the court to have the case docketed and the court shall order the Board  
35 of Review of the appropriate department to file the record.

36 (f) The cost of preparing the official record shall be assessed as part of the costs of the  
37 appeal. The appellant shall provide security for costs satisfactory to the court. Any party  
38 unreasonably refusing to stipulate to limit the record may be assessed by the court for the  
39 additional costs involved. Upon demand by any party to the appeal, the appropriate department  
40 shall furnish, at cost to the requesting party, a copy of the official record.

41 (g) The court shall hear appeals upon assignments of error filed in the petition or set out  
42 in the briefs filed by the parties. The court, in its discretion, may disregard errors not argued by  
43 brief or may consider errors that are not assigned or argued. The court shall fix a date and time  
44 for the hearing on the petition. Unless otherwise agreed by the parties, the court shall not  
45 schedule the hearing sooner than ten days after the filing of the petition for appeal. The  
46 petitioner shall provide notice of the date and time of the hearing to the Board of Review and the  
47 appropriate department.

48 (h) In cases involving alleged irregularities in procedure before the Board of Review that  
49 are not shown in the record, the court may take additional testimony. Otherwise, the circuit court  
50 shall review the appeal without a jury and may only consider the official record provided  
51 pursuant to the requirements of this section. The court may hear oral arguments and require  
52 written briefs.

53 (i) The court may affirm the final decision or order of the Board of Review or remand the  
54 matter for further proceedings. The court may reverse, vacate or modify the final decision or  
55 order of the Board of Review of the appropriate department only if the substantial rights of the  
56 petitioner have been prejudiced because the administrative findings, inferences, conclusions,  
57 decision or order are:

58           (1) In violation of constitutional or statutory provisions;  
59           (2) In excess of the statutory authority or jurisdiction of the departments set forth in  
60 section three hundred one of this article;  
61           (3) Made upon unlawful procedures;  
62           (4) Affected by other error of law;  
63           (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole  
64 record; or  
65           (6) Arbitrary or capricious or characterized by an abuse of discretion or clearly  
66 unwarranted exercise of discretion.  
67           (j) The judgment of the circuit court is final unless reversed, vacated or modified on  
68 appeal to the West Virginia Supreme Court of Appeals.  
69           (k) The process established by this section is the exclusive remedy for judicial review of  
70 final decisions of the Board of Review and the various departments and bureaus set forth in this  
71 chapter.

## **CHAPTER 15. PUBLIC SAFETY.**

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

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

1           (a) The circuit court that has sentenced a person for the commission of a sexually violent offense  
2 or that has entered a judgment of acquittal of a charge of committing a sexually violent offense in which  
3 the defendant has been found not guilty by reason of mental illness, mental retardation or addiction shall  
4 make a determination whether:  
5           (1) A person is a sexually violent predator; or  
6           (2) A person is not a sexually violent predator.  
7           (b) A hearing to make a determination as provided in subsection (a) of this section is a summary  
8 proceeding, triable before the court without a jury.

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

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

19 (e) Prior to making a determination pursuant to the provisions of this section, the sentencing court  
20 shall request and receive a report by the board established pursuant to section two-b of this article. The  
21 report shall set forth the findings and recommendation of the board on the issue of whether the person is  
22 a sexually violent predator.

23 (f) At a hearing to determine whether a person is a sexually violent predator, the person shall be  
24 present and shall have the right to be represented by counsel, introduce evidence and cross-examine  
25 witnesses. The offender shall have access to a summary of the medical evidence to be presented by the  
26 state. The offender shall have the right to an examination by an independent expert of his or her choice  
27 and testimony from the expert as a medical witness on his or her behalf. At the termination of the hearing  
28 the court shall make a finding of fact upon a preponderance of the evidence as to whether the person is a  
29 sexually violent predator.

30 (g) If a person is determined by the circuit court to be a sexually violent predator, the clerk of the  
31 court shall forward a copy of the order to the State Police in the manner promulgated in accordance with  
32 the provisions of article three, chapter twenty-nine-a of this code.

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

1 (a) There is hereby created within the Department of Military Affairs and Public Safety a sex

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

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

## **CHAPTER 16. PUBLIC HEALTH.**

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

#### **§16-1-2. Definitions.**

1 As used in this article:

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

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

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



10 (4) "Commissioner" means the ~~commissioner of the bureau, who is the state health~~  
11 ~~officer~~ Commissioner of the Bureau for Public Health;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (9) "Licensing boards" means those boards charged with regulating an occupation,  
35 business or profession and on which the commissioner serves as a member;

36 (10) "Local board of health", "local board" or "board" means a board of health serving  
37 one or more counties or one or more municipalities or a combination thereof;

38 (11) "Local health department" means the staff of the local board of health;

39 (12) "Local health officer" means the physician with a current West Virginia license to  
40 practice medicine who supervises and directs the activities, services, staff and facilities of the  
41 local health department and is appointed by the local board of health with approval by the  
42 commissioner;

43 (13) "Municipal board of health" means one form of organization for a local board of  
44 health and means a board of health serving a single municipality;

45 (14) "Performance-based standards" means generally accepted, objective standards  
46 such as rules or guidelines against which public health performance can be measured;

47 (15) "Potential source of significant contamination" means a facility or activity that stores,  
48 uses or produces substances or compounds with potential for significant contaminating impact if  
49 released into the source water of a public water supply;

50 (16) "Program plan" or "plan of operation" means the annual plan for each local board of  
51 health that must be submitted to the commissioner for approval;

52 (17) "Public groundwater supply source" means a primary source of water supply for a  
53 public water system which is directly drawn from a well, underground stream, underground  
54 reservoir, underground mine or other primary source of water supplies which is found  
55 underneath the surface of the state;

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

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

64 (20) "Public water system" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§16-1-3. Powers and duties of the secretary.**

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

2 ~~(b) All powers and duties of the director of health previously established by former~~  
3 ~~section ten of this article that are not specifically included in this chapter as powers and duties of~~  
4 ~~the commissioner are powers and duties of the secretary.~~

5 ~~(c) As necessary for the effective, efficient and economical operation of the system, the~~  
6 ~~secretary may from time to time delegate, assign, transfer or combine responsibilities or duties~~  
7 ~~to or among employees of the department.~~

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

11 (a) The Secretary may establish a state public health system.

12 (b) The Secretary may delegate, assign, transfer or combine responsibilities assigned to the  
13 Secretary by this chapter to or among employees of the Department as necessary for the operation of the  
14 public health system.

15 (c) The Secretary may require every applicant for a license, permit, certificate of registration, or  
16 registration under this chapter to place his or her social security number on the application, within the  
17 limits of applicable federal law.

18 (d) The Secretary may propose rules in accordance with the provisions of article three, chapter  
19 twenty-nine-a of this code that are necessary and proper to effectuate the purposes of this chapter.

**§16-1-3a. Transfer of functions to Secretary.**

1 In addition to other duties assigned to the Secretary in this article, effective July 1, 2019,  
2 the following functions as set out in the respective sections of the code shall become functions  
3 of the secretary. Any reference in these sections to the Secretary of the Department of Health

4 and Human Resources or the Director of Health shall mean the Secretary of the Department of  
5 Health and Compliance:

6 (1) Local boards of health as set forth in article two of chapter sixteen of this code;

7 (2) Family planning and child spacing as set forth in article two-B of chapter sixteen of  
8 this code;

9 (3) Home health services as set forth in article two-C of chapter sixteen of this code;

10 (4) Parental notification of abortion as set forth in article two-F of chapter sixteen of this  
11 code;

12 (5) Primary care support program as set forth in article two-H of chapter sixteen of this  
13 code;

14 (6) Women's right to know as set forth in article two-I of chapter sixteen of this code;

15 (7) Pain-capable unborn child protection set forth in article two-M of chapter sixteen of  
16 this code;

17 (8) Prevention and control of communicable and other infectious diseases as set forth in  
18 article three of chapter sixteen of this code;

19 (9) Repository of information on medical treatment for certain hazardous materials as  
20 set forth in article three-A of chapter sixteen of this code;

21 (10) Pertussis as set forth in article three-B of chapter sixteen of this code;

22 (11) AIDS-related medical testing and records confidentiality as set forth in article three-  
23 C of chapter sixteen of this code;

24 (12) Tuberculous testing, control, treatment and commitment as set forth in article three-  
25 D of chapter sixteen of this code;

26 (13) Sexually transmitted diseases as set forth in article four of chapter sixteen of this  
27 code;

28           (14) Autopsies on bodies of deceased persons as set forth in article four-B of Chapter  
29 sixteen of this code;

30           (15) Expedited partner therapy as set forth in article four-F of chapter sixteen of this  
31 code;

32           (16) Vital statistics as set forth in article five of chapter sixteen of this code;

33           (17) Cancer control as set forth in article five-A of chapter sixteen of this code;

34           (18) Osteoporosis prevention education as set forth in article five-M of chapter sixteen of  
35 this code;

36           (19) Medication administration by unlicensed personnel as set forth in article five-O of  
37 chapter sixteen of this code;

38           (20) Alzheimer's special care standards as set forth in article five-R of chapter sixteen of  
39 this code;

40           (21) Arthritis prevention education as set forth in article five-U of chapter sixteen of this  
41 code;

42           (22) Hotels and restaurants as set forth in article six of chapter sixteen of this code;

43           (23) Pure food and drugs as set forth in article seven of chapter sixteen of this code;

44           (24) Offenses generally as set forth in article nine of chapter sixteen of this code;

45           (25) Tobacco usage restrictions as set forth in article nine-A of chapter sixteen of this  
46 code;

47           (26) Sanitary districts for sewage disposal as set forth in article twelve of chapter  
48 sixteen of this code;

49           (27) Drinking water treatment revolving fund as set forth in article thirteen-C of chapter  
50 sixteen of this code;

51           (28) Storage and disposal of radioactive waste materials as set forth in article twenty-  
52 seven of chapter sixteen of this code;

53 (29) State health care as set forth in article twenty-nine-D of chapter sixteen of this  
54 code;  
55 (30) West Virginia health care decisions as set forth in article thirty of chapter sixteen of  
56 this code;  
57 (31) Asbestos abatement as set forth in article thirty-two of chapter sixteen of this code;  
58 (32) Breast and cervical cancer prevention and control as set forth in article thirty-three  
59 of chapter sixteen of this code;  
60 (33) Lead abatement as set forth in article thirty-five of chapter sixteen of this code;  
61 (34) Needlestick injury prevention as set forth in article thirty-six of chapter sixteen of this  
62 code;  
63 (35) Patient safety as set forth in article thirty-nine of chapter sixteen of this code;  
64 (36) Oral health improvement act as set forth in article forty-one of chapter sixteen of  
65 this code;  
66 (37) Access to opioid antagonists as set forth in article forty-six of chapter sixteen of this  
67 code; and  
68 (38) Epinephrine auto-injector availability and use as set forth in article fifty of chapter  
69 sixteen of this code.

**§16-1-5. State health officer; appointment; qualifications; term.**

1 [Repealed]

**§16-1-5a. Creation of the Bureau for Public Health.**

1 Effective the first day of July, 2019, the Bureau for Public Health is created and  
2 continued within the Department of Health and Compliance.

**§16-1-5b. Commissioner; appointment; qualifications.**

1 (a) There is created the position of Commissioner. The Commissioner shall:  
2 (1) Be appointed by the Governor with advice and consent of the Senate;



3 (2) Report directly to the Secretary;

4 (3) Serve at the will and pleasure of the Governor;

5 (4) Be a physician licensed pursuant to the laws of this state or hold a doctorate degree  
6 in public health administration;

7 (5) Serve on a full-time basis with the duties and responsibilities as set forth in this  
8 chapter and shall not engage in any other profession or occupation, including the holding of a  
9 political office in the state either by election or appointment, while serving as commissioner; and

10 (6) Not be actively engaged or employed in any other business, vocation or employment;

11 (b) Before entering upon the discharge of the duties as Commissioner, the  
12 Commissioner shall take and subscribe to the oath of office prescribed in section five, article IV  
13 of the Constitution of West Virginia.

14 (c) The Commissioner shall receive:

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

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

#### **§16-1-6. Powers and duties of the commissioner.**

18 ~~The commissioner is the chief executive, administrative and fiscal officer of the Bureau~~  
19 ~~for Public Health and has the following powers and duties:~~

20 ~~(a) To supervise and direct the fiscal and administrative matters of the bureau, and in~~  
21 ~~that regard and in accordance with law, employ, fix the compensation of and discharge all~~  
22 ~~persons necessary for the proper execution of the public health laws of this state and the~~  
23 ~~efficient and proper discharge of the duties imposed upon, and execution of powers vested in~~  
24 ~~the commissioner by law and as directed by the secretary;~~

25 ~~(b) To enforce all laws of this state concerning public health; to that end, the~~  
26 ~~commissioner shall make, or cause to be made, investigations and inquiries respecting the~~

27 ~~cause of disease, especially of epidemics and endemic conditions, and the means of~~  
28 ~~prevention, suppression or control of these conditions; the source of sickness and mortality, and~~  
29 ~~the effects of environment, employment, habits and circumstances of life on the public health.~~

30 ~~The commissioner shall further make, or cause to be made, inspections and~~  
31 ~~examinations of food, drink and drugs offered for sale or public consumption in the manner the~~  
32 ~~commissioner considers necessary to protect the public health and shall report all violations of~~  
33 ~~laws and rules relating to the law to the prosecuting attorney of the county in which the~~  
34 ~~violations occur;~~

35 ~~(c) To make complaint or cause proceedings to be instituted against any person,~~  
36 ~~corporation or other entity for the violation of any public health law before any court or agency,~~  
37 ~~without being required to give security for costs; the action may be taken without the sanction of~~  
38 ~~the prosecuting attorney of the county in which the proceedings are instituted or to which the~~  
39 ~~proceedings relate;~~

40 ~~(d) To promote the provision of essential public health services to citizens of this state;~~

41 ~~(e) To monitor the administration, operation and coordination of the local boards of~~  
42 ~~health and local health officers;~~

43 ~~(f) To develop and maintain a state plan of operation that sets forth the needs of the~~  
44 ~~state in the areas of public health; goals and objectives for meeting those needs; methods for~~  
45 ~~achieving the stated goals and objectives; and needed personnel, funds and authority for~~  
46 ~~achieving the goals and objectives;~~

47 ~~(g) To collect data as may be required to foster knowledge on the citizenry's health~~  
48 ~~status, the health system and costs of health care;~~

49 ~~(h) To delegate to any appointee, assistant or employee any and all powers and duties~~  
50 ~~vested in the commissioner, including, but not limited to, the power to execute contracts and~~  
51 ~~agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the~~

52 ~~acts of his or her appointees, assistants and employees;~~

53 ~~(i) To transfer at the direction of the secretary, notwithstanding other provisions of this~~  
54 ~~code, any patient or resident between hospitals and facilities under the control of the~~  
55 ~~commissioner and, by agreement with the state Commissioner of Corrections and otherwise in~~  
56 ~~accord with law, accept a transfer of a resident of a facility under the jurisdiction of the state~~  
57 ~~Commissioner of Corrections;~~

58 ~~(j) To make periodic reports to the Governor and to the Legislature relative to specific~~  
59 ~~subject areas of public health, the state facilities under the supervision of the commissioner, or~~  
60 ~~other matters affecting the public health of the people of the state, at the direction of the~~  
61 ~~secretary;~~

62 ~~(k) At the direction of the secretary, to accept and use for the benefit of the health of the~~  
63 ~~people of this state, any gift or devise of any property or thing which is lawfully given: *Provided,*~~  
64 ~~That if any gift is for a specific purpose or for a particular state hospital or facility it shall be used~~  
65 ~~as specified. Any profit which may arise from any gift or devise of any property or thing shall be~~  
66 ~~deposited in a special revenue fund with the state Treasurer and shall be used only as specified~~  
67 ~~by the donor or donors;~~

68 ~~(l) To acquire by condemnation or otherwise any interest, right, privilege, land or~~  
69 ~~improvement and hold title to the land or improvement, for the use or benefit of the state or a~~  
70 ~~state hospital or facility, and, by and with the consent of the Governor, and at the direction of the~~  
71 ~~secretary, to sell, exchange or otherwise convey any interest, right, privilege, land or~~  
72 ~~improvement acquired or held by the state, state hospital or state facility and deposit the~~  
73 ~~proceeds from the sale, exchange or other conveyance into the hospital services revenue~~  
74 ~~account. Any condemnation proceedings shall be conducted pursuant to chapter fifty-four of this~~  
75 ~~code;~~

76 ~~(m) To inspect and enforce rules to control the sanitary conditions of and license all~~

77 ~~institutions and health care facilities as set forth in this chapter, including, but not limited to,~~  
78 ~~schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,~~  
79 ~~factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places~~  
80 ~~open to the general public and inviting public patronage or public assembly, or tendering to the~~  
81 ~~public any item for human consumption and places where trades or industries are conducted;~~

82 ~~(n) To make inspections, conduct hearings, and to enforce the legislative rules~~  
83 ~~concerning occupational and industrial health hazards, the sanitary condition of streams,~~  
84 ~~sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of~~  
85 ~~personnel connected with the supplies, facilities or systems without regard to whether they are~~  
86 ~~publicly or privately owned; and to make inspections, conduct hearings and enforce the~~  
87 ~~legislative rules concerning the design of chlorination and filtration facilities and swimming~~  
88 ~~pools;~~

89 ~~(o) To provide in accordance with this subdivision and the definitions and other~~  
90 ~~provisions of article one-a, chapter twenty-seven of this code, and as directed by the secretary,~~  
91 ~~for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug~~  
92 ~~abusers; for research into the cause and prevention of alcoholism and drug abuse; for the~~  
93 ~~training and employment of personnel to provide the requisite rehabilitation of alcoholics and~~  
94 ~~drug abusers; and for the education of the public concerning alcoholism and drug abuse;~~

95 ~~(p) To provide in accordance with this subdivision for a program for the care, treatment~~  
96 ~~and rehabilitation of the parents of sudden infant death syndrome victims; for the training and~~  
97 ~~employment of personnel to provide the requisite rehabilitation of parents of sudden infant death~~  
98 ~~syndrome victims; for the education of the public concerning sudden infant death syndrome; for~~  
99 ~~the responsibility of reporting to the Legislature on a quarterly basis the incidence of sudden~~  
100 ~~infant death syndrome cases occurring in West Virginia; for the education of police, employees~~  
101 ~~and volunteers of all emergency services concerning sudden infant death syndrome; for the~~

102 ~~state sudden infant death syndrome advisory council to develop regional family support groups~~  
103 ~~to provide peer support to families of sudden infant death syndrome victims; and for requesting~~  
104 ~~appropriation of funds in both federal and state budgets to fund the sudden infant death~~  
105 ~~syndrome program;~~

106 ~~(q) To establish and maintain a state hygienic laboratory as an aid in performing the~~  
107 ~~duties imposed upon the commissioner, and to employ chemists, bacteriologists, and other~~  
108 ~~employees that may be necessary to properly operate the laboratory. The commissioner may~~  
109 ~~establish branches of the state laboratory at any points within the state that are necessary in the~~  
110 ~~interest of the public health;~~

111 ~~(r) To establish and fund a uniform health professionals data system to collect and~~  
112 ~~maintain uniform data on all health professionals in the state. This data shall include, but not be~~  
113 ~~limited to, the following information about each health professional: His or her name, profession,~~  
114 ~~the area of the state where he or she is practicing, his or her educational background, his or her~~  
115 ~~employer's name, and number of years practicing within the profession. The boards provided for~~  
116 ~~in articles three, four, four-a, five, seven, seven-a, fourteen, fourteen-a, fifteen, sixteen, twenty,~~  
117 ~~twenty-one, twenty-three, twenty-eight, thirty-one, thirty-two, thirty-four, thirty-five, thirty-six and~~  
118 ~~thirty-seven, chapter thirty of this code shall annually collect the data on health professionals~~  
119 ~~under their jurisdiction in the format prescribed by the commissioner. Each board shall pay to~~  
120 ~~the bureau annually, an amount determined by the commissioner to be a pro rata portion, for~~  
121 ~~anticipated expenses to establish and operate the uniform health professionals data system~~  
122 ~~required by this section. The commissioner may standardize data collection methods if~~  
123 ~~necessary to implement the provisions of this section. The commissioner shall publish annually~~  
124 ~~and make available, upon request, a report setting forth the data which was collected the~~  
125 ~~previous year; areas of the state which the collected data indicates have a shortage of health~~  
126 ~~professionals; and projections, based upon the collected data, as to the need for more health~~

127 professionals in certain areas;

128 ~~(s) To expend, for the purpose of performing the public health duties imposed on the~~  
129 ~~bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may~~  
130 ~~make advance payments to public and nonprofit health services providers when the~~  
131 ~~commissioner determines it is necessary for the initiation or continuation of public health~~  
132 ~~services. The advance payments, being in derogation of the principle of payment only after~~  
133 ~~receipt of goods or services, shall be authorized only after serious consideration by the~~  
134 ~~commissioner of the necessity of the advance payments and shall be for a period no greater~~  
135 ~~than ninety days in advance of rendition of service or receipt of goods and continuation of health~~  
136 ~~services; and~~

137 ~~(t) To exercise all other powers delegated to the commissioner by the secretary or by~~  
138 ~~this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities~~  
139 ~~necessary and incident to the authority and area of concern entrusted to the bureau or the~~  
140 ~~commissioner.~~

141 (a) The Commissioner is the chief executive, administrative and fiscal officer of the  
142 Bureau for Public Health, the Commissioner shall:

143 (1) Efficiently and properly execute and discharge the powers and duties imposed upon and  
144 vested in him or her by law and as directed by the Secretary;

145 (2) Supervise and direct the fiscal and administrative matters of the Bureau;

146 (3) Employ, fix the compensation of and discharge all persons necessary for the proper  
147 execution of the public health laws of this state. This shall include the power to:

148 (A) Appoint deputies and assistants to supervise the Bureau's programs and such other  
149 assistants and employees as may be necessary for the efficient operation of the Bureau and all its  
150 programs.

151 (B) Delegate to any of his or her appointees, assistants or employees all powers and duties  
152 vested in the Commissioner, including the power to execute contracts and agreements in the name of the

153 Bureau as provided in this article. The Commissioner shall be responsible for the acts of such  
154 appointees, assistants and employees.

- 155 (4) Enforce all laws of this state concerning public health;
- 156 (5) Make, or cause to be made, investigations and inquiries respecting the cause of disease,  
157 especially of epidemics and endemic conditions, and the means of prevention, suppression  
158 or control of those conditions; the source of sickness and mortality, and the effects of  
159 environment, employment, habits and circumstances of life on the public health;
- 160 (6) Inspect and examine food, drink and drugs offered for sale or public consumption in the  
161 manner he or she considers necessary to protect the public health and shall report all  
162 violations of laws and rules relating to the law to the prosecuting attorney of the county in  
163 which a violation occurs;
- 164 (7) File a complaint or cause proceedings to be instituted against any person, corporation or  
165 other entity for the violation of any public health law before any court or agency, without being  
166 required to give security for costs. These actions may be taken without the sanction of the  
167 prosecuting attorney of the county in which the proceedings are instituted or to which the  
168 proceedings relate;
- 169 (8) Promote the provision of essential public health services to citizens of this state;
- 170 (9) Monitor the administration, operation and coordination of the local boards of health and local  
171 health officers;
- 172 (10) Develop and maintain a state plan of operation that sets forth the needs of the state in the  
173 areas of public health; goals and objectives for meeting those needs; methods for achieving  
174 the stated goals and objectives; and needed personnel, funds and authority for achieving the  
175 goals and objectives;
- 176 (11) Collect data as may be required to foster knowledge on the health status of the citizens of  
177 West Virginia, the health system and costs of health care in this state;
- 178 (12) Delegate to any appointee, assistant or employee any and all powers and duties vested in  
179 the Commissioner, including, but not limited to, the power to execute contracts and  
180 agreements in the name of the Bureau. The Commissioner is responsible for the acts of his

- 181 or her appointees, assistants and employees;
- 182 (13) Notwithstanding any provision of this code to the contrary, transfer any patient or resident  
183 between hospitals and facilities under the control of the Commissioner and by agreement  
184 with the state Commissioner of Corrections and, in accordance with law, accept a transfer of  
185 a resident of a facility under the jurisdiction of the state Commissioner of Corrections.
- 186 (14) Make periodic reports to the Governor and to the Legislature relative to specific subject areas  
187 of public health, the state facilities under the supervision of the Commissioner, or other  
188 matters affecting the public health of the people of the state;
- 189 (15) Accept and use for the benefit of the health of the people of this state, any gift or devise of  
190 any property or thing which is lawfully given. If any gift is for a specific purpose or for a  
191 particular state hospital or facility, it shall be used as specified. Any profit which may arise  
192 from any gift or devise of any property or thing shall be deposited in a special revenue fund  
193 with the state Treasurer and shall be used only as specified by the donor or donors;
- 194 (16) Inspect, license and enforce rules to control the sanitary conditions of all institutions and  
195 health care facilities as set forth in this chapter. This shall include, but is not limited to,  
196 schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops,  
197 factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places  
198 open to the general public and inviting public patronage or public assembly, or tendering to  
199 the public any item for human consumption and places where trades or industries are  
200 conducted;
- 201 (17)(A) Make inspections, conduct hearings, and enforce legislative rules concerning  
202 occupational and industrial health hazards, the sanitary condition of streams, sources of  
203 water supply, sewerage facilities, and plumbing systems;
- 204 (B) Establish the qualifications of personnel connected with the supplies, facilities or systems  
205 without regard to whether they are publicly or privately owned; and
- 206 (C) To make inspections, conduct hearings and enforce legislative rules concerning the  
207 design of chlorination and filtration facilities and swimming pools;
- 208 (18) Provide in accordance with this chapter and the definitions and other provisions of article



- 209 one-a, chapter twenty-seven of this code:
- 210 (A) For a comprehensive program for the care, treatment and rehabilitation of alcoholics and
- 211 drug abusers;
- 212 (B) For research into the cause and prevention of alcoholism and drug abuse;
- 213 (C) For the training and employment of personnel to provide the requisite rehabilitation of
- 214 alcoholics and drug abusers; and
- 215 (D) For the education of the public concerning alcoholism and drug abuse;
- 216 (19)Provide in accordance with this chapter:
- 217 (A) For a program for the care, treatment and rehabilitation of the parents of sudden infant
- 218 death syndrome victims;
- 219 (B) For the training and employment of personnel to provide the requisite rehabilitation of
- 220 parents of sudden infant death syndrome victims;
- 221 (C) For the education of the public concerning sudden infant death syndrome;
- 222 (D) For the responsibility of reporting to the Legislative Oversight Commission on Health and
- 223 Human Resource Accountability on a quarterly basis the incidence of sudden infant
- 224 death syndrome cases occurring in West Virginia;
- 225 (E) For the education of police, employees and volunteers of all emergency services
- 226 concerning sudden infant death syndrome;
- 227 (F) For the state sudden infant death syndrome advisory council to develop regional family
- 228 support groups to provide peer support to families of sudden infant death syndrome
- 229 victims; and
- 230 (G) For requesting appropriation of funds in both federal and state budgets to fund the
- 231 sudden infant death syndrome program;
- 232 (20)Establish and maintain a state hygienic laboratory as an aid in performing the duties of the
- 233 Commissioner, and to employ chemists, bacteriologists, and other employees that may be
- 234 necessary to properly operate the laboratory. The Commissioner may establish branches of
- 235 the state laboratory at any points within the state that are necessary in the interest of the
- 236 public health;

237 (21)(A) Establish and fund a uniform health professionals data system to collect and maintain  
238 uniform data on all health professionals in this state. This data shall include, but not be limited  
239 to, the following information about each health professional:

240 (i) His or her name;

241 (ii) Profession;

242 (iii) The area of the state where he or she is practicing;

243 (iv) His or her educational background;

244 (v) His or her employer's name; and

245 (vi) The number of years practicing within the profession.

246 (B) The boards provided for in articles three, four, four-a, five, seven, seven-a, fourteen,  
247 fourteen-a, fifteen, sixteen, twenty, twenty-one, twenty-three, twenty-eight, thirty-one, thirty-two,  
248 thirty-four, thirty-five, thirty-six and thirty-seven, chapter thirty of this code shall annually collect  
249 the data on health professionals under their jurisdiction in the format prescribed by the  
250 Commissioner.

251 (C) Each board shall pay to the Bureau annually, an amount determined by the Commissioner to  
252 be a pro rata portion, for anticipated expenses to establish and operate the uniform health  
253 professionals data system required by this article.

254 (D) The Commissioner may standardize data collection methods if necessary to implement the  
255 provisions of this section.

256 (E) The Commissioner shall publish annually and make available upon request, a report setting  
257 forth the data which was collected the previous year; areas of the state which the collected data  
258 indicates have a shortage of health professionals; and projections, based upon the collected data,  
259 as to the need for more health professionals in certain areas;

260 (24) (A) Expend any sums appropriated by the Legislature for the purpose of performing the  
261 public health duties imposed on the Bureau, or authorized by law.

262 (B) The Commissioner may make advance payments to public and nonprofit health services  
263 providers when the Commissioner determines it is necessary for the initiation or continuation of  
264 public health services.

265 (C) The advance payments, being in derogation of the principle of payment only after receipt of  
266 goods or services, shall be authorized only after serious consideration by the Commissioner of  
267 the necessity of the advance payments.

268 (D) Shall be for a period no greater than ninety days in advance of rendition of service or receipt  
269 of goods and continuation of health services;

270 (25) To make periodic reports to the Secretary, Governor and to the Legislature as required by  
271 this chapter; and

272 (26) Exercise all other powers delegated to the Commissioner by the Secretary or by this chapter  
273 or otherwise in this code to enforce all health laws, and to pursue all other activities necessary  
274 and incident to the authority and area of concern entrusted to the Bureau or the Commissioner.

275 (b) The Commissioner is authorized and empowered to accept and use for the benefit of  
276 the bureau any gift or devise of any property or thing which lawfully may be given. Any gift or  
277 devise of any property or thing which lawfully may be given and whatever profit may arise from its  
278 use or investment shall be deposited in a special revenue fund with the State Treasurer, and shall  
279 be used only as specified by the donor or donors.

**§16-1-6a. Organization and employees.**

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

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

6 (c) The Secretary may transfer employees and resources of the Department to the  
7 Bureau as may be necessary to fulfill the duties and responsibilities of the Bureau pursuant to  
8 this chapter. The Secretary may not transfer employees of other divisions and agencies within  
9 the Department to the Bureau without a prior finding that the office or position held by the  
10 employee may be eliminated and until the office or position is, in fact, eliminated.

11 (d) The Commissioner, if he or she deems such action necessary, may hire legal

12 counsel for the Bureau, notwithstanding the provisions of section two, article three, chapter five  
13 of this code or any other code provision to the contrary, or may request the Attorney General to  
14 appoint counsel who shall perform such duties as may be required by the Bureau. The Attorney  
15 General, in pursuance of such request, may select and appoint counsel to serve during the will  
16 and pleasure of the Attorney General, and shall be paid out of any funds allocated and  
17 appropriated to the Bureau.

18 (e) The Commissioner may employ such staff or employees as may be necessary to  
19 administer and enforce this chapter.

**§16-1-6b. Supervisory responsibilities of the Commissioner.**

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

**§16-1-6c. General powers and duties of the Bureau for Public Health.**

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

(1) To establish policies and procedures for governing the administration of the Bureau.

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

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

(4) To act as a liaison with other state entities and private groups with an interest in  
medical assistance; and

(5) To perform any other duties assigned to the Bureau by the Secretary.

**ARTICLE            2.            LOCAL            BOARDS            OF            HEALTH.**

**§16-2-2. Definitions.**

1            Unless the context in which used clearly requires a different meaning, as used in this  
2 article:

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

7            (b) "Bureau" means the Bureau for Public Health in the Department of ~~Health and~~  
8 ~~Human Resources~~ Health and Compliance;

9            (c) "Clinical and categorical programs" means those services provided to individuals of  
10 specified populations and usually focus on health promotion or disease prevention. These  
11 services are not considered comprehensive health care but focus on specific health issues such  
12 as breast and cervical cancer, prenatal and pediatric health services and home health services;

13            (d) "Combined local board of health" is one form of organization for a local board of  
14 health and means a board of health serving any two or more counties or any county or counties  
15 and one or more municipalities within or partially within the county or counties;

16            (e) "Commissioner" means the commissioner of the Bureau for Public Health, ~~who is the~~  
17 ~~state health officer~~;

18            (f) "Communicable and reportable disease prevention and control" is one of three areas  
19 of basic public health services each local board of health must offer. Services shall include  
20 disease surveillance, case investigation and follow-up, outbreak investigation, response to  
21 epidemics, and prevention and control of rabies, sexually transmitted diseases, vaccine

22 preventable diseases, HIV/AIDS, tuberculosis and other communicable and reportable  
23 diseases;

24 (g) "Community health promotion" is one of three areas of basic public health services  
25 each local board of health must offer. Services shall include assessing and reporting community  
26 health needs to improve health status, facilitating community partnerships including identifying  
27 the community's priority health needs, mobilization of a community around identified priorities,  
28 and monitoring the progress of community health education services;

29 (h) "County board of health" is one form of organization for a local board of health and  
30 means a local board of health serving a single county;

31 (i) "Department" means the West Virginia Department of ~~Health and Human Resources~~  
32 Health and Compliance;

33 (j) "Director" or "director of health" means the ~~state health officer~~ commissioner.  
34 Administratively within the department, the Bureau for Public Health through its commissioner  
35 carries out the public health function of the department, unless otherwise assigned by the  
36 secretary;

37 (k) "Environmental health protection" is one of three areas of basic public health services  
38 each local board of health must offer. Services shall include efforts to protect the community  
39 from environmental health risks including, inspection of housing, institutions, recreational  
40 facilities, sewage and wastewater facilities; inspection and sampling of drinking water facilities;  
41 and response to disease outbreaks or disasters;

42 (l) "Enhanced public health services" means services that focus on health promotion  
43 activities to address a major health problem in a community, are targeted to a particular  
44 population and assist individuals in this population to access the health care system, such as

45 lead and radon abatement for indoor air quality and positive pregnancy tracking. Enhanced  
46 public health services are services a local health department may offer;

47 (m) "Local board of health," "local board" or "board" means a board of health serving one  
48 or more counties or one or more municipalities or a combination thereof;

49 (n) "Local health department" means the staff of the local board of health;

50 (o) "Local health officer" means the individual physician with a current West Virginia  
51 license to practice medicine who supervises and directs the activities of the local health  
52 department services, staff and facilities and is appointed by the local board of health with  
53 approval by the commissioner;

54 (p) "Municipal board of health" is one form of organization for a local board of health and  
55 means a board of health serving a single municipality;

56 (q) "Performance-based standards" means generally accepted, objective standards such  
57 as rules or guidelines against which a local health department's level of performance can be  
58 measured;

59 (r) "Primary care services" means health care services, including medical care, that  
60 emphasize first contact patient care and assume overall and ongoing responsibility for the  
61 patient in health maintenance and treatment of disease. Primary care services are services that  
62 local boards of health may offer if the board has determined that an unmet need for primary  
63 care services exists in its service area. Basic public health services funding may not be used to  
64 support these services;

65 (s) "Program plan" or "plan of operation" means the annual plan for each local board of  
66 health that must be submitted to the commissioner for approval;

67 (t) "Secretary" means the secretary of the state Department of ~~Health and Human~~

68 ~~Resources~~ Health and Compliance; and

69 (u) "Service area" means the territorial jurisdiction of the local board of health.

**§16-2-9. Local board of health; terms of appointment; reappointment; oath of office; vacancies; removal; compensation; expenses.**

1 (a) The term of office for members selected and appointed to a local board of health  
2 pursuant to the provisions of this article is five years. Members may serve until their duly  
3 qualified successors are selected and appointed by vote of the original appointing authority.  
4 Members may be reappointed for additional terms of five years. Board members' oaths of office  
5 shall be duly recorded before entering into or discharging any duties of the office.

6 (b) Any vacancy on any local board of health shall be filled by appointment of the original  
7 appointing authority. This appointment is for the unexpired term.

8 (c) A local board of health may remove any of its members pursuant to the provisions of  
9 its lawfully adopted bylaws and shall remove any of its members for official misconduct,  
10 incompetence, neglect of duty, gross immorality or the revocation of any state professional  
11 license or certification. A local board of health, or any of its members may be removed by the  
12 ~~state health officer~~ commissioner for failure or refusal to comply with duties as set forth by  
13 statute or rule. Upon removal, a successor or successors to the member or members removed  
14 shall immediately be appointed by the original appointing body pursuant to the provisions of this  
15 article.

16 (d) Each member of a local board of health may receive compensation as determined by  
17 the local board for attending meetings of and other activities for the board as required by law:  
18 *Provided*, That this compensation may not exceed \$100 per day. Each member of a local board  
19 may be reimbursed for all reasonable and necessary travel and other expenses actually



20 incurred by the member in the performance of duties as a member of the local board.

**ARTICLE 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM FOR WOMEN,  
INFANTS AND CHILDREN (WIC).**

**§16-2G-1. Voucher or coupon redemption and payment.**

1 [Repealed]

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

**§16-3-4. Compulsory immunization of school children; information disseminated;  
offenses; penalties.**

1 (a) Whenever a resident birth occurs, the commissioner shall promptly provide parents  
2 of the newborn child with information on immunizations mandated by this state or required for  
3 admission to a public, private and parochial school in this state or a state-regulated child care  
4 center.

5 (b) Except as hereinafter provided, a child entering school or a state-regulated child care  
6 center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis,  
7 mumps, diphtheria, polio, rubella, tetanus and whooping cough.

8 (c) No child or person may be admitted or received in any of the schools of the state or a  
9 state-regulated child care center until he or she has been immunized against chickenpox,  
10 hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and whooping  
11 cough or produces a certificate from the commissioner granting the child or person an  
12 exemption from the compulsory immunization requirements of this section.

13 (d) Any school or state-regulated child care center personnel having information  
14 concerning any person who attempts to be enrolled in a school or state-regulated child care

15 center without having been immunized against chickenpox, hepatitis-b, measles, meningitis,  
16 mumps, diphtheria, polio, rubella, tetanus and whooping cough shall report the names of all  
17 such persons to the commissioner.

18 (e) Persons may be provisionally enrolled under minimum criteria established by the  
19 commissioner so that the person's immunization may be completed while missing a minimum  
20 amount of school. No person shall be allowed to enter school without at least one dose of each  
21 required vaccine.

22 (f) County health departments shall furnish the biologicals for this immunization for  
23 children of parents or guardians who attest that they cannot afford or otherwise access vaccines  
24 elsewhere.

25 (g) Health officers and physicians who provide vaccinations must present the person  
26 vaccinated with a certificate free of charge showing that they have been immunized against  
27 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and  
28 whooping cough, or he or she may give the certificate to any person or child whom he or she  
29 knows to have been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps,  
30 diphtheria, polio, rubella, tetanus and whooping cough.

31 (h) The commissioner is authorized to grant, renew, condition, deny, suspend or revoke  
32 exemptions to the compulsory immunization requirements of this section, on a statewide basis,  
33 upon sufficient medical evidence that immunization is contraindicated or there exists a specific  
34 precaution to a particular vaccine.

35 (1) A request for an exemption to the compulsory immunization requirements of this  
36 section must be accompanied by the certification of a licensed physician stating that the  
37 physical condition of the child is such that immunization is contraindicated or there exists a

38 specific precaution to a particular vaccine.

39 (2) The commissioner is authorized to appoint and employ an Immunization Officer to  
40 make determinations on request for an exemption to the compulsory immunization requirements  
41 of this section, on a statewide basis, and delegate to the Immunization Officer the authority  
42 granted to the commissioner by this subsection.

43 (3) A person appointed and employed as the Immunization Officer must be a physician  
44 licensed under the laws of this state to practice medicine.

45 (4) The Immunization Officer's decision on a request for an exemption to the compulsory  
46 immunization requirements of this section may be appealed to the ~~State Health Officer~~  
47 commissioner.

48 (5) The final determination of the ~~State Health Officer~~ commissioner is subject to a right  
49 of appeal pursuant to the provisions of article five, chapter twenty-nine a of this code.

50 (i) A physician who provides any person with a false certificate of immunization against  
51 chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio,, rubella, tetanus and  
52 whooping cough is guilty of a misdemeanor and, upon conviction, shall be fined not less than  
53 \$25 nor more than \$100.

### **ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.**

#### **§16-3D-2. Definitions.**

1 As used in this article:

2 (1) "Active Tuberculosis" or "Tuberculosis" means a communicable disease caused by  
3 the bacteria, Mycobacterium tuberculosis, which is demonstrated by clinical, bacteriological,  
4 radiographic or epidemiological evidence. An infected person whose tuberculosis has

5 progressed to active disease may experience symptoms such as coughing, fever, fatigue, loss  
6 of appetite and weight loss and is capable of spreading the disease to others if the tuberculosis  
7 germs are active in the lungs or throat.

8 (2) "Bureau" means the Bureau for Public Health in the Department of ~~Health and~~  
9 ~~Human Resources~~ Health and Compliance;

10 (3) "Commissioner" means the Commissioner of the Bureau for Public Health, ~~who is the~~  
11 ~~state health officer~~;

12 (4) "Local board of health," "local board" or "board" means a board of health serving one  
13 or more counties or one or more municipalities or a combination thereof;

14 (5) "Local health department" means the staff of the local board of health; and

15 (6) "Local health officer" means the individual physician with a current West Virginia  
16 license to practice medicine who supervises and directs the activities of the local health  
17 department services, staff and facilities and is appointed by the local board of health with  
18 approval by the commissioner.

19 (7) "Tuberculosis suspect" means a person who is suspected of having tuberculosis  
20 disease due to any or all of the following medical factors: the presence of symptoms, the result  
21 of a positive skin test, risk factors for tuberculosis, or findings on an abnormal chest x ray,  
22 during the time period when an active tuberculosis disease diagnosis is pending.

**ARTICLE 4A. PRENATAL EXAMINATION.**

**§16-4A-1. Compulsory serologic test.**

1 [Repealed]

**§16-4A-2. Attending physician to obtain blood specimen.**

1 [Repealed]

**§16-4A-3. Identification of specimen; report.**

1 [Repealed]

**§16-4A-4. Notation on birth certificate.**

1 [Repealed]

**§16-4A-5. Offenses; penalty.**

1 [Repealed]

**§16-4A-6. Separability.**

1 [Repealed]

**ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.**

**§16-4E-1. Legislative findings.**

1 [Repealed]

**§16-4E-2. Establishment of an advisory council on maternal risk assessment.**

1 [Repealed]

**§16-4E-3. Responsibilities of the advisory council on maternal risk assessment.**

1 [Repealed]

**§16-4E-4. Legislative rule-making authority.**

1 [Repealed]

**§16-4E-5. Applicability of the screening tool.**

1 [Repealed]

**§16-4E-6. Confidentiality of screening tool.**

1 [Repealed]

~~**ARTICLE 8. ELECTROLOGISTS.**~~

~~**§16-8-1. Definitions.**~~

1 (a) ~~"Electrology" means the art and practice relating to the removing of hair from the normal skin~~  
2 ~~of the body by the application of an electric current to the hair papilla by means of a needle or needles, or~~

3 by the application of an electronic tweezer having the electrical current flow through the hair and the  
4 follicle as in conventional electrolysis.

5 (b) "Electrolysis" means the process by which hair is removed from the normal skin by the  
6 application of an electric current to the hair root by means of a needle, needles or electronic tweezer,  
7 whether the process employs direct electric current to the hair root or by means of shortwave alternating  
8 electric \_\_\_\_\_ current.

**~~§16-8-2. Regulations by state board of health Should this be Secretary of the Department of Health  
and ; minimum requirements.~~**

1 The West Virginia board of health shall adopt rules and regulations, as in their judgment are  
2 necessary, to provide for the safe practice of electrology or electrolysis in this state, and when  
3 promulgated, these rules and regulations shall be the minimum requirements to be enforced by local  
4 health authorities throughout the state. All rules and regulations shall be promulgated in the manner  
5 provided by the provisions of article three, chapter twenty-nine-a of this code.

**ARTICLE 8. ELECTIVE BODY MODIFICATION.**

**§16-8-1. Definitions.**

1 The following words shall have the following meaning:

2 (1) "Adequate ventilation" means a free and unrestricted circulation of fresh air  
3 throughout a body piercing studio or a tattoo studio and the expulsion of foul or stagnant air.

4 (2) "Antibacterial solution" means any solution used to retard the growth of bacteria approved for  
5 application to human skin and includes all products so labeled.

6 (3) "Antimicrobial solution" means any solution used to retard the growth of microorganisms.

7 (4) "Body piercing" means to puncture the skin for the purpose of creating a hole to be  
8 decorated or adorned, but does not include the use of a mechanized, presterilized ear-piercing  
9 system that penetrates the outer perimeter or lobe of the ear or both.

10 (5) "Body piercing studio" means any room or space where body piercing is practiced or

11 where the business of body piercing or any part thereof is conducted.

12 (6) "Electrology" means the art and practice relating to the removing of hair from the  
13 normal skin of the body by the application of an electric current to the hair papilla by means of a  
14 needle or needles, or by the application of an electronic tweezer having the electrical current  
15 flow through the hair and the follicle as in conventional electrolysis.

16 (7) "Electrolysis" means the process by which hair is removed from the normal skin by  
17 the application of an electric current to the hair root by means of a needle, needles or electronic  
18 tweezer, whether the process employs direct electric current to the hair root or by means of  
19 shortwave alternating electric current.

20 (8) "Germicidal solution" means any solution which destroys germs and is so labeled.

21 (9) "Minor" means any person under the age of eighteen years.

22 (10) "Operator" means any person who is registered with the state to operate, control or  
23 manage a body piercing studio, and whose studio has been issued an operating permit by the  
24 local board of health.

25 (11) "Photo therapy device" means a device used for exposure to daylight or to specific  
26 wavelengths of light using lasers, light-emitting diodes, fluorescent lamps, dichroic lamps or very  
27 bright, full-spectrum light, usually controlled with various devices.

28 (12) "Single use" means products, instruments or items that are used one time on one  
29 client and then properly disposed of in accordance with rules of the Department regarding the  
30 disposal of medical wastes.

31 (13) "Standard precautions" means that all blood and body fluids are treated so as to  
32 contain all blood-borne pathogens and all proper precautions are taken to prevent the spread of  
33 any blood-borne pathogens.

34 (14) "Sterilization" means holding in an autoclave for twenty-five minutes at fifteen  
35 pounds pressure at a temperature of two hundred fifty degrees Fahrenheit or one hundred  
36 twenty-one degrees Celsius. This definition does not apply to the sterilization referenced in  
37 section six (a)(1)(D) of this article.

38 (15) "Tattoo" means to mark or color the skin by pricking in coloring matter so as to form  
39 indelible marks or figures or by the production of scars.

40 (16) "Tattoo studio" means any room or space where tattooing is practiced or where the business  
41 of tattooing or any part thereof is conducted.

42 (17) "Technician" means an individual who engages in the practice of body piercing.

43 (18) "Tanning device" means any equipment that emits radiation used for tanning of the  
44 skin, such as a sun lamp, tanning booth or tanning bed, and includes any accompanying  
45 equipment, such as protective eye wear, timers and handrails.

46 (19) "Tanning facility" means any commercial location, place, area, structure or  
47 business where a tanning device is used for a fee, membership dues or other compensation.

**§16-8-2. Body piercing studio business.**

1 (a) Effective with the passage of this article, any body piercing studio in West Virginia shall obtain  
2 a West Virginia business registration certificate and shall register with the local or regional board of  
3 health, request an inspection of the facility, and obtain an operating permit before engaging in the  
4 business of body piercing.

5 (b) Each local or regional board of health shall conduct annual inspections of body piercing  
6 studios to determine compliance with this article.

7 (c) Upon a determination by the board that the body piercing studio is in compliance with the  
8 provisions of this article, the board shall issue to the body piercing studio an operating permit, which shall  
9 be posted in a conspicuous place in the body piercing studio, clearly visible to the general public.



10           (d) Upon a determination by the board that any body piercing studio is not in compliance with the  
11 provisions of this article, or the rules promulgated hereunder, the board may order the body piercing  
12 studio to cease operations until such time as the board determines that the body piercing studio is in  
13 compliance.

14           (e) Nothing in this article may be construed as prohibiting any health care provider licensed under  
15 chapter thirty of this code from performing any action within the scope of his or her practice, or as  
16 restricting the lawful practice of medicine or surgery in this state.

**§16-8-3. Tattoo Studio Business.**

1           (a) Studio sanitation.

2           (1) The tattoo artist's hands shall be washed and then air blown or dried by single-use towel  
3 prior to beginning work on each person or when interrupted in the process of working on  
4 a person. In addition, disposable latex examination gloves shall be worn by the tattoo  
5 artist during the tattooing process. The gloves shall be changed and properly disposed of  
6 each time there is an interruption in the application of the tattoo, each time the gloves  
7 become torn or punctured or whenever the ability of the gloves to function as a barrier is  
8 compromised.

9           (2) Cabinets for the storage of instruments, dyes, pigments, single-use articles, carbon,  
10 stencils and other utensils shall be provided for each tattoo artist and shall be maintained  
11 in a sanitary manner.

12           (3) Bulk single use articles shall be commercially packaged and handled in such a way as to  
13 protect them from contamination. Storage of single-use articles may not be in toilet rooms  
14 or in vestibules of toilet rooms nor under nonpotable water lines or exposed sewer lines.

15           (4) Work tables and chairs or benches shall be provided for each tattoo artist. The surface of  
16 all work tables and chairs or benches shall be constructed of material which is smooth,  
17 light colored, nonabsorbent, corrosive-resistant and easily sanitized. The work tables and  
18 chairs or benches shall be sanitized with a germicidal solution after each tattoo

19 application. All existing tattoo studios on the effective date of the administrative regulation  
20 shall be exempt from the required color of the work table.

21 (5) All materials applied to human skin shall be from single-use articles or transferred from  
22 bulk containers to single-use containers and shall be disposed of after each use.

23 (6) No pets, including working dogs, guide dogs or security dogs from a certified trainer, may  
24 be permitted in a tattoo studio workroom as defined in subsection (c), section three  
25 hundred four of this article.

26 (b) Operation standards.

27 (1) Records.

28 (A) Proper records of tattoos administered shall be maintained for each patron by the holder of  
29 the studio registration.

30 (B) A record shall be prepared for each patron prior to any procedure being performed and shall  
31 include the patron's name and signature, address, age, date tattooed, design of the tattoo, location of the  
32 tattoo on the patron's body and the name of the tattoo artist who performed the work.

33 (C) Record entries shall be in ink or indelible pencil and shall be available for examination by the  
34 inspecting authorities provided in subsection (e) of this section.

35 (D) Before tattoo administration, the owner or tattoo artist shall discuss with the patron the risks  
36 involved in the tattoo requested, including the potential that a tattoo may interfere with the clinical reading  
37 of a magnetic resonance imaging study, should the patron intending to be tattooed ever encounter a  
38 medical need for such a study. The owner shall provide the patron with written information regarding the  
39 possible complications that may arise from receiving a tattoo. The written information shall be prepared  
40 by the Department. Receipt of the information shall be acknowledged in writing by the patron. The owner  
41 or tattoo artist shall also keep and maintain the acknowledgment as part of the patron's record pursuant  
42 to the provisions of subdivision (E) of this subsection.

43 (E) All records required by this section shall be kept on file for five years by the holder of the  
44 studio registration for the studio in which the tattoo was performed.

45 (2) Consent.

46 (A) Prior written consent for tattooing of minors shall be obtained from a parent or guardian.

47 (B) All written consents shall be kept on file for five years by the holder of the studio registration  
48 for the tattoo studio in which the tattoo was performed.

49 (C) The person receiving the tattoo shall attest to the fact that he or she is not intoxicated or  
50 under the influence of drugs or alcohol.

51 (3) Tattooing procedures.

52 (A) Printed instructions on the care of the skin after tattooing shall be given to each patron as a  
53 precaution to prevent infection.

54 (B) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the  
55 person being tattooed.

56 (C) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.

57 (D) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough,  
58 jaundice, draining or open skin infections such as boils which could be indicative of more serious  
59 conditions such as, but not limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall refrain from  
60 tattooing activities until such time as they are no longer experiencing or exhibiting the aforementioned  
61 symptoms.

62 (E) Before working on each patron, the fingernails and hands of the tattoo artist shall be  
63 thoroughly washed and scrubbed with hot running water, antibacterial soap and an individual hand brush  
64 that is clean and in good repair.

65 (F) The tattoo artist's hands shall be air blown dried or dried by a single-use towel. In addition,  
66 disposable latex examination gloves shall be worn during the tattoo process. The gloves shall be changed  
67 each time there is an interruption in the tattoo application, the gloves become torn or punctured or  
68 whenever their ability to function as a barrier is compromised.

69 (G) Only sterilized or single-use, disposable razors shall be used to shave the area to be  
70 tattooed.

71 (H) Immediately prior to beginning the tattoo procedure, the affected skin area shall be treated  
72 with an antibacterial solution.

73 (I) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the acetate  
74 stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least 20 minutes and then  
75 dried with sterile gauze or dried in the air on a sanitized surface after each use.

76 (J) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the paper  
77 stencil shall be single-use and disposable.

78 (K) If the design is drawn directly onto the skin, the design shall be applied with a single-use  
79 article only.

80 (4) Dyes or pigments.

81 (A) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized or  
82 disposable single-use containers for each patron.

83 (B) After tattooing, the unused dye or pigment in the single-use containers shall be discarded  
84 along with the container.

85 (C) All dyes or pigments used in tattooing shall be from professional suppliers specifically  
86 providing dyes or pigments for the tattooing of human skin.

87 (5) Sterilization of needles.

88 (A) A set of individual, sterilized needles shall be used for each patron.

89 (B) No less than twenty-four sets of sterilized needles and tubes shall be on hand for the entire  
90 day or night operation. Unused sterilized instruments shall be resterilized at intervals of no more than six  
91 months from the date of the last sterilization.

92 (C) Used, nondisposable instruments shall be kept in a separate, puncture resistant container  
93 until brush scrubbed in hot water and soap and then sterilized by autoclaving.

94 (D) If used instruments are ultrasonically cleaned prior to being placed in the used instrument  
95 container, they shall be ultrasonically cleaned and then rinsed under running hot water prior to being  
96 placed in the used instrument container.

97 (E) The ultrasonic unit shall be sanitized daily with a germicidal solution.

98 (F) If used instruments are not ultrasonically cleaned prior to being placed in the used instrument  
99 container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap  
100 and then sterilized by autoclaving.

101 (G) All nondisposable instruments, including the needle tubes, shall be sterilized and shall be  
102 handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be  
103 sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of  
104 sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents.

105 (H) Autoclave sterilization bags, with a color code indicator which changes color upon proper  
106 steam sterilization, shall be utilized during the autoclave sterilization process.

107 (I) Instruments shall be placed in the autoclave in such a manner as to allow live steam to  
108 circulate around them.

109 (J) No rusty, defective or faulty instruments shall be kept in the studio.

110 (6) Aftercare of tattoo.

111 The completed tattoo shall be washed with a single-use towel saturated with an antibacterial  
112 solution.

113 (c) Facilities and equipment.

114 (1) General physical environment.

115 (A) Tattoo studios shall have at least fifty footcandles of light and adequate ventilation. Walls and  
116 ceilings shall be painted a light color.

117 (B) The floor of the tattoo workroom shall be constructed of impervious material. The floor shall  
118 be swept and wet-mopped daily. Floors, walls or ceilings shall not be swept or cleaned while tattooing is  
119 in operation.

120 (C) Convenient, clean and sanitary toilet and hand-washing facilities shall be made accessible to  
121 customers.

122 (D) The building and equipment shall be maintained in a state of good repair at all times. The

123 studio premises shall be kept clean, neat and free of litter and rubbish.

124 (2) Workroom.

125 (A) Each tattoo studio shall have a workroom separate from a waiting room or any room or rooms  
126 used for any other purpose. The workroom may not be used as a corridor for access to other rooms.  
127 Patrons or customers shall be tattooed only in the workroom.

128 (B) The workroom shall be equipped with hot and cold running water, with one sink or basin per  
129 artist operating at the same time.

130 (C) The sinks and basins shall be for the exclusive use of the tattoo artists for washing their  
131 hands and preparing customers for tattooing. They shall be equipped with foot, wrist or single-lever action  
132 controls, soap, a germicidal solution, single-use towels and individual hand brushes clean and in good  
133 repair for each tattoo artist. All plumbing shall be in compliance with industry standards.

134 (D) Persons may not consume any food or drink nor smoke in the workroom.

135 (d) Disposal of waste.

136 The tattoo studio operator shall comply with rules promulgated by the Secretary regarding the  
137 disposal of medical wastes.

138 (e) Registration requirements; inspections by local or regional boards of health; permit fees.

139 (1) Tattoo studios in West Virginia shall obtain a West Virginia business registration certificate  
140 and shall register with their local or regional board of health.

141 (2) Each local or regional board of health shall conduct annual inspections of each tattoo studio to  
142 determine compliance with this article. Every person, firm or corporation operating a tattoo studio in West  
143 Virginia shall apply to their local or regional board of health for the inspection. The local or regional  
144 boards of health shall attempt to conduct the inspections within ten days of the receipt of the request for  
145 inspection. If it is impracticable for the local or regional board of health to conduct the investigation within  
146 ten days after receiving the application, the boards may issue to the applicant a temporary operating  
147 permit which shall be valid for thirty days or until a regular inspection is made, whichever occurs first.

148 (3) Upon a determination by the inspecting authority that any tattoo studio is not in compliance

149 with the provisions of this article, the inspection authority shall have the power to order the tattoo studio to  
150 cease operations until a time as the inspecting authority determines that the studio is in compliance.

151 (4) Upon a determination by the inspecting authority that the tattoo studio is in compliance with  
152 the provisions of this article, there shall be issued to the studio an operating permit that shall be posted in  
153 a conspicuous place, clearly visible to the general public.

154 (5) The fee for the issuance of an operating permit issued pursuant to this article shall be \$200  
155 and shall be paid by the tattoo studio receiving the permit. The fee shall be collected by and paid to the  
156 local or regional boards of health.

**§16-8-4. Tanning Facilities.**

(a) *Operation standards.*

1 (1) A tanning facility shall provide to any patron who wishes to use a tanning device located  
2 within its tanning facility a disclosure and consent form relating to use of a tanning device that contains  
3 the current United States Food and Drug Administration warning as follows:

4 “Danger. Ultraviolet Radiation. Follow instructions. Avoid overexposure. As with natural  
5 sunlight, overexposure can cause eye and skin injury and allergic reactions. REPEATED  
6 EXPOSURE MAY CAUSE PREMATURE AGING OF THE SKIN AND SKIN CANCER. WEAR  
7 PROTECTIVE EYEWEAR; FAILURE TO DO SO MAY RESULT IN SEVERE BURNS OR  
8 LONG-TERM INJURY TO THE EYES. Medications or cosmetics may increase your  
9 sensitivity to the ultraviolet radiation. Consult physician before using tanning device if you are  
10 using medications or have a history of skin problems or believe yourself especially sensitive  
11 to sunlight. If you do not tan in the sun, you are unlikely to tan from use of this product.”

12 (2) The disclosure and consent form must have a place for the patron's signature and the date. A  
13 signed and dated copy of the disclosure and consent form shall be maintained by the tanning facility and  
14 remains valid for one year from the date it was signed.

15 (3) All patrons are required to present proof of age prior to use of a tanning device. Proof of age  
16 shall be satisfied with a driver's license or other government-issued identification containing the date of

17 birth and a photograph of the individual. Persons under the age of eighteen may not be permitted to use a  
18 tanning device.

19 (b) Local or regional health department authority to inspect.

20 Local or regional health departments shall have the authority to enter and inspect a tanning  
21 facility to determine compliance with the requirements of this article.

22 (c) Exception for health care providers.

23 Nothing in this article may be construed as prohibiting any health care provider licensed under  
24 chapter thirty of this code from performing any action within the scope of his or her practice that results in  
25 prescribing the use of a photo therapy device to a patient regardless of the patient's age for treatment of a  
26 medical condition.

#### **§16-8-5. Penalties.**

1 (a) Body piercing studio business.

2 (1) Any owner of a body piercing studio who does not obtain a West Virginia business registration  
3 certificate, who does not register with the local or regional board of health, or who fails to request an  
4 inspection as required by this article is guilty of a misdemeanor and, upon conviction thereof, for a first  
5 offense, may have all of the body piercing equipment and paraphernalia confiscated and shall be fined  
6 \$100.

7 (2) For a second offense, which is a misdemeanor, the owner may have all of the body piercing  
8 equipment and paraphernalia confiscated and shall be fined not less than \$500 nor more than \$1,000 or  
9 be imprisoned in the county or regional jail for not less than ten days nor more than one year, or both  
10 fined and imprisoned.

11 (3) For a third offense, which is a misdemeanor, the owner shall have all the body piercing  
12 equipment and paraphernalia confiscated, shall be fined not less than \$1,000 nor more than \$5,000, or be  
13 imprisoned in the county or regional jail not less than thirty days nor more than one year, or both fined  
14 and imprisoned.

15 (b) Tattoo studio business.



16 (1) Any owner of a tattoo studio who does not obtain a West Virginia business registration  
17 certificate, who does not register with their local or regional board of health or who fails to request an  
18 inspection as required by this article shall be guilty of a misdemeanor and, upon conviction thereof, for a  
19 first offense, may have all of the tattoo equipment and paraphernalia confiscated and shall be fined \$100.

20 (2) For a second offense, which is a misdemeanor, the owner may have all of the tattoo  
21 equipment and paraphernalia confiscated and shall be fined not less than \$500 nor more than \$1,000 or  
22 confined in a county or regional jail not less than ten days nor more than one year, or both fined and  
23 imprisoned.

24 (3) For a third offense, which is a misdemeanor, the owner shall have all the tattoo equipment  
25 and paraphernalia confiscated, shall be fined not less than \$1,000 nor more than \$5,000, or confined in a  
26 county or regional jail not less than thirty days nor more than one year, or both fined and imprisoned

27 (c) *Tanning facilities.*

28 (1) Any owner of a tanning facility who violates the requirements of this article is guilty of a  
29 misdemeanor and, upon conviction thereof, for a first offense, shall be fined \$100.

30 (2) For a second offense, the owner is guilty of a misdemeanor and, upon conviction thereof, shall  
31 be fined not less than \$250 nor more than \$500.

32 (3) For a third or subsequent offense, the owner is guilty of a misdemeanor and, upon conviction  
33 thereof, shall be fined not less than \$500 nor more than \$1,000.

**§16-8-6.**

**Rulemaking.**

1 The Secretary shall propose rules for legislative approval in accordance with article three, chapter  
2 twenty-nine-a of this code as follows:

3 (1) *Body piercing studio business.*

4 (A) General physical requirements for facilities and equipment, including requirements for  
5 adequate ventilation and lighting;

6 (B) Record keeping requirements and forms;

7 (C) Written notification of the risks of body piercing procedures and minimum age requirements;

8 (D) Body piercing procedures, including, but not limited to, safety and sterilization procedures; the  
9 use of antimicrobial solutions, needles, single use instruments and other instruments; the exercise of

10 standard precautions; and instructions on the care of the skin after body piercing procedures;

11 (E) Permitting requirements for operators and technicians, including fees for permits and  
12 renewals of permits sufficient to cover the costs of inspecting facilities and administering this article; and

13 (F) For the disposal of waste in compliance with the rules of the Department regarding the  
14 disposal of medical wastes.

15 (G) The rules required by this subsection may also include provisions on training or educational  
16 requirements or materials; health screenings for technicians; and any other provisions considered  
17 necessary to protect the public or assure adequate health and safety.

18 (H) The rules required by this subsection may also include limitations or prohibitions on the  
19 performance of certain procedures, including, but not limited to, procedures referred to as cutting,  
20 branding and scarification, which are identified as posing a risk to the public health and safety.

21 (2) *Eletrologists.*

22 The Secretary shall purpose rules to regulate eletrologists. These rules shall include, at a  
23 minimum, requirements to be enforced by local or regional health authorities throughout the state and  
24 may include any other provisions deemed necessary by the Secretary for the health and safety of the  
25 practice of electrology or electrolysis.

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

**§16-22-1. Findings.**

[Repealed]

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

1 [Repealed]

**§16-22-3. Tests for diseases specified by the state Public Health Commissioner; reports;**

assistance to afflicted children; Public Health Commissioner to propose rules.

1 [Repealed]

**§16-22-4. Penalties for violating provisions of article.**

1 [Repealed]

**§16-22-5. Severability.**

1 [Repealed]

**§16-22-6. Effective date.**

1 [Repealed]

## **ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.**

**§16-22A-1. Testing required.**

1 [Repealed]

**§16-22A-2. Rule making authorized.**

1 [Repealed]

**§16-22A-3. Fees for testing; payment of same.**

1 [Repealed]

**§16-22A-4. Hearing impairment testing advisory committee established.**

1 [Repealed]

## **ARTICLE 22B. BIRTH SCORE PROGRAM.**

**§16-22B-1. Legislative findings; intent; purpose.**

1 [Repealed]

**§16-22B-2. Birth score program established.**

1 [Repealed]

**§16-22B-3. Determination of birth score; referral to physician.**

1 [Repealed]

**§16-22B-4. Rules.**

1 [Repealed]

**ARTICLE 24. STATE HEMOPHILIA PROGRAM.**

**§16-24-8. When payments for care and treatment of hemophiliacs may be made by director.**

1 [Repealed]

**ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY.**

**§16-29E-2. Legislative intent.**

1 It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by  
2 the Legislature and the various agencies within the ~~Department of Health and Human Resources~~  
3 Department of Health and Compliance, the Department of Healthcare Facilities and the Department of  
4 Human Services serve the following core set of principles:

5 (1) That all health and social programs offered under state authority be coordinated to maximize  
6 efficiencies and minimize competition within the various agencies thereby addressing the needs of the  
7 citizens more effectively;

8 (2) That communication be facilitated among the various agencies within ~~the Department of~~  
9 ~~Health and Human Resources~~ these departments and between ~~the department~~ these departments and  
10 the Legislature;

11 (3) That policy changes, not made by legislative rule, be discussed with the commission for  
12 purposes of coordinating those policies with existing programs and stated goals;

13 (4) That programs or policies implemented in accordance with federal mandates be  
14 communicated to the commission;

15 (5) That in developing and implementing programs with private or federal grant moneys, the  
16 various agencies communicate their efforts to the commission to ensure and facilitate future state  
17 funding; and

18 (6) That agencies previously exempted from rule-making review by federal or state statutes

19 advise the commission of program changes which may affect the health and well-being of the citizens of  
20 West Virginia.

**§16-29E-3. Definitions.**

1 As used in this article:

2 (a) (1) "Agency" means those various agencies, authorities, boards, committees, commissions or  
3 departments of ~~the Department of Health and Human Resources~~ the Department of Healthcare Facilities,  
4 the Department of Health and Compliance and the Department of Human Services with authority to  
5 promulgate legislative rules pursuant to this chapter that regulate health care providers, practitioners or  
6 consumers; or those offering social services programs;

7 (b) (2) "Commission" means the Legislative Oversight commission on health and human  
8 resources accountability; and

9 (c) (3) "Department" or "departments" means the ~~Department of Health and Human Resources.~~  
10 Department of Healthcare Facilities, the Department of Health and Compliance and the Department of  
11 Human Services.

**§16-29E-5. Powers and duties of commission.**

12 (a) The powers, duties and responsibilities of the commission shall include the following:

13 (1) Make a continuing investigation, study and review of the practices, policies and procedures of  
14 the health care and social services agencies in this state;

15 (2) Make a continuing investigation, study and review of all matters related to health and social  
16 policy in the state;

17 (3) Review program development by the various agencies of ~~the Department of Health and~~  
18 ~~Human Resources~~ the Department of Healthcare Facilities the Department of Health and Compliance  
19 and, the Department of Human Services if those programs impact the physical, emotional or social well-  
20 being of the citizens of West Virginia;

21 (4) Conduct studies on:

22 (A) The amount of funds expended by hospitals and other health care providers of this state for

23 services to persons who are unable to pay for those services and for which they receive no other form of  
24 reimbursement;

25 (B) The extent to which persons in this state forego needed medical services because of  
26 insufficient income and assets to pay for those services;

27 (C) The extent to which the state is maximizing available federal programs and moneys in  
28 providing health care services to the citizens of this state;

29 (D) The operation of the programs and funds created by article twenty-nine-c of this chapter; and

30 (E) The roles of the public, private and private nonprofit sectors in providing health care services  
31 to the citizens of this state;

32 (5) Review and study the state Medicaid program in order to determine if the state Medicaid  
33 agency, as the payor of last resort, is expending maximum effort to identify alternate private insurance  
34 resources for Medicaid beneficiaries;

35 (6) Review and study the feasibility and financial impact upon the state of assuring increased  
36 access to Medicaid beneficiaries to primary health care in the nonhospital setting by requiring enrollment  
37 in a primary care clinic program, if available;

38 (7) Review and study the feasibility and financial impact upon the state of the establishment of  
39 different and lesser schedules of payment for primary health services delivered by a hospital emergency  
40 room as compared to the schedule of payments for emergency room services of a true medical  
41 emergency nature; and

42 (8) Conduct a study on the effects of rural health networks, including effects on the quality, cost  
43 and availability of care; ~~and~~

44 ~~(9) Meet jointly with the advisory committee created in article thirty-five of this chapter to~~  
45 ~~determine methods for coordinating the collection and analysis of health care information within the state,~~  
46 ~~including the development of health information systems that will allow for the electronic transmittal of~~  
47 ~~data and access by the various agencies of government.~~

48 (b) The commission shall make annual reports to the Legislature regarding the results of all

49 investigations, studies and reviews pursuant to the provisions of section seven of this article.

**ARTICLE 37. BODY PIERCING STUDIO BUSINESS.**

**§16-37-1. Short title.**

1 [Repealed]

**§16-37-2. Definitions.**

1 [Repealed]

**§16-37-3. Registration requirements; inspections by local boards of health; posting of permit; power of local board of health to order studio to close.**

1 [Repealed]

**§16-37-4. Rules to be proposed by the Department of Health and Human Resources.**

1 [Repealed]

**§16-37-5. Violations and penalties.**

1 [Repealed]

**ARTICLE 38. TATTOO STUDIO BUSINESS.**

**§16-38-1. Definitions.**

1 [Repealed]

**§16-38-2. Studio sanitation.**

1 [Repealed]

**§16-38-3. Operation standards.**

1 [Repealed]

**§16-38-4. Facilities and equipment.**

1 [Repealed]

**§16-38-5. Disposal of waste.**

1 [Repealed]

**§16-38-6. Registration requirements; inspections by local or regional boards of health; permit**

fees.

1 [Repealed]

**§16-38-7. Violations and penalties.**

1 [Repealed]

**ARTICLE 44. THE PULSE OXIMETRY NEWBORN TESTING ACT.**

**§16-44-1. Legislative findings.**

1 [Repealed]

**§16-44-2. Pulse oximetry screening required; definition; rules.**

1 [Repealed]

**ARTICLE 45. TANNING FACILITIES.**

**§16-45-1. Definitions.**

1 [Repealed]

**§16-45-2. Exception for health care providers.**

1 [Repealed]

**§16-45-3. Operation standards.**

1 [Repealed]

**§16-45-4. Local health department authority to inspect.**

1 [Repealed]

**§16-45-5. Violations and penalties.**

1 [Repealed]

**CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.**

1 (a) A preliminary breath analysis may be administered to a child whenever a law-enforcement  
2 official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of



3 alcohol in his or her blood for the purpose of determining the child's blood alcohol content. Such breath  
4 analysis must be administered as soon as possible after the law-enforcement officer arrives at a  
5 reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her  
6 blood. Any preliminary breath analysis administered pursuant to this subsection must be administered  
7 with a device and in a manner approved by the ~~division of health~~ Department of Health and Compliance  
8 for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the  
9 purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had  
10 an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, and  
11 should, therefore, be taken into custody to administer a secondary test in accordance with the provisions  
12 of this section.

13 (b) A child may be taken into custody by a law-enforcement official without a warrant or court  
14 order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with  
15 any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results  
16 of the analysis indicate that the child has an alcohol concentration in his or her blood of less than two  
17 hundredths of one percent, by weight, the child may not be taken into custody unless other grounds exist  
18 under subsection (b), section eight, article five, chapter forty-nine of this code. Upon taking a child into  
19 custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause  
20 notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located,  
21 to a close relative.

22 (c) Upon taking a child into custody pursuant to this section, the official shall take the child to a  
23 facility where a secondary test of the child's blood or urine may be administered at the direction of the  
24 official or a test of the child's breath may be administered by the official. The law-enforcement agency by  
25 which such law-enforcement official is employed shall designate whether the secondary test is a test of  
26 either blood, breath or urine: *Provided*, That if the test so designated is a blood test and the child refuses  
27 to submit to the blood test, then the law-enforcement official taking the child into custody shall designate  
28 in lieu thereof a breath test to be administered. Notwithstanding the provisions of section seven of this  
29 article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to

30 operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a  
31 written statement advising him or her that a refusal to submit to a secondary test of either blood, breath or  
32 urine, as finally designated by the law-enforcement agency or official in accordance with this subsection,  
33 will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at  
34 least thirty days or a revocation of the license for a period up to life.

35 (d) If the law-enforcement official taking the child into custody is employed by a law-enforcement  
36 agency which does not have available the testing equipment or facilities necessary to conduct any  
37 secondary breath test which may be administered pursuant to the provisions of this section, then the  
38 official who took the child into custody may request another qualified person to administer a secondary  
39 breath test: *Provided*, That the breath test shall be administered in the presence of the official who took  
40 the child into custody. The results of such breath test may be used in evidence to the same extent and in  
41 the same manner as if such test had been conducted by the law-enforcement official who took the child  
42 into custody. The qualified person administering the breath test must be a member of the West Virginia  
43 state police, the sheriff of the county wherein the child was taken into custody or any deputy of such  
44 sheriff or a law-enforcement official of another municipality within the county wherein the child was taken  
45 into custody. Only the person actually administering the secondary breath test is competent to testify as  
46 to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted  
47 in accordance with the provisions of section six of this article.

48 (e) After taking the child into custody, if the law-enforcement official has reasonable cause to  
49 believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest  
50 for an offense defined under the provisions of section two of this article if the child were an adult, then the  
51 official shall proceed to treat the child in the same manner as any other child taken into custody without a  
52 warrant or court order, in accordance with the provisions of section eight of this article.

53 (f) If the results of any secondary test administered pursuant to this section indicate that the child,  
54 at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of eight  
55 hundredths of one percent or less, by weight, and if the law-enforcement official does not have  
56 reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would

57 provide grounds for arrest for an offense defined under the provisions of section two of this article if the  
58 child were an adult, then the official shall release the child: *Provided*, That if the results of any secondary  
59 test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle,  
60 had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, the  
61 child shall only be released to a parent or custodian, or to some other responsible adult.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND  
REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF  
ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.**

**§17C-5A-3. Safety and treatment program; reissuance of license.**

1 (a) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~  
2 ~~Abuse~~ The Department of Human Services, shall administer a comprehensive safety and  
3 treatment program for persons whose licenses have been revoked under the provisions of this  
4 article or section seven, article five of this chapter or subsection (6), section five, article three,  
5 chapter seventeen-b of this code and shall also establish the minimum qualifications for mental  
6 health facilities, day report centers, community correction centers or other public agencies or  
7 private entities conducting the safety and treatment program: *Provided*, ~~That the Department of~~  
8 ~~Health and Human Resources, Division of Alcoholism and Drug Abuse~~ the Department of  
9 Human Services may establish standards whereby the ~~division~~ Department will accept or  
10 approve participation by violators in another treatment program which provides the same or  
11 substantially similar benefits as the safety and treatment program established pursuant to this  
12 section.

13 (b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and  
14 drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs  
15 as they relate to driving, defensive driving or other safety driving instruction and other programs  
16 designed to properly educate, train and rehabilitate the offender.

17           (c) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~  
18 ~~Abuse~~ The Department of Human Services shall provide for the preparation of an educational  
19 and treatment the program for each person whose license has been revoked under the  
20 provisions of this article or section seven, article five of this chapter or subsection (6), section  
21 five, article three, chapter seventeen-b of this code which shall contain the following: (1) A listing  
22 and evaluation of the offender's prior traffic record; (2) the characteristics and history of alcohol  
23 or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety  
24 program; and (4) a recommendation as to treatment or rehabilitation and the terms and  
25 conditions of the treatment or rehabilitation. The program shall be prepared by persons  
26 knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

27           (d) There is hereby created a special revenue account within the State Treasury known  
28 as the ~~Department of Health and Human Resources~~ Department of Human Services Safety and  
29 Treatment Fund. The account shall be administered by the Secretary of ~~the Department of~~  
30 ~~Health and Human Resources~~ the Department of Human Services for the purpose of  
31 administering the comprehensive safety and treatment program established by subsection (a) of  
32 this section. The account may be invested, and all earnings and interest accruing shall be  
33 retained in the account. The Auditor shall conduct an audit of the fund at least every three fiscal  
34 years.

35           Effective July 1, 2010, the State Treasurer shall make a one-time transfer of \$250,000  
36 from the Motor Vehicle Fees Fund into the ~~Department of Health and Human Resources~~  
37 Department of Human Services Safety and Treatment Fund.

38           (e) (1) The program provider shall collect the established fee from each participant upon  
39 enrollment unless the department has determined that the participant is an indigent based upon  
40 criteria established pursuant to legislative rule authorized in this section.

41           (2) If the department determined that a participant is an indigent based upon criteria

42 established pursuant to the legislative rule authorized by this section, the department shall  
43 provide the applicant with proof of its determination regarding indigency, which proof the  
44 applicant shall present to the interlock provider as part of the application process provided in  
45 section three-a of this article and/or the rules promulgated pursuant thereto.

46 (3) Program providers shall remit to ~~the Department of Health and Human Resources~~  
47 the Department of Human Services a portion of the fee collected, which shall be deposited by  
48 the Secretary of ~~the Department of Health and Human Resources~~ the Department of Human  
49 Services into ~~the Department of Health and Human Resources~~ the Department of Human  
50 Services Safety and Treatment Fund. ~~The Department of Health and Human Resources~~ The  
51 Department of Human Services shall reimburse enrollment fees to program providers for each  
52 eligible indigent offender.

53 (f) On or before January 15 of each year, the Secretary of ~~the Department of Health and~~  
54 ~~Human Resources~~ the Department of Human Services shall report to the Legislature on:

55 (1) The total number of offenders participating in the safety and treatment program  
56 during the prior year;

57 (2) The total number of indigent offenders participating in the safety and treatment  
58 program during the prior year;

59 (3) The total number of program providers during the prior year; and

60 (4) The total amount of reimbursements paid to program provider during the prior year.

61 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to  
62 the program developed for the offender, shall prescribe the necessary terms and conditions for  
63 the reissuance of the license to operate a motor vehicle in this state revoked under this article or  
64 section seven, article five of this chapter or subsection (6), section five, article three, chapter  
65 seventeen-b of this code which shall include successful completion of the educational, treatment  
66 or rehabilitation program, subject to the following:

67 (1) When the period of revocation is six months, the license to operate a motor vehicle in  
68 this State may not be reissued until: (A) At least ninety days have elapsed from the date of the  
69 initial revocation, during which time the revocation was actually in effect;(B) the offender has  
70 successfully completed the program; (C) all costs of the program and administration have been  
71 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

72 (2) When the period of revocation is for a period of one year or for more than a year, the  
73 license to operate a motor vehicle in this state may not be reissued until: (A) At least one-half of  
74 the time period has elapsed from the date of the initial revocation, during which time the  
75 revocation was actually in effect; (B) the offender has successfully completed the program; (C)  
76 all costs of the program and administration have been paid; and (D) all costs assessed as a  
77 result of a revocation hearing have been paid. Notwithstanding any provision in this code, a  
78 person whose license is revoked for refusing to take a chemical test as required by section  
79 seven, article five of this chapter for a first offense is not eligible to reduce the revocation period  
80 by completing the safety and treatment program.

81 (3) When the period of revocation is for life, the license to operate a motor vehicle in this  
82 State may not be reissued until: (A) At least ten years have elapsed from the date of the initial  
83 revocation, during which time the revocation was actually in effect; (B) the offender has  
84 successfully completed the program; (C) all costs of the program and administration have been  
85 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

86 (4) Notwithstanding any provision of this code or any rule, any mental health facilities or  
87 other public agencies or private entities conducting the safety and treatment program when  
88 certifying that a person has successfully completed a safety and treatment program shall only  
89 have to certify that the person has successfully completed the program.

90 (h) ~~(1) The Department of Health and Human Resources, Division of Alcoholism and~~  
91 ~~Drug Abuse~~ The Department of Human Services shall provide for the preparation of an

92 educational program for each person whose license has been suspended for sixty days  
93 pursuant to the provisions of subsection (n), section two, article five-a of this chapter. The  
94 educational program shall consist of not less than twelve nor more than eighteen hours of actual  
95 classroom time.

96 (2) When a sixty-day period of suspension has been ordered, the license to operate a  
97 motor vehicle may not be reinstated until: (A) At least sixty days have elapsed from the date of  
98 the initial suspension, during which time the suspension was actually in effect; (B) the offender  
99 has successfully completed the educational program; (C) all costs of the program and  
100 administration have been paid; and (D) all costs assessed as a result of a suspension hearing  
101 have been paid.

102 (i) A required component of the treatment program provided in subsection (b) of this  
103 section and the education program provided for in subsection (c) of this section shall be  
104 participation by the violator with a victim impact panel program providing a forum for victims of  
105 alcohol and drug-related offenses and offenders to share first-hand experiences on the impact  
106 of alcohol and drug-related offenses in their lives. ~~The Department of Health and Human~~  
107 ~~Resources, Division of Alcoholism and Drug Abuse~~ The Department of Human Services  
108 shall propose and implement a plan for victim impact panels where appropriate numbers of  
109 victims are available and willing to participate and shall establish guidelines for other innovative  
110 programs which may be substituted where the victims are not available to assist persons whose  
111 licenses have been suspended or revoked for alcohol and drug-related offenses to gain a full  
112 understanding of the severity of their offenses in terms of the impact of the offenses on victims  
113 and offenders. The plan shall require, at a minimum, discussion and consideration of the  
114 following:

115 (A) Economic losses suffered by victims or offenders;

116 (B) Death or physical injuries suffered by victims or offenders;

117 (C) Psychological injuries suffered by victims or offenders;  
118 (D) Changes in the personal welfare or familial relationships of victims or offenders; and  
119 (E) Other information relating to the impact of alcohol and drug-related offenses upon  
120 victims or offenders.

121 ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~  
122 ~~Abuse~~ The Department of Human Services shall ensure that any meetings between victims and  
123 offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

124 (j)(1) The Secretary of ~~the Department of Health and Human Resources~~ the Department  
125 of Human Services shall promulgate a rule for legislative approval in accordance with article  
126 three, chapter twenty-nine-a of this code to administer the provisions of this section and  
127 establish a fee to be collected from each offender enrolled in the safety and treatment program.  
128 The rule shall include: (A) A reimbursement mechanism to program providers of required fees  
129 for the safety and treatment program for indigent offenders, criteria for determining eligibility of  
130 indigent offenders, and any necessary application forms; and (B) program standards that  
131 encompass provider criteria including minimum professional training requirements for providers,  
132 curriculum approval, minimum course length requirements and other items that may be  
133 necessary to properly implement the provisions of this section.

134 (2) The Legislature finds that an emergency exists and, therefore, the Secretary shall file  
135 by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of  
136 section fifteen, article three, chapter twenty-nine-a of this code.

137 (k) Nothing in this section may be construed to prohibit day report or community  
138 correction programs, authorized pursuant to article eleven-c, chapter sixty-two of this code, from  
139 administering a comprehensive safety and treatment program pursuant to this section.

## **CHAPTER 18. EDUCATION.**



**ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**

**§18-4-2. Qualifications; health certificate; disability; acting superintendent.**

1 (a) Each county superintendent shall hold a professional administrative certificate endorsed for  
2 superintendent, or a first class permit endorsed for superintendent, subject to the following:

3 (1) A superintendent who holds a first class permit may be appointed for one year only, and may  
4 be reappointed two times for an additional year each upon an annual evaluation by the county board and  
5 a determination of satisfactory performance and reasonable progress toward completion of the  
6 requirements for a professional administrative certificate endorsed for superintendent;

7 (2) Any candidate for superintendent, assistant superintendent or associate superintendent, who  
8 possesses an earned doctorate from an accredited institution of higher education and either has  
9 completed three successful years of teaching in public education or has the equivalent of three years of  
10 experience in management or supervision as defined by state board rule, after employment by the county  
11 board shall be granted a permanent administrative certificate and shall be a licensed county  
12 superintendent;

13 (3) The state board shall promulgate a legislative rule in accordance with article three-b, chapter  
14 twenty-nine-a of this code, to address those cases where a county board finds that course work needed  
15 by the county superintendent who holds a first class permit is not available or is not scheduled at state  
16 institutions of higher education in a manner which will enable the county superintendent to complete  
17 normal requirements for a professional administrative certificate within the three-year period allowed  
18 under the permit; and

19 (4) Any person employed as assistant superintendent or educational administrator prior to June  
20 27, 1988, and who was previously employed as superintendent is not required to hold the professional  
21 administrative certificate endorsed for superintendent.

22 (b) In addition to other requirements set forth in this section, a county superintendent shall meet  
23 the following health-related conditions of employment:

24 (1) Before entering upon the discharge of his or her duties, file with the president of the county  
25 board a certificate from a licensed physician certifying the following:

26 (A) A tuberculin skin test, of the type Mantoux test (PPD skin test), approved by the ~~Director of~~  
27 ~~the Division of Health~~ Secretary of the Department of Health and Compliance, has been made within four  
28 months prior to the beginning of the term of the county superintendent; and

29 (B) The county superintendent does not have tuberculosis in a communicable state based upon  
30 the test results and any further study;

31 (2) After completion of the initial test, the county superintendent shall have an approved  
32 tuberculin skin test once every two years or more frequently if medically indicated. Positive reactors to the  
33 skin test are to be referred immediately to a physician for evaluation and indicated treatment or further  
34 studies;

35 (3) A county superintendent who is certified by a licensed physician to have tuberculosis in a  
36 communicable stage shall have his or her employment discontinued or suspended until the disease has  
37 been arrested and is no longer communicable; and

38 (4) A county superintendent who fails to complete required follow-up examinations as set forth in  
39 this subsection shall be suspended from employment until a report of examination is confirmed.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-22c. Providing for the maintenance and use of epinephrine auto-injectors;  
administration of injections; notice; indemnity from liability; rules.**

1 (a) A public, private, parochial or denominational school located within this state may  
2 possess and maintain at the school a supply of epinephrine auto-injectors for use in emergency  
3 medical care or treatment for an anaphylactic reaction. A prior diagnosis for a student or school  
4 personnel requiring the use of epinephrine auto-injectors is not necessary to permit the school  
5 to stock epinephrine auto-injectors. Epinephrine auto-injectors shall be maintained by the school  
6 in a secure location which is only accessible by medical personnel and authorized nonmedical  
7 personnel and not by students.

8 (b) An allopathic physician licensed to practice pursuant to the provisions of article three,  
9 chapter thirty of this code or an osteopathic physician licensed to practice pursuant to the

10 provisions of article fourteen, chapter thirty of this code may prescribe within the course of his or  
11 her professional practice standing orders and protocols for use when necessary by a school  
12 which wishes to maintain epinephrine auto-injector pursuant to the provisions of this section.

13 (c) A school nurse, as set forth in section twenty-two of this article, may administer an  
14 epinephrine auto-injector to a student or school personnel during regular school hours or at a  
15 school function when the school nurse medically believes the individual is experiencing an  
16 anaphylactic reaction. A school nurse may use the school supply of epinephrine auto-injectors  
17 for a student or school personnel authorized to self-administer that meet the requirements of a  
18 prescription on file with the school.

19 (d) Nonmedical school personnel who have been trained in the administration of an  
20 epinephrine auto-injector and who have been designated and authorized by the school or  
21 county board to administer the epinephrine auto-injector are authorized to administer an  
22 epinephrine auto-injector to a student or school personnel during regular school hours or at a  
23 school function when the authorized and designated nonmedical school personnel reasonably  
24 believes, based upon their training, that the individual is experiencing an anaphylactic reaction.  
25 Nonmedical school personnel may use the school supply of epinephrine auto-injectors for a  
26 student or school personnel authorized to self-administer that meet the requirements of a  
27 prescription on file with the school.

28 (e) School transportation employees, including bus drivers, who have been trained in the  
29 administration of an epinephrine auto-injector and who have been designated and authorized by  
30 the school or county board to administer an epinephrine auto-injector may administer an  
31 epinephrine auto-injector to a student or school personnel during transportation to or from a  
32 school function when the school transportation employee reasonably believes, based upon his  
33 or her training, that the individual is experiencing an anaphylactic reaction. A school  
34 transportation employee may use the individual's personal supply of epinephrine auto-injectors

35 or the school's supply of epinephrine auto-injectors for a student or school personnel authorized  
36 to self-administer that meet the requirements of a prescription on file with the school: *Provided,*  
37 That a school transportation employee shall defer to an individual possessing a higher degree of  
38 medical training or the parent of the child experiencing an anaphylactic reaction, if either are  
39 present at the time of the reaction; *Provided, however,* That the school transportation employee,  
40 trained and authorized to administer epinephrine auto-injectors, is not subject to the terms of  
41 section twenty-two of this article.

42 (f) Prior notice to the parents of a student of the administration of the epinephrine auto-  
43 injector is not required. Immediately following the administration of the epinephrine auto-injector,  
44 the school shall provide notice to the parent of a student who received an auto-injection.

45 (g) A school nurse, a trained school transportation employee, or trained and authorized  
46 nonmedical school personnel who administer an epinephrine auto-injection to a student or to  
47 school personnel as provided in this section is immune from liability for any civil action arising  
48 out of an act or omission resulting from the administration of the epinephrine auto-injection  
49 unless the act or omission was the result of the school nurse, school transportation employee,  
50 or trained and authorized nonmedical school personnel's gross negligence or willful misconduct.

51 (h) For the purposes of this section, all county boards of education may participate in  
52 free or discounted drug programs from pharmaceutical manufacturers to provide epinephrine  
53 auto-injectors to schools in their counties which choose to stock auto-injectors.

54 (i) All county boards of education are required to collect and compile aggregate data on  
55 incidents of anaphylactic reactions resulting in the administration of school maintained  
56 epinephrine auto-injectors in their county during a school year and forward the data to the state  
57 superintendent of schools. The state superintendent of schools shall prepare an annual report to  
58 be presented to the Joint Committee on Government and Finance as set forth in article three,  
59 chapter four of this code, by December 31 of each year.

60 (j) The State Board of Education, as defined in article two of this chapter, shall consult  
61 with the ~~state health officer~~ Commissioner of the Bureau for Public Health, as defined in ~~section~~  
62 ~~four, article three, chapter thirty~~ article one, chapter sixteen of this code, and promulgate rules  
63 necessary to effectuate the provisions of this section in accordance with the provisions of article  
64 three-b, chapter twenty-nine-a of this code. The rules shall provide, at a minimum, for:

65 (1) The criteria for selection and minimum requirements of nonmedical school personnel  
66 and school transportation employees who may administer epinephrine auto-injectors following  
67 the necessary training;

68 (2) The training requirements necessary for nonmedical school personnel and school  
69 transportation employees to be authorized to administer an epinephrine auto-injection;

70 (3) Training on anaphylaxis and allergy awareness for food service workers in the school  
71 system, if easily available locally;

72 (4) Storage requirements for maintaining the epinephrine auto-injectors within the  
73 schools;

74 (5) Comprehensive notice requirements to the parents of a student who was  
75 administered a school maintained epinephrine auto-injection including who administered the  
76 injection, the rationale for administering the injection, the approximate time of the injection and  
77 any other necessary elements to make the student's parents fully aware of the circumstances  
78 surrounding the administration of the injection;

79 (6) Any and all necessary documentation to be kept and maintained regarding receipt,  
80 inventory, storage and usage of all epinephrine auto-injectors;

81 (7) Detailed reporting requirements for county boards of education on incidents of use of  
82 school maintained epinephrine auto-injectors during a school year; and

83 (8) Any other requirements necessary to fully implement this section.

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-3. Definitions.**

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

2           (1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a  
3 contributor plus regular interest.

4           (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of  
5 a retired member.

6           (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed  
7 upon the basis of the mortality table and interest rates as set and adopted by the retirement board in  
8 accordance with the provisions of this article: *Provided*, That when used in the context of compliance with  
9 the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially  
10 equivalent" shall be computed using the mortality tables and interest rates required to comply with those  
11 requirements.

12           (4) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance  
13 with this article.

14           (5) "Average final salary" means the average of the five highest fiscal year salaries earned as a  
15 member within the last fifteen fiscal years of total service credit, including military service as provided in  
16 this article, or if total service is less than fifteen years, the average annual salary for the period on which  
17 contributions were made: *Provided*, That salaries for determining benefits during any determination period  
18 may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with  
19 section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue  
20 Code.

21           (6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

22           (7) "Contributor" means a member of the retirement system who has an account in the teachers  
23 accumulation fund.

24           (8) "Deposit" means a voluntary payment to his or her account by a member.

25           (9) "Employer" means the agency of and within the state which has employed or employs a  
26 member.

27           (10) "Employer error" means an omission, misrepresentation or violation of relevant provisions of  
28 the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of  
29 both the West Virginia Code and of the West Virginia Code of State Regulations by the participating  
30 public employer that has resulted in an underpayment or overpayment of contributions required. A  
31 deliberate act contrary to the provisions of this section by a participating public employer does not  
32 constitute employer error.

33           (11) "Employment term" means employment for at least ten months, a month being defined as  
34 twenty employment days.

35           (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public  
36 employer to a member for performing duties for the participating public employer for which the member  
37 was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done.  
38 Gross salary also includes retroactive payments made to a member to correct a clerical error, or made  
39 pursuant to a court order or final order of an administrative agency charged with enforcing federal or state  
40 law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be  
41 allocated to and considered paid in the periods in which the work was or would have been done. Gross  
42 salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or  
43 any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or  
44 automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

45           (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
46 amended.

47           (14) "Member" means any person who has accumulated contributions standing to his or her credit  
48 in the state Teachers Retirement System. A member shall remain a member until the benefits to which he  
49 or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to  
50 section thirteen of this article.

51           (15) "Members of the administrative staff of the public schools" means deans of instruction, deans  
52 of men, deans of women, and financial and administrative secretaries.

53           (16) "Members of the extension staff of the public schools" means every agricultural agent, boys'

54 and girls' club agent and every member of the agricultural extension staff whose work is not primarily  
55 stenographic, clerical or secretarial.

56 (17) "New entrant" means a teacher who is not a present teacher.

57 (18) "Nonteaching member" means any person, except a teacher member, who is regularly  
58 employed for full-time service by: (A) Any county board of education; (B) the State Board of Education;  
59 (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical  
60 College Education; or (E) a governing board, as defined in section two, article one, chapter eighteen-b of  
61 this code: *Provided*, That any person whose employment with the Higher Education Policy Commission,  
62 the West Virginia Council for Community and Technical College Education or a governing board  
63 commences on or after July 1, 1991, is not considered a nonteaching member.

64 (19) "Plan year" means the twelve-month period commencing on July 1 and ending the following  
65 June 30 of any designated year.

66 (20) "Present member" means a present teacher or nonteacher who is a member of the  
67 retirement system.

68 (21) "Present teacher" means any person who was a teacher within the thirty-five years beginning  
69 July 1, 1934, and whose membership in the retirement system is currently active.

70 (22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all service  
71 of a present member who was employed as a teacher, and did not contribute to a retirement account  
72 because he or she was legally ineligible for membership during the service.

73 (23) "Public schools" means all publicly supported schools, including colleges and universities in  
74 this state.

75 (24) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has  
76 nominated as beneficiary of his or her contributions by written designation duly executed and filed with  
77 the retirement board.

78 (25) "Regular interest" means interest at four percent compounded annually, or a higher earnable  
79 rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public  
80 Retirement Board, 162 CSR 7.



81 (26) "Regularly employed for full-time service" means employment in a regular position or job  
82 throughout the employment term regardless of the number of hours worked or the method of pay.

83 (27) "Required beginning date" means April 1 of the calendar year following the later of: (A) The  
84 calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in  
85 which the member retires or ceases covered employment under the system after having attained the age  
86 of seventy and one-half years.

87 (28) "Retirant" means any member who commences an annuity payable by the retirement  
88 system.

89 (29) "Retirement board" means the Consolidated Public Retirement Board created pursuant to  
90 article ten-d, chapter five of this code.

91 (30) "Retirement system" means the state Teachers Retirement System established by this  
92 article.

93 (31) "Teacher member" means the following persons, if regularly employed for full-time service:  
94 (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C)  
95 public school librarians; (D) superintendents of schools and assistant county superintendents of schools;  
96 (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of  
97 the research, extension, administrative or library staffs of the public schools;(G) the State Superintendent  
98 of Schools, heads and assistant heads of the divisions under his or her supervision, or any other  
99 employee under the state superintendent performing services of an educational nature;(H) employees of  
100 the State Board of Education who are performing services of an educational nature;(I) any person  
101 employed in a nonteaching capacity by the State Board of Education, any county board of education, the  
102 State Department of Education or the State Teachers Retirement Board, if that person was formerly  
103 employed as a teacher in the public schools;(J) all classroom teachers, principals and educational  
104 administrators in schools under the supervision of the Division of Corrections, the ~~Division~~ Department of  
105 Health and Compliance or the ~~Division of Human Services~~ Department of Human Services;(K) an  
106 employee of the State Board of School Finance, if that person was formerly employed as a teacher in the  
107 public schools; and(L) any person designated as a 21st Century Learner Fellow pursuant to section

108 eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State  
109 Teachers Retirement System provided in this article.

110 (32) "Total service" means all service as a teacher or nonteacher while a member of the  
111 retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

112 Age in excess of seventy years shall be considered to be seventy years.

## **ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.**

### **§18-9E-3. Air quality in new schools.**

1 (a) In an effort to create well-ventilated school environments and notwithstanding any other  
2 provision of this code to the contrary, any new school building designed and constructed in the state by a  
3 county board, regardless of the funding source, shall be designed and constructed in compliance with the  
4 current standards of the American society of heating, refrigerating and air conditioning engineers  
5 handbook (ASHRAE), the national fire protection association code (NFPA) and the code of the building  
6 officials and code administrators (BOCA).

7 (b) Upon notice from the School Building Authority that a new public school building is occupied,  
8 ~~the division of health~~ Department of Health and Compliance shall perform radon testing in the school  
9 within the first year after occupancy and at least every five years thereafter. The county board shall  
10 provide any reasonable assistance to the ~~division of health~~ Department of Health and Compliance that is  
11 necessary to perform the radon testing. The radon testing shall include all major student-occupied areas  
12 at or below grade level. If it is determined that radon is present in amounts greater than the amount  
13 determined to be acceptable by the rules promulgated by the School Building Authority, pursuant to  
14 subsection (d) of this section, any industry accepted mitigation technique shall be used to reduce the  
15 radon level to the level or below the level determined acceptable by the School Building Authority.

16 (c) If the School Building Authority determines that it is feasible to test for radon prior to the  
17 construction of a school building, the School Building Authority may cause preconstruction site testing for  
18 radon to be performed.

19 (d) The School Building Authority shall promulgate rules pursuant to article three-a, chapter  
20 twenty-nine-a of this code to ensure that any new school building designed after the effective date of this

21 article is designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards.  
22 The School Building Authority shall promulgate rules, pursuant to article three-a, chapter twenty-nine-a of  
23 this code, that establish standards for safe levels of radon for public school buildings. The rules shall  
24 include the requirement that county boards submit all new school designs to the School Building Authority  
25 for review and approval for compliance with current education standards and design efficiencies prior to  
26 preparation of final bid documents.

27 (e) On or before July 1, 2002, the School Building Authority shall promulgate rules to establish a  
28 process for independent testing, adjusting and balancing (TAB) heating, ventilation and air conditioning  
29 (HVAC) systems in new school buildings or renovated schools when the HVAC system has been  
30 replaced prior to occupancy. The process shall be consistent with current ASHRAE standards and shall  
31 include, but not be limited to, the following:

32 (1) Requiring HVAC designers to be professional engineers registered in this state in the specific  
33 discipline associated with the system being designed;

34 (2) Requiring a process to ensure that the HVAC system has been installed in the prescribed  
35 manner and will operate within the performance guidelines as designed;

36 (3) Requiring participation of the design engineer who designed the system to verify the intent of  
37 the design;

38 (4) Requiring the TAB agent to be qualified to perform the desired services and perform testing  
39 and balancing procedures, or qualified to perform other School Building Authority-approved certification  
40 according to the procedures contained in the associated air balance council (AABC) national standards,  
41 the national environmental balancing bureau (NEBB) procedural standards and the environment  
42 engineering consultants (EEC) standards for testing, adjusting and balancing of environmental systems;

43 (5) Requiring that the independent TAB agent directly represent the building owner and is under  
44 contract with the building owner and paid from project funds;

45 (6) Requiring that sufficient documentation is provided to the owner to facilitate control and  
46 maintenance of the systems in accordance with the manufacturer's requirements;

47 (7) Requiring that sufficient training is provided by the equipment manufacturer or an agent of the  
48 manufacturer to those persons who will operate and maintain the systems prior to occupation of the

49 facility, including at least one full day follow-up training between six and eight months after the facility has  
50 been occupied; and

51 (8) Requiring certification upon successful completion of the TAB process by the independent  
52 TAB agent.

53 (f) To ensure proper maintenance and operation of new and replacement HVAC equipment, the  
54 Department of Education, using existing staff, shall provide county maintenance personnel additional  
55 training on the equipment and its controls at the site of the installation. The training shall occur within one  
56 year after student occupation of any new school facility or at any existing school facility where the HVAC  
57 system has been replaced or generally rehabilitated. Additionally, the Department of Education's facility  
58 staff shall provide on-site training to the county maintenance staff on the county's HVAC equipment at any  
59 facility that has been determined to have problematic indoor air quality as identified through the complaint  
60 procedure set forth in state board policy 6202.

61 (g) Upon completion of the required training, the Department of Education's facility staff shall  
62 provide the county board a report summarizing the training that was completed and a plan for continuing  
63 education of the county's HVAC staff. If sufficient staff is not available to the county to perform  
64 maintenance on HVAC systems, the Department of Education's staff shall assist the county in the  
65 development of an immediate and long range maintenance plan to ensure that HVAC systems are  
66 maintained and operated according to the manufacturer's recommendations.

67 (h) Beginning July 1, 2002, and every three months thereafter, the Department of Education shall  
68 forward to the School Building Authority copies of any complaints received by the Department of  
69 Education of indoor air quality problems which require system repair or replacement and are identified  
70 through the complaint procedure established in state board policy 6202.

71 (i) The state board shall promulgate rules, pursuant to article three-b, chapter twenty-nine-a of  
72 this code, in consultation with the ~~division of health~~ Department of Health and Compliance, that authorize  
73 the use of any appropriate floor covering in public school buildings, based on user needs and  
74 performance specifications.

**§18-9E-5. Investigation of indoor air quality complaints in existing schools and schools  
subsequently constructed.**

(a) The state board, in consultation with the ~~division of health~~ Department of Health and Compliance, shall promulgate rules pursuant to article three-b, chapter twenty-nine-a of this code which require each county board to investigate all reports of indoor air quality problems within the county. The rules shall set forth a designated official or officials within the county school system to be responsible for addressing, pursuant to this section, any indoor air quality complaints. The rules also shall set forth a procedure for any party to file a complaint with the designated official or officials. Any indoor air quality complaint found to be valid by the designated official or officials shall be addressed by forming a plan of correction. Any county board that addresses an indoor air quality complaint is encouraged to seek any available assistance from local, state and federal agencies in both investigating the complaint and in forming the plan of correction. A county board shall consider any documented plans of closure of a school building when forming any plan of correction for that school building. The rules shall be submitted to the Legislative Oversight commission on education accountability prior to September 1, 1999. Additionally, the rules shall set an appropriate cost for a plan of correction over which all such plans of correction shall be reported to the Legislative Oversight commission on education accountability. Based upon the Legislative Oversight commission on education accountability's experience in receiving the complaints, the commission shall submit a recommendation for funding the plans of correction.

(b) Furthermore, each plan of correction shall be incorporated into each county board's ten-year county-wide major improvement plan set forth in section sixteen, article nine-d of this chapter. Also pursuant to section sixteen, article nine-d of this chapter, the state board may restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter: *Provided*, That nothing in this subsection shall be interpreted as requiring that a county board make addressing an air quality complaint a priority over other projects in the county board's ten-

year county-wide major improvement plan.

## ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY

### REHABILITATION

### FUND

### ACT.

#### §18-10K-2. Board created, membership, terms, officers and staff.

1 (a) There is hereby established the West Virginia traumatic brain and spinal cord injury  
2 rehabilitation fund board.

3 (b) The board shall consist of twenty-three members. The members shall include:

4 (1) The secretary of the Department of Education and the arts, ex officio, or his or her  
5 designee;

6 (2) The ~~secretary of health and human resources~~ Secretary of Human Services, ex  
7 officio, or his or her designee;

8 (3) The State Superintendent of Schools, ex officio, or his or her designee;

9 (4) The secretary of the Department of Military Affairs and Public Safety, ex officio, or his  
10 or her designee;

11 (5) The ~~director~~ Commissioner of the bureau of behavioral health ~~within the Department~~  
12 ~~of Health and Human Resources~~, ex officio, or his or her designee;

13 (6) The director of the Division of Rehabilitation Services, ex officio, or his or her  
14 designee;

15 (7) The ~~director~~ Commissioner of the bureau of medical services, ex officio, or his or her  
16 designee;

17 (8) The director of the Office of Emergency Services, ex officio, or his or her designee;

18 (9) The executive director of the workers' compensation commission, ex officio, or his or  
19 her designee;

20 (10) Seven members appointed by the Governor to represent public and private health

21 organizations or other disability coalitions or advisory groups; and

22 (11) Seven members appointed by the Governor who are either survivors of traumatic  
23 brain or spinal cord injury or family members of persons with traumatic brain or spinal cord  
24 injury.

25 (c) The citizen members shall be appointed by the Governor for terms of three years,  
26 except that of the members first appointed, two of the representatives of public and nonprofit  
27 private health organizations, disability coalitions or advisory groups and two of the  
28 representatives of survivors or family members of persons with traumatic brain or spinal cord  
29 injuries shall serve for terms of one year, two of the representatives of each of those respective  
30 groups shall serve for terms of two years and the remaining three representatives of each of  
31 those respective groups shall serve for terms of three years. All subsequent appointments shall  
32 be for three years. Members shall serve until the expiration of the term for which they have been  
33 appointed or until their successors have been appointed and qualified. In the event of a  
34 vacancy, the Governor shall appoint a qualified person to serve for the unexpired term. No  
35 member may serve more than two consecutive three-year terms. State officers or employees  
36 may be appointed to the board unless otherwise prohibited by law.

37 (d) In the event a board member fails to attend more than twenty-five percent of the  
38 scheduled meetings in a twelve-month period, the board may, after written notification to that  
39 member and the secretary of education and the arts, request in writing that the Governor  
40 remove the member and appoint a new member to serve his or her unexpired term.

41 (e) The board shall elect from its membership a chairperson, treasurer and secretary as  
42 well as any other officer as appropriate. The term of the chairperson is for two years in duration  
43 and he or she cannot serve more than two consecutive terms.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.**

#### **§18C-3-1. Health Education Loan Program; establishment; administration; eligibility and loan cancellation; required report.**

1           (a) For the purposes of this section, "Vice Chancellor for Administration" means the person  
2 employed pursuant to section two, article four, chapter eighteen-b of this code.

3           (b) There is continued a special revolving fund account administered by the commission in the  
4 state Treasury to be known as the Health Education Student Loan Fund which shall be used to carry out  
5 the purposes of this section. The fund consists of the following:

6           (1) All funds on deposit in the medical student loan fund in the state Treasury or which are due or  
7 become due for deposit in the fund as obligations made under the previous enactment of this section;

8           (2) Those funds provided for medical education pursuant to the provisions of section four, article  
9 ten, chapter eighteen-b of this code;

10           (3) Appropriations provided by the Legislature;

11           (4) Repayment of any loans made under this section;

12           (5) Amounts provided by medical associations, hospitals or other medical provider organizations  
13 in this state, or by political subdivisions of the state, under an agreement which requires the recipient to  
14 practice his or her health profession in this state or in the political subdivision providing the funds for a  
15 predetermined period of time and in such capacity as set forth in the agreement; and

16           (6) Other amounts which may be available from external sources.

17           (c) Balances remaining in the fund at the end of the fiscal year do not expire or revert. All costs  
18 associated with administering this section shall be paid from the Health Education Student Loan Fund.

19           (d) The Vice Chancellor for Administration may utilize any funds in the Health Education Student  
20 Loan Fund for the purposes of the Medical Student Loan Program. The commission shall give priority for  
21 the loans to residents of this state, as defined by the commission. An individual is eligible for loan  
22 consideration if the individual meets the following conditions:

23           (1) Demonstrates financial need;



24 (2) Meets established academic standards;

25 (3) Is enrolled or accepted for enrollment at the West Virginia University School of Medicine, the  
26 Marshall University School of Medicine, or the West Virginia School of Osteopathic Medicine in a program  
27 leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);

28 (4) Has not yet received one of the degrees provided in subdivision (3) of this subsection; and

29 (5) Is not in default of any previous student loan.

30 (e) At the end of each fiscal year, any individual who has received a medical student loan and  
31 who has rendered services as a medical doctor or a doctor of osteopathy in this state in a medically  
32 underserved area or in a medical specialty in which there is a shortage of physicians, as determined by  
33 the ~~Division of Health~~ Department of Health and Compliance at the time the loan was granted, may  
34 submit to the commission a notarized, sworn statement of service on a form provided for that purpose.  
35 Upon receipt of the statement the commission shall cancel \$10,000 of the outstanding loan or loans for  
36 every full twelve consecutive calendar months of such service.

37 (f) No later than thirty days following the end of each fiscal year, the Vice Chancellor for  
38 Administration shall prepare and submit a report to the commission for inclusion in the statewide report  
39 card required under section eight, article one-d, chapter eighteen-b of this code to be submitted to the  
40 Legislative Oversight Commission on Education Accountability established under section eleven, article  
41 three-a, chapter twenty-nine-a of this code. At a minimum, the report shall include the following  
42 information:

43 (1) The number of loans awarded;

44 (2) The total amount of the loans awarded;

45 (3) The amount of any unexpended moneys in the fund; and

46 (4) The rate of default during the previous fiscal year on the repayment of previously awarded  
47 loans.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 11D. TRADITIONAL CHEESE PRODUCTION.

#### §19-11D-1. Legislative findings.

1 The Legislature finds that local production and sale of locally manufactured cheese products is a

2 culturally significant tradition and that the preservation of historic methods of cheese production is in the  
3 public interest; that local cheese production is an important part of the economic livelihood of many  
4 families and small businesses in this state; and that the unique quality of home and farm-based cheese  
5 products cannot be duplicated using manufacturing and food production requirements enforced by local  
6 boards of health. Therefore, the Legislature finds that it is in the public interest to exempt certain local  
7 cheese production and local cheese products from regulations of the ~~division of health~~ Department of  
8 Health and Compliance related to food sanitation enforced by local boards of health, and to place the  
9 production of certain home and farm-based cheese products under the jurisdiction of the Department of  
10 Agriculture.

**§19-11D-3. Exemption from regulatory control; authorizing rules by the commissioner of  
agriculture.**

1 The manufacture of cheese products described in section two of this article is exempt from: (a)  
2 Pasteurization, packaging, labeling and all other health related requirements established in this code or  
3 rules promulgated by the ~~division of health~~ Department of Health and Compliance; and (b) regulatory  
4 control by the ~~division of health~~ Department of Health and Compliance and county or local health  
5 departments or sanitarians. Powers of the commissioner of agriculture set forth in section ten, article  
6 eleven-a of this chapter are applicable to the manufacturing of home and farm-based cheese products  
7 described in section two of this article. The commissioner of agriculture is authorized to promulgate rules  
8 pursuant to article three, chapter twenty-nine-a of this code, considering and promoting traditional  
9 methods of cheese production, while providing minimum health and sanitation standards necessary for  
10 the protection of the public, including standards for cleanliness, handling, and protection from  
11 contamination. Emergency rules for this purpose are authorized.

**ARTICLE 12A. LAND DIVISION.**

**§19-12A-6. Appointment of farm management director; qualifications; powers and duties.**

1 (a) The commission shall appoint a farm management director who, in addition to qualifications  
2 established by the commission, shall have owned, operated or managed a farm for at least five years  
3 within ten years immediately prior to being appointed. The farm management director is the chief  
4 executive officer of the commission and is responsible for conducting the operations of the farms. The

5 director shall prepare an annual report of the farming operations, including a listing of all receipts and  
6 expenditures and shall present it to the commission and the Legislature at the end of each fiscal year.

7 (b) As authorized or directed by the commission, the director shall also:

8 (1) Prepare the annual budget request for the operation of the institutional farms and submit it to  
9 the commission for approval and submission to the secretary of the Department of Administration.

10 (2) Receive and approve all requisitions for farm supplies and equipment.

11 (3) Supervise the operation of all canneries and determine what foods are to be canned.

12 (4) Recruit and approve assistant farm managers to supervise each institutional farm.

13 (5) Implement all orders of the commission.

14 (6) Supervise all other employees of the commission.

15 (7) Transfer farm supplies, farm equipment, farm facilities, food stuffs and produce from one  
16 institutional farm to another to promote efficiency and improve farm management.

17 (c) With the approval of the commission, the farm management director may rent or lease  
18 additional land for farm use.

19 (d) By September 30, each year, each institution under the control of the ~~division of health~~  
20 Department of Health and Compliance, the Department of Healthcare Facilities; the Department of  
21 Human Services and the Division of Corrections shall present to the farm management director a  
22 purchase order for its food requirements during the next fiscal year as determined by the institution. If,  
23 during the year, an institution finds that it needs other or additional food, milk, or commodities not  
24 included in its purchase order for the year, the institutional superintendent may forward a supplemental  
25 request to the farm management director, which order may be filled depending on availability. If  
26 institutional farms produce more food, milk and other commodities than can be sold to the institutions, the  
27 farm management director may sell the surplus to other state agencies willing to purchase. If any surplus  
28 remains after sales to other state agencies, the director may sell the surplus on the open market, or at the  
29 discretion of the director, turn over any surplus food products to appropriate public, nonprofit agencies  
30 upon application.

31 (e) On July 1, 1990, the ~~division of health~~ Department of Health and Compliance, the Department  
32 of Healthcare Facilities, Department of Human Services and the Division of Corrections shall each

33 transfer, by interdepartmental transfer, the sum of \$200,000 to the farm management commission to be  
34 credited toward their purchase of food products from the commission. Such credits shall be treated as  
35 advance payments for food products purchased by these divisions pursuant to this section and such  
36 divisions shall not be required to make actual payments for food products until such credits have been  
37 completely expended.

**ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.**

**§19-16A-4. Powers and duties of the commissioner.**

1 The commissioner of agriculture has the power and duty to carry out the provisions of this article  
2 and is authorized to:

3 (a) Delegate to employees of the Department of Agriculture the authority vested in the  
4 commissioner by virtue of the provisions of this article;

5 (b) Cooperate, receive grants in aid and enter into agreements with any other agency of the state,  
6 the United States Department of Agriculture, United States environmental protection agency or any other  
7 federal agency or any other state or agency thereof for the purpose of carrying out the provisions of this  
8 article;

9 (c) Contract for research projects;

10 (d) Require that pesticides used in this state are adequately tested and are safe for use under  
11 local conditions;

12 (e) Require that individuals who sell, store, dispose or apply pesticides are adequately trained  
13 and observe appropriate safety practices;

14 (f) Promulgate rules pursuant to chapter twenty-nine-a of this code, including, but not limited to,  
15 the following:

16 (1) Licensing of businesses that sell, store, recommend for use, mix or apply pesticides;

17 (2) Registration of pesticides for manufacture, distribution, sale, storage or use in this state;

18 (3) Requiring reporting and recordkeeping related to licensing and registration;

19 (4) Establishing training, testing and standards for certification of commercial application, public  
20 application, registered technician and private applicator;

21 (5) Revoking, suspending or denying licenses, registration and certification or certificate or

22 permits;

23 (6) Creating advisory committees made up of both pesticide industry representatives and  
24 consumers as considered necessary to implement this article;

25 (7) Establishing a fee structure for licenses, registration and certificate to defray the costs of  
26 implementing this article;

27 (8) Classifying or subclassifying certificate or certificates to be issued under this article. The  
28 classification may include, but not be limited to, agricultural, forest, ornamental, aquatic, right-of-way,  
29 industrial, institutional, structural or health-related pest control;

30 (9) Restricting or prohibiting the sale or use and disposal of any pesticide, pesticide container or  
31 residue which is extremely hazardous;

32 (10) Coordinating and supporting pesticide monitoring programs;

33 (11) Developing a program for registration of persons with health sensitivity to pesticide drift;

34 (12) Establishing guidelines and requirements, as deemed necessary, for licenses, certificate  
35 holders and permittees for the identification of pests and their methods of inspection of property to  
36 determine the presence of pests;

37 (13) Establishing procedures for reporting spills, accidents or incidents; and

38 (14) Such other rules necessary or convenient to carry out the purpose of this article;

39 (g) Design and conduct an appropriate educational program on the use of pesticides and the  
40 necessity for care when applying the same; and

41 (h) Only after consultation with the state Board of Education, ~~division of human services for child~~  
42 ~~welfare~~ Department of Human Services, representatives from the environmental community, and  
43 representatives of school and daycare employees, by July 1, 1995, promulgate emergency rules,  
44 pursuant to article three, chapter twenty-nine-a of this code, establishing an integrated pest management  
45 program. The emergency and legislative rules for the program established in this subsection shall include,  
46 but are not limited to, the following:

47 (1) The use of least hazardous materials;

48 (2) That pesticides shall only be applied when monitoring indicates that pest infestations are  
49 present;

50 (3) That students and school and daycare employees, except school, Board of Education or  
51 daycare employees that are certified applicators, shall not be present during application and provide for  
52 appropriate reentry times, except that pesticides may be applied to a localized area of infestation when  
53 students or school and daycare employees are present if the infestation causes an imminent threat of  
54 bodily harm;

55 (4) A definition of pesticides; and

56 (5) A system for prior notification to parents and school and daycare employees.

## CHAPTER 20. NATURAL RESOURCES.

### ARTICLE 2. WILDLIFE RESOURCES.

#### §20-2-28. When licenses or permits not required.

1 Persons in the following categories are not required to obtain licenses or permits as indicated:

2 (a) Bona fide resident landowners or their resident children, or resident parents, or bona fide  
3 resident tenants of the land may hunt, trap or fish on their own land during open season in accordance  
4 with the laws and rules applying to the hunting, trapping and fishing without obtaining a license, unless  
5 the lands have been designated as a wildlife refuge or preserve.

6 (b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a  
7 fishing license. A written statement or certificate from a duly licensed physician of this state showing the  
8 resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of the  
9 resident at all times while he or she is fishing in this state.

10 (c) All residents of West Virginia on active duty in the armed forces of the United States of  
11 America, while on leave or furlough, may hunt, trap or fish in season in West Virginia without obtaining a  
12 license. Leave or furlough papers shall serve in lieu of any license and shall be carried on the person at  
13 all times while trapping, hunting or fishing.

14 (d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five  
15 years of age or older before January 1, 2012, is not required to have a license to hunt, trap or fish during  
16 the legal seasons in West Virginia, but in lieu of the license the person shall at all times while hunting,  
17 trapping or fishing carry on his or her person a valid West Virginia driver's license or nondriver  
18 identification card issued by the Division of Motor Vehicles.

19 (e) Except as otherwise provided for in this section, residents of states that share river borders  
20 with the State of West Virginia who carry hunting or fishing licenses valid in that state may hunt or fish  
21 without obtaining licenses, but the hunting or fishing shall be confined to the fish and waterfowl of the river  
22 proper and not on its tributaries: *Provided*, That the state shall first enter into a reciprocal agreement with  
23 the director extending a like privilege of hunting and fishing to licensed residents of West Virginia without  
24 requiring the residents to obtain that state's hunting and fishing licenses.

25 (f) Residents of the State of Ohio who carry hunting or fishing licenses valid in that state may hunt  
26 or fish on the Ohio River or from the West Virginia banks of the river without obtaining licenses, but the  
27 hunting or fishing shall be confined to fish and waterfowl of the river proper and to points on West Virginia  
28 tributaries and embayments identified by the director: *Provided*, That the State of Ohio shall first enter into  
29 a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio  
30 banks of the river to licensed residents of West Virginia without requiring the residents to obtain Ohio  
31 hunting and fishing licenses.

32 (g) Any resident of West Virginia who was honorably discharged from the Armed Forces of the  
33 United States of America and who receives a veteran's pension based on total permanent service-  
34 connected disability as certified to by the Veterans Administration may hunt, trap or fish in this state  
35 without obtaining a license. The director shall propose rules for legislative approval in accordance with the  
36 provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the  
37 certification of the veteran, manner of applying for and receiving the certification and requirements as to  
38 identification while the veteran is hunting, trapping or fishing.

39 (h) Any disabled veteran who is a resident of West Virginia and who, as certified to by the  
40 Commissioner of Motor Vehicles, is eligible to be exempt from the payment of any fee on account of  
41 registration of any motor vehicle owned by the disabled veteran as provided in section eight, article ten,  
42 chapter seventeen-a of this code shall be permitted to hunt, trap or fish in this state without obtaining a  
43 license. The director shall propose rules for legislative approval in accordance with the provisions of  
44 article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the  
45 disabled veteran, manner of applying for and receiving the certification and requirements as to  
46 identification while the disabled veteran is hunting, trapping or fishing.

47 (i) Any resident or inpatient in any state mental health, health or benevolent institution or facility  
48 may fish in this state, under proper supervision of the institution involved, without obtaining a fishing  
49 license. A written statement or certificate signed by the superintendent of the mental health, health or  
50 benevolent institution or facility in which the resident or inpatient, as the case may be, is institutionalized  
51 shall serve in lieu of a fishing license and shall be carried on the person of the resident or inpatient at all  
52 times while he or she is fishing in this state.

53 (j) Any resident who is developmentally disabled, as certified by a physician and the ~~Director of~~  
54 ~~the Division of Health~~ Secretary of the Department of Human Resources, may fish in this state without  
55 obtaining a fishing license. As used in this section, "developmentally disabled" means a person with a  
56 severe, chronic disability which:

57 (1) Is attributable to a mental or physical impairment or a combination of mental and physical  
58 impairments;

59 (2) Is manifested before the person attains age twenty-two;(3) Results in substantial functional  
60 limitations in three or more of the following areas of major life activity:

61 (A) Self-care;

62 (B) Receptive and expressive language;

63 (C) Learning;

64 (D) Mobility;

65 (E) Self-direction;

66 (F) Capacity for independent living; and

67 (G) Economic self-sufficiency; and

68 (4) Reflects the person's need for a combination and sequence of care, treatment or supportive  
69 services which are of lifelong or extended duration and are individually planned and coordinated.

70 (k) A student eighteen years of age or younger receiving instruction in fly fishing in a public,  
71 private, parochial or Christian school in this state may fly fish in the state for catch and release only  
72 without obtaining a fishing license while under the supervision of an instructor authorized by the school.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**



**ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

**§22-15-10. Prohibitions; permits required.**

1 (a) Open dumps are prohibited and it is unlawful for any person to create, contribute to  
2 or operate an open dump or for any landowner to allow an open dump to exist on the  
3 landowner's property unless that open dump is under a compliance schedule approved by the  
4 director. Such compliance schedule shall contain an enforceable sequence of actions leading to  
5 compliance and shall not exceed two years. Open dumps operated prior to April 1, 1998, by a  
6 landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his  
7 or her residence or farm are not a violation of this section if such open dump did not constitute a  
8 violation of law on January 1, 1998, and unauthorized dumps which were created by unknown  
9 persons do not constitute a violation of this section: *Provided*, That no person may contribute  
10 additional solid waste to any such dump after April 1, 1998, except that the owners of the land  
11 on which unauthorized dumps have been or are being made are not liable for such unauthorized  
12 dumping unless such landowners refuse to cooperate with the division in stopping such  
13 unauthorized dumping.

14 (b) It is unlawful for any person, unless the person holds a valid permit from the division  
15 to install, establish, construct, modify, operate or abandon any solid waste facility. All approved  
16 solid waste facilities shall be installed, established, constructed, modified, operated or  
17 abandoned in accordance with this article, plans, specifications, orders, instructions and rules in  
18 effect.

19 (c) Any permit issued under this article shall be issued in compliance with the  
20 requirements of this article, its rules and article eleven of this chapter and the rules promulgated  
21 thereunder, so that only a single permit is required of a solid waste facility under these two  
22 articles. Each permit issued under this article shall have a fixed term not to exceed five years:  
23 *Provided*, That the director may administratively extend a permit beyond its five-year term if the  
24 approved solid waste facility is in compliance with this article, its rules and article eleven of this

25 chapter and the rules promulgated thereunder: *Provided, however,* That such administrative  
26 extension may not be for more than one year. Upon expiration of a permit, renewal permits may  
27 be issued in compliance with rules promulgated by the director.

28 (d) For existing solid waste facilities which formerly held ~~division of health~~ Department of  
29 Health and Compliance permits which expired by law and for which complete permit  
30 applications for new permits pursuant to this article were submitted as required by law, the  
31 division may enter an administrative order to govern solid waste activities at such facilities,  
32 which may include a compliance schedule, consistent with the requirements of the division's  
33 solid waste management rules, to be effective until final action is taken to issue or deny a permit  
34 for such facility pursuant to this article, or until further order of the division.

35 (e) No person may dispose in the state of any solid waste in a manner which endangers  
36 the environment or the public health, safety or welfare as determined by the director: *Provided,*  
37 That the carcasses of dead animals may be disposed of in any solid waste facility or in any  
38 other manner as provided for in this code. Upon request by the director, the commissioner of the  
39 bureau of public health shall provide technical advice concerning the disposal of solid waste or  
40 carcasses of dead animals within the state.

41 (f) A commercial solid waste facility shall not discriminate in favor of or against the  
42 receipt of any waste otherwise eligible for disposal at the facility based on its geographic origin.

43 (g) In addition to all the requirements of this article and the rules promulgated hereunder,  
44 a permit to construct a new commercial solid waste facility or to expand the spatial area of an  
45 existing facility, may not be issued unless the public service commission has granted a  
46 certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If  
47 the director approves a permit or permit modification, the certificate of need shall become a part  
48 of the permit and all conditions contained in the certificate of need shall be conditions of the  
49 permit and may be enforced by the division in accordance with the provisions of this article. If

50 the director approves a permit or permit modification, the certificate of need shall become a part  
51 of the permit and all conditions contained in the certificate of need shall be conditions of the  
52 permit and may be enforced by the division in accordance with the provisions of this article:  
53 *Provided*, That the provisions of this subsection do not apply to materials recovery facilities or  
54 mixed waste processing facilities as defined by chapter twenty-two, article fifteen, section two of  
55 this code, except within a thirty-five mile radius of a facility sited in a karst geological region and  
56 which has been permitted by the West Virginia Department of Environmental Protection as a  
57 mixed waste processing facility and has received a certificate of need by July 1, 2016.

58 (h) The director shall promulgate legislative rules pursuant to article three, chapter  
59 twenty-nine-a of this code which reflect the purposes as set forth in this section.

## **ARTICLE 28. COMMUNITY INFRASTRUCTURE INVESTMENT PROJECTS.**

### **§22-28-4. Community infrastructure investment agreements; report to Joint Committee on Government and Finance.**

1 (a) Municipal utilities and public service districts have the power and authority to enter into  
2 community infrastructure investment agreements with any person for the purpose of constructing new  
3 project facilities or substantially improving or expanding project facilities.

4 (b) Notwithstanding any other provision in this code to the contrary, the Secretary shall have the  
5 power and the authority to review and approve all such community infrastructure investment agreements  
6 pursuant to this article.

7 (c) Each such agreement shall contain as a minimum the following terms and conditions to be  
8 performed by the parties thereto:

9 (1) The project facilities shall be engineered and constructed in accordance with the requirements  
10 for new construction established by the municipal utility or public service district;

11 (2) Proof or certification of the financial ability of the municipal utility or public service district to  
12 maintain and operate the public facilities;

13 (3) Certification that upon completion and activation of the project facility or improvements to the  
14 project facility, the title to the public facility shall be transferred without cost to the municipal utility or

15 public service district;

16 (4) A finding that the construction of the new public facility, or the substantial improvement or  
17 expansion of an existing public facility, either: (i) Fosters economic growth by promoting commercial,  
18 industrial or residential development; and (ii) improves water quality or otherwise enables the affected  
19 territory to achieve compliance with any applicable state or federal health or environmental law;

20 (5) The municipal utility or public service district will receive or otherwise obtain without cost to the  
21 public all necessary rights-of-way for the operation of the public facility;

22 (6) The rates charged by the municipal utility or public service district to new customers to be  
23 served by the project facility shall be the rates in effect at the time of transfer of the project facility to the  
24 utility plus any additional cost of service borne by the municipal utility or public service district as a result  
25 of the project facility until such time as new rates may be finally enacted by the municipal utility or  
26 proposed by the public service district and approved by the Public Service Commission and the rates  
27 charged by the municipal utility or the public service district to existing customers shall not be impacted as  
28 a result of the obligation of the public service district or municipal utility pursuant to the community  
29 infrastructure investment agreement;

30 (7) Confirmation that the agreement does not violate any of the bond covenants imposed on the  
31 municipal utility or public service district;

32 (8) Proof that necessary permits, where applicable, have been obtained from the ~~Division of~~  
33 ~~Health~~ Department of Health and Compliance and the Department of Environmental Protection;

34 (9) Evidence that the person responsible for the construction of or improvements to the public  
35 facility has provided funding to the municipal utility or public service district for the engagement of an  
36 engineer qualified to design and certify the structural integrity and capacity of the project facility;

37 (10) Proof that the person responsible for construction of or improvements to the public facility  
38 has obtained a performance bond payable to the municipal utility or public service district equal to the  
39 estimated cost of construction: *Provided*, That the form of the bond required by this section shall be  
40 approved by the Secretary and may include, at the option of the Secretary, surety bonding, collateral  
41 bonding (including cash and securities), establishment of an escrow account, letters of credit,  
42 performance bonding fund participation as established by the Secretary, self-bonding or a combination of

43 these methods; and

44 (11) Any other conditions that the secretary may determine to be relevant as established.

45 (d) Where the Secretary has found that the community infrastructure investment agreement  
46 meets the requirements contained in this article, the Secretary shall issue a certificate of appropriateness  
47 to the parties as evidence of such approval.

48 (e) Not later than thirty days prior to the issuance of a certificate of appropriateness for any  
49 community infrastructure investment project, the Secretary shall first submit a report of the same to the  
50 Joint Committee on Government and Finance.

**§22-28-5. Authority of the Department of Environmental Protection and ~~Division of Health~~  
Department of Health and Compliance not affected.**

1 Nothing contained in this article shall be construed to affect the authority of the Department of  
2 Environmental Protection pursuant to the provisions of this chapter, nor the authority of the ~~Division of~~  
3 ~~Health~~ Department of Health and Compliance pursuant to the provisions of chapter sixteen of this code.  
4 Facilities discharging into the Potomac River watershed and its tributaries shall be designed to achieve  
5 nutrient reductions, for both Nitrogen and Phosphorus, consistent with West Virginia's participation in the  
6 Chesapeake Bay Program upon implementation of the Chesapeake Bay standards by the Secretary.

**CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.**

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;  
ADMINISTRATION; ENFORCEMENT.**

**§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.**

1 (a) The office of miners' health, safety and training is continued and is a separate office within the  
2 Department of Commerce, labor and environmental resources. The office shall be administered, in  
3 accordance with the provisions of this article, under the supervision and direction of the director of the  
4 office of miners' health, safety and training.

5 (b) The ~~division of health~~ Department of Health and Compliance, safety and training shall have as  
6 its purpose the supervision of the execution and enforcement of the provisions of this chapter and, in  
7 carrying out the aforesaid purposes, it shall give prime consideration to the protection of the safety and

8 health of persons employed within or at the mines of this state. In addition, the division shall, consistent  
9 with the aforesaid prime consideration, protect and preserve mining property and property used in  
10 connection therewith.

## **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.**

### **ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.**

#### **§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.**

1 (a) Each person occupying a residence or operating a business establishment in this state shall  
2 either:

3 (1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

4 (2) Provide proper proof that said person properly disposes of solid waste at least once within  
5 every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of  
6 the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of  
7 this code regarding an approved method or methods of supplying such proper proof. A civil penalty of  
8 \$150 may be assessed to the person not receiving solid waste collection services in addition to the  
9 unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by  
10 not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully  
11 disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he  
12 or she is subject to a fine of not less than \$50 nor more than \$1,000 or sentenced to perform not less than  
13 ten nor more than forty hours of community service, such as picking up litter, or both fined and sentenced  
14 to community service.

15 (b) The Solid Waste Management Board, in consultation and collaboration with the Public Service  
16 Commission, shall prepare and submit, no later than October 1, 1992, a report concerning the feasibility  
17 of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: *Provided,*  
18 That such plan shall consider such factors as affordability, impact on open dumping and other relevant  
19 matters. The report shall be submitted to the Governor, the President of the Senate and the Speaker of

20 the House of Delegates.

21 (c) The Public Service Commission, in consultation and collaboration with the ~~Division of Human~~  
22 ~~Services~~ Department of Human Services, shall prepare and submit, no later than October 1, 1992, a  
23 report concerning the feasibility of reducing solid waste collection fees to individuals who directly pay  
24 such fees and who receive public assistance from state or federal government agencies and are therefore  
25 limited in their ability to afford to pay for solid waste disposal. This report shall consider the individual's  
26 health and income maintenance and other relevant matters. This report shall also include recommended  
27 procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This  
28 report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of  
29 Delegates.

## CHAPTER 25. DIVISION OF CORRECTIONS.

### ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

**§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to  
Department of ~~Health and Human Resources~~ Healthcare Facilities; establishment of work  
and study release units; contracting with certain entities for reentry and direct placement  
services; reports to Governor.**

1 (a) The Commissioner of Corrections shall manage, direct, control and govern the following penal  
2 or correctional institutions and any others placed under his or her jurisdiction or control:

- 3 Mount Olive Correctional Complex;
- 4 Huttonsville Correctional Center;
- 5 Anthony Correctional Center;
- 6 Denmark Correctional Center;
- 7 Pruntytown Correctional Center;
- 8 Northern West Virginia Correctional Center;
- 9 St. Marys Correctional Center;
- 10 Lakin Correctional Center;
- 11 Ohio County Correctional Center;

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12 Beckley Correctional Center;  
13 Martinsburg Correctional Center;  
14 Salem Correctional Center; and  
15 Parkersburg Correctional Center.

16 (b) The Commissioner of Corrections may contract with the County Commission of McDowell  
17 County to house and incarcerate inmates at the Stevens Correctional Center consistent with all  
18 requirements and standards governing the Division of Corrections.

19 (c) Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred  
20 to the Department of ~~Health and Human Resources~~ Healthcare Facilities, which is the custodian of all  
21 deeds and other muniments of title to the property and shall record those that are susceptible of  
22 recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the  
23 contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent  
24 appointed by the ~~Commissioner of the Division of Human Services~~ Secretary of the Department of  
25 Healthcare Facilities.

26 (d) The Commissioner of Corrections may establish work and study release units as extensions  
27 and subsidiaries of those state institutions under his or her control and authority. The work and study  
28 release units may be coeducational and shall be managed, directed and controlled as provided in this  
29 article.

30 (e) (1) The commissioner may contract with nonprofit or charitable entities including, but not  
31 limited to, nonprofit community mental health clinics, operating half-way houses or transitional housing  
32 facilities for the placement of persons in the commissioner's custody, whether confined or under parole  
33 supervision, as long as such facilities meet standards and criteria established by the commissioner.

34 (2) (A) The Commissioner of Corrections may direct that a person who is placed in a half-way  
35 house or transitional housing facility under this section make reimbursement to the state in the amount of  
36 a reasonable sum calculated to offset all or part of the costs of the placement.

37 (B) Prior to ordering the person to make the reimbursement, the commissioner, or his or her  
38 designee, shall consider the following:

39 (i) The person's ability to pay;



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40 (ii) The nature and extent of the person's responsibilities to his or her dependents, if any;

41 (iii) The length of probable incarceration under the court's sentence; and

42 (iv) The effect, if any, that reimbursement might have on the person's rehabilitation.

43 (f) The Division of Corrections shall provide the number of persons placed in a half-way house or  
44 a transitional housing facility pursuant to subsection (e) of this section in its report made pursuant to  
45 section twenty, article one, chapter five of this code, and shall describe its plans to use the authority  
46 provided under the provisions of subsection (e) of this section in furtherance of the duties and  
47 responsibilities imposed by this article.

48 (g) Any person employed by the Office of Public Institutions is a classified civil service employee  
49 within the limits contained in section two, article six, chapter twenty-nine of this code.

## **CHAPTER 27. BEHAVIORAL HEALTH.**

### **ARTICLE 1. DEFINITIONS.**

#### **§27-1-1. Defined words and phrases.**

1 The following words and phrases as used in this chapter shall have the following meaning unless  
2 the context clearly requires a different meaning.

1 "Addiction" shall mean a maladaptive pattern of substance use leading to clinically significant  
2 impairment or distress as manifested by one or more of the following occurring within thirty days prior to  
3 the filing of the petition:

4 (A) Recurrent substance use resulting in a failure to fulfill major role obligations at work, school or  
5 home, including, but not limited to, repeated absences or poor work performance related to substance  
6 use; substance-related absences, suspensions or expulsions from school; or neglect of children or  
7 household;

8 (B) Recurrent use in situations in which it is physically hazardous, including, but not limited to,  
9 driving while intoxicated or operating a machine when impaired by substance use;

10 (C) Recurrent substance-related legal problems; or

11 (D) Continued use despite knowledge or having persistent or recurrent social or interpersonal  
12 problems caused or exacerbated by the effects of the substance.

13 "Behavioral health facility" shall mean any inpatient, residential or outpatient facility for the care

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14 and treatment of the mentally ill, intellectually disabled or addicted which is operated, by the West Virginia  
15 Department of Healthcare Facilities and includes state hospitals as defined in this article. The term also  
16 includes veterans administration hospitals, but does not include any regional jail, juvenile or adult  
17 correctional facility, or juvenile detention facility.

18 “Bureau” shall mean the West Virginia Bureau for Behavioral Health.

19 “Chief executive officer” shall mean the person in charge of administrating a state-operated  
20 treatment facility and has the authority to manage and administer the financial, business and personnel  
21 affairs of such facility. All other persons employed at the state-operated treatment facility are under the  
22 jurisdiction and authority of the administrator of the treatment facility who need not be a physician.

23 "Chief medical officer" shall mean the physician responsible for medical programs within a  
24 behavioral health facility and shall include the clinical director of a state hospital.

25 “Clinical Director” shall mean the person who has the responsibility for decisions involving clinical  
26 and medical treatment of patients in a state-operated behavioral health facility. The clinical director must  
27 be a physician duly licensed to practice medicine in this state who has completed training in an accredited  
28 program of post-graduate education in psychiatry. In any facility designated by the Secretary of the  
29 Department of Healthcare Facilities as a facility for individuals with an intellectual disability in which  
30 programs and services are designed primarily to provide education, training and rehabilitation rather than  
31 medical or psychiatric treatment, the duties and responsibilities, other than those directly related to  
32 medical treatment services, assigned to the clinical director by this chapter, are assigned to and become  
33 the responsibility of the administrator of that facility, or of a person with expertise in the field of intellectual  
34 disability. This person need not be a physician and shall be designated by the administrator.

35 “Commissioner” shall mean the Commissioner of the West Virginia Bureau for Behavioral Health.

36 “Department shall mean the West Virginia Department of Human Services.

37 "Detained or taken into custody" where used in this chapter, shall permit detention for custody in  
38 a county facility which may be in the same building as the county jail if the said county facility:

39 (A) Meets the standards which the West Virginia Department of Health and Compliance shall  
40 prescribe; and

41 (B) Is approved for such use by the West Virginia Department of Health and Compliance; and

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42 (C) Is inspected annually by the West Virginia Department of Health and Compliance.

43 "Incapacitated" shall mean a level of intoxication at which an individual is incapable of physical or  
44 mental control of himself or herself, thus rendering him or her dangerous to himself or herself or others or  
45 unable to protect himself or herself from hazard.

46 "Inebriate" shall mean a person over the age of eighteen years who is incapable or unfit to  
47 properly conduct himself or herself, or his or her affairs, or is dangerous to himself or herself or others, by  
48 reason of periodical, frequent or constant drunkenness, induced either by the use of alcoholic or other  
49 liquors, or of opium, morphine, or other narcotic or intoxicating or stupefying substance.

50 "Intellectual disability" shall mean significantly subaverage intellectual functioning which manifests  
51 itself in a person during his or her developmental period and which is characterized by his or her  
52 inadequacy in adaptive behavior. Notwithstanding any provision to the contrary, if any service provision or  
53 reimbursement is affected by the changes in terminology adopted in the 2010 First Extraordinary Session  
54 of the Legislature, the terms "intellectual disability" or "individuals with an intellectual disability" shall  
55 assume their previous terminology. It is not the intent of the Legislature to expand the class of individuals  
56 affected by this terminology change.

57 "Judicial officer" in the context of the provisions of this and other chapters of this code dealing  
58 with disposition of a charge of public intoxication, shall mean a municipal judge, a magistrate or any judge  
59 of a court of record in this state.

60 "Likely to cause serious harm" shall mean an individual is exhibiting behaviors consistent with a  
61 medically recognized mental disorder or addiction, excluding, however, disorders that are manifested only  
62 through antisocial or illegal behavior and as a result of the mental disorder or addiction:

63 (A) The individual has inflicted or attempted to inflict bodily harm on another;

64 (B) The individual, by threat or action, has placed others in reasonable fear of physical harm to  
65 themselves;

66 (C) The individual, by action or inaction, presents a danger to himself or herself, or others in his or  
67 her care;

68 (D) The individual has threatened or attempted suicide or serious bodily harm to himself or  
69 herself; or

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70 (E) The individual is behaving in a manner as to indicate that he or she is unable, without  
71 supervision and the assistance of others, to satisfy his or her need for nourishment, medical care, shelter  
72 or self-protection and safety so that there is a substantial likelihood that death, serious bodily injury,  
73 serious physical debilitation, serious mental debilitation or life-threatening disease will ensue unless  
74 adequate treatment is afforded.

75 (F) In making the "likely to cause serious harm" determination, judicial, medical, psychological  
76 and other evaluators and decision makers should utilize all available information, including psychosocial,  
77 medical, hospitalization and psychiatric information and including the circumstances of any previous  
78 commitments or convalescent or conditional releases that are relevant to a current situation, in addition to  
79 the individual's current overt behavior. The rules of evidence shall be followed in making the "likely to  
80 cause serious harm" determination except that hearsay evidence not admissible thereunder may be  
81 admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably  
82 prudent persons in the conduct of their affairs.

83 "Mental illness" shall mean a manifestation in a person of significantly impaired capacity to  
84 maintain acceptable levels of functioning in the areas of intellect, emotion and physical well- being.

85 "Physician" shall mean a person licensed pursuant to the laws of this state to practice medicine or  
86 a medical officer of the government of the United States while in this state in the performance of his or her  
87 official duties.

88 "Psychologist" shall mean any person licensed pursuant to the laws of this state to engage in the  
89 practice of psychology, or any other psychologist not a resident of this state who engages in the practice  
90 of psychology in this state and who holds a license or certificate to engage in the practice of psychology  
91 issued by another state with licensing or certification requirements comparable to the licensing  
92 requirements of this state, as may be determined by the State Board of Examiners of Psychologists.

93 "Psychiatrist" shall mean a physician licensed pursuant the laws of this state to practice medicine  
94 who has completed training in an accredited program of post-graduate education in psychiatry.

95 "Resident of the state" shall mean any person who has had an established residency in this state  
96 for at least one year, and a "resident of the county" is any person who has had an established residency  
97 in a county for at least sixty days.

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98           "Secretary" shall mean the Secretary of the West Virginia Department of Human Services. Any  
99 reference in this chapter and this code to Director or Director of the Division of Health shall mean the  
100 Secretary of the Department of Human Services.

101           "State hospital" shall mean any hospital, center or institution, or part of any hospital, center or  
102 institution, established, maintained and operated by the Department of Healthcare Facilities, or by the  
103 Department of Healthcare Facilities. in conjunction with a political subdivision of the state, to provide  
104 inpatient or outpatient care and treatment for the mentally ill, intellectually disabled or addicted. The terms  
105 "hospital" and "state hospital" exclude correctional and regional jail facilities.

106           "Substance" shall mean alcohol, controlled substances as defined in sections two hundred four,  
107 two hundred six, two hundred eight and two hundred ten, article two, chapter sixty-a of this code or  
108 anything consumed for its psychoactive effect whether or not designed for human consumption.

**ARTICLE       2.       BUREAU       FOR       BEHAVIORAL       HEALTH.**

**§27-2-1. Statement of policy.**

1           The purpose of this article is to improve the the standards of treatment of the mentally ill and  
2 intellectually disabled, encourage the further development of outpatient and diagnostic clinics, establish  
3 better research and training programs, and promote the development of behavioral health.

**§27-2-2. Creation; composition.**

1           Effective on the first day of July, 2018, there shall be a Bureau for Behavioral Health within the  
2 Department. The Bureau shall be under the immediate supervision of a Commissioner, who is  
3 responsible for the exercise of duties and powers assigned the Bureau in this chapter.

**§27-2-3. Appointment of commissioner; qualifications; oath; compensation.**

1           (a) There is created the position of Commissioner. The Commissioner shall:  
2           (1) Be appointed by the Governor with advice and consent of the Senate;  
3           (2) Report directly to the Secretary;  
4           (3) Serve at the will and pleasure of the Governor;  
5           (4) Serve on a full-time basis and shall not engage in any other profession or occupation,  
6 including the holding of a political office in the state either by election or appointment, while

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7 servicing as Commissioner; and

8 (5) Have an appropriate educational level and have responsible administrative  
9 experience, possess management skills and have knowledge of behavioral health.

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

13 (c) The Commissioner shall receive:

14 (1) A reasonable and competitive compensation package to be established by the  
15 Secretary; and

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

17 (d) Notwithstanding any other provision of this code to the contrary, whenever in this code there is  
18 a reference to the director of the department of mental health or to the commissioner of the department of  
19 mental health it shall be construed to mean and shall be a reference to the Commissioner of the Bureau  
20 for Behavioral Health.

**§27-2-4. Powers and duties of the Commissioner.**

1 (a) In addition to the powers and duties set forth in any other provision of this code, the  
2 Commissioner has the following powers and duties:

3 (1) To develop and maintain a state plan which:

4 (A) Sets forth needs of the state in the areas of mental and behavioral health and intellectual  
5 disability;

6 (B) Sets forth goals and objectives for meeting those needs; and

7 (C) Contains plans of operation for achieving the stated goals and objectives, including  
8 organizational structure; and statement of requirements in personnel funds and authority for achieving the  
9 goals and objectives.

10 (2) To appoint deputies and assistants to supervise the Bureau's programs, including hospital and  
11 residential services, and such other assistants and employees as may be necessary for the efficient  
12 operation of the Bureau and all its programs.

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13           (3) To delegate to any of his or her appointees, assistants or employees all powers and duties  
14 vested in the Commissioner, including the power to execute contracts and agreements in the name of the  
15 Bureau as provided in this article. The Commissioner shall be responsible for the acts of such  
16 appointees, assistants and employees.

17           (b) The Commissioner is authorized and empowered to accept and use for any mental health  
18 purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given.  
19 Any gift or devise of any property or thing which lawfully may be given and whatever profit may arise from  
20 its use or investment shall be deposited in a special revenue fund with the State Treasurer, and shall be  
21 used only as specified by the donor or donors.

**§27-2-5. Organization and employees.**

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

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

6           (c) The Secretary may transfer employees and resources of the Department to the  
7 Bureau as may be necessary to fulfill the duties and responsibilities of the Bureau pursuant to  
8 this chapter. The Secretary may not transfer employees of other divisions and agencies within  
9 the Department to the Bureau without a prior finding that the office or position held by the  
10 employee may be eliminated and until the office or position is, in fact, eliminated.

11           (d) The Commissioner, if he or she deems such action necessary, may hire legal  
12 counsel for the Bureau, notwithstanding the provisions of section two, article three, chapter five  
13 of this code or any other code provision to the contrary, or may request the Attorney General to  
14 appoint counsel who shall perform such duties as may be required by the Bureau. The Attorney  
15 General, in pursuance of such request, may select and appoint counsel to serve during the will  
16 and pleasure of the Attorney General, and shall be paid out of any funds allocated and

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17 appropriated to the Bureau.

**§27-2-6. Supervisory responsibilities of the Commissioner.**

18 The Commissioner shall have control and supervision of the Bureau and shall be  
19 responsible for the work of each of its organizational units. Each organizational unit shall be  
20 headed by an employee of the Bureau appointed by the Commissioner who shall be responsible  
21 to the Commissioner for the work of his or her organizational unit.

**§27-2-7. General powers and duties of the Bureau of Behavioral Health.**

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

3 (1) To recruit, educate and train professional staff;

4 (2) To act as a liaison with other state entities and private groups with an interest in  
5 behavioral and mental health;

6 (3) To establish standards for, and supervise the operation of, community mental health  
7 clinics for adults and children and to develop new community facilities and community service  
8 programs for the overall improvement of the regional behavioral health facilities;

9 (4) To offer behavioral health services to adults and children with diagnosed behavioral  
10 health issues and those with intellectual disabilities;

11 (5) To offer substance abuse programs for persons with alcohol and substance use  
12 issues such as education, rehabilitation and prevention;

13 (6) To develop a comprehensive and practical program of mental and behavioral health  
14 education of the public, especially at the local level;

15 (7) To work with county mental hygiene commissions and circuit courts;

16 (8) To determine and approve schedules of reasonable cost for reimbursement by the  
17 patient or responsible relative for mental health services rendered; and



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18 (9) To perform any other duties assigned to the Bureau by the Secretary.

**ARTICLE 3. SUICIDE PREVENTION AND AWARENESS.**

**§27-3-1. Dissemination of information.**

1 (a) The Bureau shall post on its website suicide prevention awareness information, to include  
2 recognizing the warning signs of a suicide crisis. The website shall include information related to suicide  
3 prevention training opportunities offered by the Bureau or an agency recognized by the Bureau as a  
4 training provider.

5 (b) The Bureau may assist public middle and high school administrators in providing suicide  
6 prevention information to students in public middle and high schools.

7 (c) The Bureau shall annually review, for adequacy and completeness, the materials or programs  
8 posted on the websites of the institutions of higher education as required by section seven, article one-b,  
9 chapter eighteen-b of this code.

**ARTICLE 4. CONFIDENTIALITY.**

**§27-4-1. Confidential information; disclosure.**

1 (a) Communications and information obtained in the course of treatment or evaluation of any  
2 client or patient are confidential information. Such confidential information includes:

3 (1) The fact that a person is, or has been, a client or patient;

4 (2) Information transmitted by a patient or client or family thereof for purposes relating to  
5 diagnosis or treatment;

6 (3) Information transmitted by persons participating in the accomplishment of the objectives of  
7 diagnosis or treatment;

8 (4) All diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional  
9 condition;

10 (5) Any advice, instructions or prescriptions issued in the course of diagnosis or treatment; and

11 (6) Any record or characterization of the matters herein described.

12 (b) Communication and information does not include information which does not identify a client

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13 or patient, information from which a person acquainted with a client or patient would not recognize such  
14 client or patient and uncoded information from which there is no possible means to identify a client or  
15 patient.

16 (c) Confidential information shall not be disclosed, except:

17 (1) In an involuntary proceeding conducted pursuant to this chapter to disclose the results of an  
18 involuntary examination made pursuant to section two, three or four of article fourteen;

19 (2) In a proceeding under article ten of this chapter to disclose the results of an involuntary  
20 examination made pursuant thereto;

21 (3) Pursuant to an order of any court based upon a finding that the information is sufficiently  
22 relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality  
23 established by this section;

24 (4) To provide notice to the federal National Instant Criminal Background Check System,  
25 established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, in  
26 accordance with article seven-a, chapter sixty-one of this code;

27 (5) To protect against a clear and substantial danger of imminent injury by a patient or client to  
28 himself, herself or another;

29 (6) For treatment or internal review purposes, to staff of the behavioral health facility where the  
30 patient is being cared for or to other health professionals involved in treatment of the patient; and

31 (7) Without the patient's consent as provided for under the Privacy Rule of the federal Health  
32 Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days from the date of  
33 admission to a behavioral health facility if:

34 (A) The provider makes a good faith effort to obtain consent from the patient or legal  
35 representative prior to disclosure;

36 (B) the minimum information necessary is released for a specifically stated purpose; and

37 (C) prompt notice of the disclosure, the recipient of the information and the purpose of the  
38 disclosure is given to the patient or legal representative.

**§27-4-2. Authorization of disclosure of confidential information.**

1 (a) No consent or authorization for the transmission or disclosure of confidential information is

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2 effective unless it is in writing and signed by the patient or client or by his or her legal guardian.

3 (b) Every person signing an authorization shall be given a copy.

4 (c) Every person requesting the authorization shall inform the patient, client or authorized  
5 representative that refusal to give the authorization will in no way jeopardize his or her right to obtain  
6 present \_\_\_\_\_ or \_\_\_\_\_ future \_\_\_\_\_ treatment.

**ARTICLE 5. RELEASE, DISCHARGE AND READMISSION OF PATIENTS;**

**ESCAPEES.**

**§27-5-1. Discharge.**

1 The chief medical officer of the behavioral health facility shall continually review the case of each  
2 individual who is an involuntary patient at the facility pursuant to article fourteen of this chapter. The chief  
3 medical officer shall as frequently as practicable, in any event at least once every three months, cause a  
4 complete psychiatric examination of each patient, and whenever it is determined that the conditions  
5 justifying involuntary hospitalization no longer exist or that the individual can no longer benefit from  
6 hospitalization, the chief medical officer shall discharge the patient. Upon discharge the chief medical  
7 officer shall forward a copy of the patient's discharge to the clerk of the circuit court or mental hygiene  
8 commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or  
9 mental hygiene commissioner of the county wherein the individual is a resident.

**§27-5-2. Release of patients on convalescent status.**

1 (a) The chief medical officer of a behavioral health facility may release an involuntary patient on  
2 convalescent status (trial visit) when the chief medical officer believes such release is in the best interest  
3 of the patient. Release on convalescent status shall include provisions for continuing responsibility to and  
4 by a behavioral health facility, not necessarily the facility in which the patient was previously hospitalized,  
5 including a plan of treatment on an outpatient basis to ensure that the patient receives whatever care and  
6 treatment he or she might require. At the end of six months on convalescent status, the patient must be  
7 discharged from any involuntary commitment order that might have been entered against him or her and  
8 he or she cannot be involuntarily returned to any behavioral health facility unless a new commitment  
9 proceeding has been instituted against him or her. When a patient released on convalescent status is  
10 discharged from his or her involuntary commitment, it shall be the responsibility of the chief medical

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11 officer of the behavioral health facility of which the individual was a patient prior to being placed on  
12 convalescent status to immediately make a report of the discharge of the patient to the circuit court or  
13 mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to  
14 the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

15 (b) Notwithstanding any provision of this code to the contrary, anytime an individual is  
16 involuntarily committed to a behavioral health facility for inpatient treatment pursuant to the provisions of  
17 article nine of this chapter due to a mental illness and it is determined by the medical director of the  
18 behavioral health facility that the use of medication by the individual is necessary to avoid the recurrence  
19 of the behavior which caused the involuntary hospitalization, initial release from the behavioral health  
20 facility shall be on convalescent status. This initial release shall be with the requirement that the individual  
21 follow a designated treatment plan which may include the taking of medication unless the medical director  
22 makes a written finding that release on convalescent status will serve no treatment purpose. If an  
23 individual released on convalescent status does not comply with the terms and conditions of convalescent  
24 status, any person may file a petition to revoke such convalescent status and said petition shall be  
25 subject to the procedures and provisions of this article.

### **§27-5-3. Release as unimproved.**

1 (a) The chief medical officer of a behavioral health facility may release an involuntary patient as  
2 unimproved when any person requests the patient's release and is willing and able to take proper care of  
3 the patient outside the behavioral health facility. In the event that a patient is released to a responsible  
4 person, a report shall be made by such person at least once every six months to the chief medical officer  
5 of the behavioral health facility. No discharge shall be given to said patient until he or she has returned to  
6 the behavioral health facility for examination by the chief medical officer and he or she has determined  
7 that said patient is no longer in need of hospitalization.

8 (b) When a patient is released from a behavioral health facility as unimproved, it shall be the  
9 responsibility of the chief medical officer of the behavioral health facility of which the individual was a  
10 patient prior to being released as unimproved to immediately make a report of the discharge of the patient  
11 to the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization  
12 was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual

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13 is \_\_\_\_\_ a \_\_\_\_\_ resident.

**§27-5-4. Readmission of patients.**

1        While any involuntary patient is out of the behavioral health facility pursuant to the provisions of  
2 section two or three of this article, he or she may be readmitted to the behavioral health facility on the  
3 basis of the original commitment. If there is reason to believe that it is in the best interest of the patient to  
4 be hospitalized, the chief medical officer of the behavioral health facility may issue a sworn notice for the  
5 immediate readmission of the patient, which notice shall contain facts concerning the original commitment  
6 and the current condition of the patient. This notice shall be sent to the clerk of the circuit court which  
7 ordered his or her admission, to the clerk of the circuit court of the county of the patient's residence, to the  
8 circuit court or mental hygiene commissioner of the county in which the patient may be found and to the  
9 patient at the location where the patient may be found. Upon receipt of such notice, the circuit court or  
10 mental hygiene commissioner may, if satisfied that the condition of the patient warrants his or her return,  
11 authorize any health officer or police officer to take the patient into custody and transport him or her to the  
12 behavioral health facility where the notice originated.

**§27-5-5. Return of escapees; veterans.**

1        (a) If any person confined in a behavioral health facility, pursuant to article six or fourteen of this  
2 chapter, escapes therefrom, the chief medical officer thereof may issue a notice, giving the name and  
3 description of the person escaping and requesting the patient's apprehension and return to the behavioral  
4 health facility. The chief medical officer may issue an order directed to the sheriff of the county in which  
5 the patient is a resident, commanding him or her to take into custody and transport such escaped person  
6 back to the behavioral health facility, which order the sheriff may execute in any part of the state. If such  
7 person goes to another state, the chief medical officer may notify the Commissioner and the  
8 Commissioner may take such action as he or she may deem proper for the return of such person to the  
9 behavioral health facility.

10        (b)(1) If any veteran duly committed to a veterans' hospital or other veterans' institution, either  
11 within or without the state, escapes therefrom and any person makes complaint, under oath, to the clerk  
12 of the circuit court of the county from which such veteran was so committed upon the order of the circuit  
13 court, giving such information and stating such facts therein as may be required; or



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12 (2) A "qualified forensic psychologist" is:

13 (A) A licensed psychologist licensed pursuant to the laws of this state to practice psychology; and

14 (B) Board eligible or board certified in forensic psychology by the American Board of Professional  
15 Psychology or actively enrolled in good standing in a West Virginia training program approved by the  
16 American Board of Forensic Psychology to make the evaluator eligible for board certification in forensic  
17 psychology or, has at least two years of experience in performing court-ordered forensic criminal  
18 evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

19 (3) A "qualified forensic evaluator" is either a qualified forensic psychiatrist or a qualified forensic  
20 psychologist as defined in this article.

21 (4) "Department" means the Department of Health and Compliance.

22 (b) No qualified forensic evaluator may perform a forensic evaluation on an individual pursuant to  
23 this chapter if the qualified forensic evaluator has been the individual's treating psychologist or  
24 psychiatrist within one year prior to any evaluation order.

**§27-6-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period.**

1 (a) Whenever a court of record has reasonable cause to believe that a defendant in which an  
2 indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial it shall,  
3 sua sponte or upon motion filed by the state or by or on behalf of the defendant, at any stage of the  
4 proceedings order a forensic evaluation of the defendant's competency to stand trial. This evaluation is to  
5 be conducted by one or more qualified forensic psychiatrists, or one or more qualified forensic  
6 psychologists. If a court of record or other judicial officer orders both a competency evaluation and a  
7 criminal responsibility or diminished capacity evaluation, the competency evaluation shall be performed  
8 first. If a qualified forensic evaluator is of the opinion that a defendant is not competent to stand trial, no  
9 criminal responsibility or diminished capacity evaluation may be conducted without further order of the  
10 court. The initial forensic evaluation may not be conducted at a state inpatient behavioral health facility  
11 unless the defendant resides there.

12 (b) The court shall require the party making the motion for the evaluation, and other parties as the  
13 court considers appropriate, to provide to the qualified forensic evaluator appointed pursuant to

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14 subsection (a) of this section any information relevant to the evaluations within ten business days of its  
15 evaluation order. The information shall include, but not be limited to:

16 (1) A copy of the warrant or indictment;

17 (2) Information pertaining to the alleged crime, including statements by the defendant made to the  
18 police, investigative reports and transcripts of preliminary hearings, if any;

19 (3) Any available psychiatric, psychological, medical or social records that are considered  
20 relevant;

21 (4) A copy of the defendant's criminal record; and

22 (5) If the evaluations are to include a diminished capacity assessment, the nature of any lesser  
23 included criminal offenses.

24 (c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of any  
25 court-ordered evaluation which may include record review and defendant interview and shall, within ten  
26 business days of the date of the completion of any evaluation, provide to the court of record a written,  
27 signed report of his or her opinion on the issue of competency to stand trial. If it is the qualified forensic  
28 evaluator's opinion that the defendant is not competent to stand trial, the report shall state whether the  
29 defendant is substantially likely to attain competency within the next three months and, in order to attain  
30 competency to stand trial, whether the defendant requires inpatient management in a behavioral health  
31 facility. The court may extend the ten-day period for filing the report if a qualified forensic evaluator shows  
32 good cause to extend the period, but in no event may the period exceed thirty days. If there are no  
33 objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written  
34 report if the qualified forensic evaluator's opinion may otherwise be made known to the court and  
35 interested parties.

36 (d) If the court determines:

37 (1) The defendant has been uncooperative during the forensic evaluation ordered pursuant to this  
38 section or;

39 (2) There have been one or more inadequate or conflicting forensic evaluations performed  
40 pursuant to this section; and

41 (3) The court has reason to believe that an observation period is necessary in order to determine



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42 if a person is competent to stand trial, the court may order the defendant be committed to a behavioral  
43 health facility designated by the department for a period not to exceed fifteen days and an additional  
44 evaluation be conducted in accordance with this section by one or more qualified forensic psychiatrists, or  
45 a qualified forensic psychiatrist and a qualified forensic psychologist.

46 (e) The court shall order that at the conclusion of the fifteen-day observation period the sheriff of  
47 the county where the defendant was charged shall take immediate custody of the defendant for  
48 transportation and disposition as ordered by the court.

49 (f) A behavioral health facility not operated by the state is not obligated to admit and treat a  
50 defendant pursuant to this section.

**§27-6-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition.**

1 (a) Within five days of the receipt of the qualified forensic evaluator's report and opinion on the  
2 issue of competency to stand trial, the court of record shall make a preliminary finding on the issue of  
3 whether the defendant is competent to stand trial and if not competent whether there is a substantial  
4 likelihood that the defendant will attain competency within the next three months. If the court of record  
5 orders, or if the state or defendant or defendant's counsel within twenty days of receipt of the preliminary  
6 findings requests, a hearing, then a hearing shall be held by the court of record within fifteen days of the  
7 date of the preliminary finding, absent good cause being shown for a continuance. If a hearing order or  
8 request is not filed within twenty days, the preliminary findings of the court become the final order.

9 (b) At a hearing to determine a defendant's competency to stand trial the defendant has the right  
10 to be present and he or she has the right to be represented by counsel and introduce evidence and cross-  
11 examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the  
12 hearing and shall have access to all forensic evaluator's opinions. All rights generally afforded a  
13 defendant in criminal proceedings shall be afforded to a defendant in the competency proceedings,  
14 except trial by jury.

15 (c) The court of record, pursuant to a preliminary finding or hearing on the issue of a defendant's  
16 competency to stand trial, and with due consideration of any forensic evaluation conducted pursuant to  
17 sections two and three of this article shall make a finding of fact upon a preponderance of the evidence as

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18 to the defendant's competency to stand trial based on whether or not the defendant has sufficient present  
19 ability to consult with his or her attorney with a reasonable degree of rational understanding and whether  
20 he or she has a rational as well as a factual understanding of the proceedings against him or her.

21 (d) If at any point in the proceedings the defendant is found competent to stand trial, the court of  
22 record shall proceed with the criminal proceedings.

23 (e) If at any point in the proceedings the defendant is found not competent to stand trial, the court  
24 of record shall at the same hearing, upon the evidence, make further findings as to whether or not there is  
25 a substantial likelihood that the defendant will attain competency within the next ensuing three months.

26 (f)(1) If at any point in the proceedings the defendant is found not competent to stand trial and is  
27 found substantially likely to attain competency, the court of record shall in the same order, upon the  
28 evidence, make further findings as to whether the defendant requires, in order to attain competency,  
29 inpatient management in a behavioral health facility. If inpatient management is required, the court shall  
30 order the defendant be committed to an inpatient behavioral health facility designated by the Department  
31 to attain competency to stand trial and for a competency evaluation. The term of this commitment may not  
32 exceed three months from the time of entry into the facility.

33 (2) However, upon request by the chief medical officer of the behavioral health facility and based  
34 on the requirement for additional management to attain competency to stand trial, the court of record  
35 may, prior to the termination of the three-month period, extend the period up to nine months from entry  
36 into the facility.

37 (3) A forensic evaluation of competency to stand trial shall be conducted by a qualified forensic  
38 evaluator and a report rendered to the court, in like manner as subsections (a) and (c), section two of this  
39 article, every three months until the court determines the defendant is not competent to stand trial and is  
40 not substantially likely to attain competency.

41 (g) If at any point in the proceedings the defendant is found not competent to stand trial and is  
42 found not substantially likely to attain competency and if the defendant has been indicted or charged with  
43 a misdemeanor, or felony which does not involve an act of violence against a person, the criminal  
44 charges shall be dismissed. The dismissal order may, however, be stayed for twenty days to allow civil  
45 commitment proceedings to be instituted by the prosecutor pursuant to article fourteen of this chapter.

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46 The defendant shall be immediately released from any inpatient facility unless civilly committed.

47 (h) If at any point in the proceedings the defendant is found not competent to stand trial and is  
48 found not substantially likely to attain competency, and if the defendant has been indicted or charged with  
49 a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a  
50 person, then the court shall determine on the record the offense or offenses of which the person  
51 otherwise would have been convicted, and the maximum sentence he or she could have received. A  
52 defendant shall remain under the court's jurisdiction until the expiration of the maximum sentence unless  
53 the defendant attains competency to stand trial and the criminal charges reach resolution or the court  
54 dismisses the indictment or charge. The court shall order the defendant be committed to a behavioral  
55 health facility designated by the Department that is the least restrictive environment to manage the  
56 defendant and that will allow for the protection of the public. Notice of the maximum sentence period with  
57 an end date shall be provided to the behavioral health facility. The court shall order a qualified forensic  
58 evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed  
59 within thirty days of admission to the behavioral health facility and a report rendered to the court within ten  
60 business days of the completion of the evaluation. The medical director of the behavioral health facility  
61 shall provide the court a written clinical summary report of the defendant's condition at least annually  
62 during the time of the court's jurisdiction. The court's jurisdiction shall continue an additional ten days  
63 beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant  
64 to article fourteen of this chapter. The defendant shall then be immediately released from the facility  
65 unless civilly committed.

66 (i) If the defendant has been ordered to a behavioral health facility pursuant to subsection (h) of  
67 this section and the court receives notice from the medical director or other responsible official of the  
68 behavioral health facility that the defendant no longer constitutes a significant danger to self or others, the  
69 court shall conduct a hearing within thirty days to consider evidence, with due consideration of the  
70 qualified forensic evaluator's dangerousness report or clinical summary report to determine if the  
71 defendant shall be released to a less restrictive environment. The court may order the release of the  
72 defendant only when the court finds that the defendant is no longer a significant danger to self or others.  
73 When a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated

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74 as a result of any treatment, the court, in its discretion, may make the continuance of appropriate  
75 treatment, including medications, a condition of the defendant's release from inpatient hospitalization. The  
76 court shall maintain jurisdiction of the defendant in accordance with said subsection. Upon notice that a  
77 defendant ordered to a behavioral health facility pursuant to said subsection who is released on the  
78 condition that he or she continues treatment does not continue his or her treatment, the prosecuting  
79 attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that  
80 defendant is in violation of the conditions of his or her release, the court shall reorder the defendant to a  
81 behavioral health facility under the authority of the Department which is the least restrictive setting that  
82 will allow for the protection of the public.

83 (j) The prosecuting attorney may, by motion, and in due consideration of any chief medical  
84 officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject to the  
85 court's jurisdiction pursuant to subsection (h) of this section or released pursuant to subsection (i) of this  
86 section to be determined by the court of record while the defendant remains under the jurisdiction of the  
87 court. The court may order a forensic evaluation of competency to stand trial be conducted by a qualified  
88 forensic evaluator and a report rendered to the court in like manner as subsections (a) and (c), section  
89 two of this article.

90 (k) Any defendant found not competent to stand trial may at any time petition the court of record  
91 for a hearing on his or her competency.

92 (l) Notice of court findings of a defendant's competency to stand trial, of commitment for inpatient  
93 management to attain competency, of dismissal of charges, of order for inpatient management to protect  
94 the public, of release or conditional release, or any hearings to be conducted pursuant to this section shall  
95 be sent to the prosecuting attorney, the defendant and his or her counsel, and the behavioral health  
96 facility. Notice of court release hearing or order for release or conditional release pursuant to subsection  
97 (i) of this section shall be made available to the victim or next of kin of the victim of the offense for which  
98 the defendant was charged. The burden is on the victim or next of kin of the victim to keep the court  
99 apprised of that person's current mailing address.

100 (m) A behavioral health facility not operated by the state is not obligated to admit or treat a  
101 defendant pursuant this section.

**§27-6-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.**

1           (a) If the court of record finds, upon hearing evidence or representations of counsel for the  
2 defendant, that there is probable cause to believe that the defendant's criminal responsibility or  
3 diminished capacity will be a significant factor in his or her defense, the court shall appoint one or more  
4 qualified forensic psychiatrists or qualified forensic psychologists to conduct a forensic evaluation of the  
5 defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of  
6 the opinion that the defendant is not competent to stand trial that no criminal responsibility or diminished  
7 capacity evaluation may be conducted. The forensic evaluation may not be conducted at a state inpatient  
8 behavioral health facility unless the defendant has been ordered to a behavioral health facility in  
9 accordance with subsection (c), section two of this article or subsection (f) or (h), section three of this  
10 article. To the extent possible, qualified forensic evaluators who have conducted evaluations of  
11 competency pursuant to subsection (a), section two of this article shall be used to evaluate criminal  
12 responsibility or diminished capacity under this subsection.

13           (b) The court shall require the party making the motion for the evaluations, and other parties as  
14 the court considers appropriate, to provide to the qualified forensic evaluator appointed pursuant to  
15 subsection (a) of this section any information relevant to the evaluation within ten business days of its  
16 evaluation order. The information shall include, but not be limited to:

17           (1) A copy of the warrant or indictment;

18           (2) Information pertaining to the alleged crime, including statements by the defendant made to the  
19 police, investigative reports and transcripts of preliminary hearings, if any;

20           (3) Any available psychiatric, psychological, medical or social records that are considered  
21 relevant;

22           (4) A copy of the defendant's criminal record; and

23           (5) If the evaluation is to include a diminished capacity assessment, the nature of any lesser  
24 criminal offenses.

25           (c) A qualified forensic evaluator shall schedule and arrange within fifteen days of the receipt of  
26 appropriate documents the completion of any court-ordered evaluation which may include record review

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27 and defendant interview and shall, within ten business days of the date of the completion of any  
28 evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of  
29 criminal responsibility and if ordered, on diminished capacity. The court may extend the ten-day period for  
30 filling the report if a qualified forensic evaluator shows good cause to extend the period, but in no event  
31 may the period exceed thirty days. If there are no objections by the state or defense counsel, the court  
32 may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may  
33 otherwise be made known to the court and interested parties.

34 (d) If the court determines that the defendant has been uncooperative during a forensic  
35 evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting  
36 forensic evaluations performed pursuant to subsection (a) of this section, and the court has reason to  
37 believe that an observation period and additional forensic evaluation or evaluations are necessary in  
38 order to determine if a defendant was criminally responsible or with diminished capacity, the court may  
39 order the defendant be admitted to a behavioral health facility designated by the department for a period  
40 not to exceed fifteen days and an additional evaluation be conducted and a report rendered in like  
41 manner as subsections (a) and (b) of this section by one or more qualified forensic psychiatrists or one or  
42 more qualified forensic psychologists. At the conclusion of the observation period, the court shall enter a  
43 disposition order and the sheriff of the county where the defendant was charged shall take immediate  
44 custody of the defendant for transportation and disposition as ordered by the court.

45 (e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court  
46 shall determine on the record the offense or offenses of which the acquitee could have otherwise been  
47 convicted, and the maximum sentence he or she could have received. The acquitee shall remain under  
48 the court's jurisdiction until the expiration of the maximum sentence or until discharged by the court. The  
49 court shall commit the acquitee to a behavioral health facility designated by the department that is the  
50 least restrictive environment to manage the acquitee and that will allow for the protection of the public.  
51 Notice of the maximum sentence period with end date shall be provided to the behavioral health facility.  
52 The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include  
53 dangerousness risk factors to be completed within thirty days of admission to the behavioral health facility  
54 and a report rendered to the court within ten business days of the completion of the evaluation. The

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55 medical director of the behavioral health facility shall provide the court a written clinical summary report of  
56 the defendant's condition at least annually during the time of the court's jurisdiction. The court's  
57 jurisdiction continues an additional ten days beyond any expiration to allow civil commitment proceedings  
58 to be instituted by the prosecutor pursuant to article fourteen of this chapter. The defendant shall then be  
59 immediately released from the facility unless civilly committed.

60 (f) In addition to any court-ordered evaluations completed pursuant to section two, three or four of  
61 this article, the defendant or the state has the right to an evaluation or evaluations by a forensic evaluator  
62 or evaluators of his or her choice and at his or her expense.

63 (g) A behavioral health facility not operated by the state is not required to admit or treat a  
64 defendant or acquittee pursuant to this section.

**§27-6-5. Release of acquittee to less restrictive environment; discharge from jurisdiction of the court.**

1 (a) If, at any time prior to the expiration of the court's jurisdiction, the chief medical officer or  
2 responsible official of the behavioral health facility to which an acquittee has been ordered pursuant to  
3 subsection (e), section four of this article believes that the acquittee is not mentally ill or does not have  
4 significant dangerousness risk factors associated with mental illness, he or she shall file with the court of  
5 record notice of the belief and shall submit evidence in support of the belief. This report shall include a  
6 forensic evaluation dangerousness report conducted in like manner as said subsection and  
7 recommendations for treatment, including medications, that reduce or eliminate the dangerousness risk  
8 factors associated with mental illness. The court of record shall hold a hearing within thirty days of receipt  
9 of the notice to consider evidence as to whether the acquittee shall be released from the behavioral health  
10 facility to a less restrictive environment. Notice of the hearing shall be made available to the prosecuting  
11 attorney responsible for the charges brought against the acquittee at trial, the acquittee and his or her  
12 counsel and the behavioral health facility. If upon consideration of the evidence the court determines that  
13 an acquittee may be released from a behavioral health facility to a less restrictive setting, the court shall  
14 order, within fifteen days of the hearing, the acquittee be released upon terms and conditions, if any, the  
15 court considers appropriate for the safety of the community and the well-being of the acquittee. Any terms  
16 and conditions imposed by the court must be protective and therapeutic in nature, not punitive. When a

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17 defendant's dangerousness risk factors associated with mental illness are reduced or eliminated as a  
18 result of any treatment, the court, in its discretion, may make the continuance of appropriate treatment,  
19 including medications, a condition of the defendant's release from inpatient hospitalization. The court shall  
20 maintain jurisdiction of the defendant in accordance with said subsection. Upon notice that an acquitee  
21 released on the condition that he or she continues appropriate treatment does not continue his or her  
22 treatment, the prosecuting attorney responsible for the charges brought against the acquitee at trial shall,  
23 by motion, cause the court to reconsider the acquitee's release. Upon a showing that the acquitee is in  
24 violation of the conditions of his or her release, the court may reorder the acquitee to a behavioral health  
25 facility designated by the department which is the least restrictive setting appropriate to manage the  
26 acquitee and protect the public.

27 (b) No later than thirty days prior to the release from a behavioral health facility or other  
28 management setting of an acquitee because of the expiration of the court's jurisdiction as set in  
29 accordance with subsection (e), section four of this article, if the acquitee's physician, psychologist, chief  
30 medical officer or other responsible party is of the opinion that the acquitee's mental illness renders the  
31 acquitee to be likely to cause serious harm to self or others, the supervising physician, psychologist, chief  
32 medical officer or other responsible party shall notify the court of record who shall promptly notify the  
33 prosecuting attorney in the county of the court having jurisdiction of the opinion and the basis for the  
34 opinion. Following notification, the prosecuting attorney may file, within ten days, a civil commitment  
35 application against the acquitee pursuant to article fourteen of this chapter.

**§27-6-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.**

1 If a defendant who has been found to be not competent to stand trial believes that he or she can  
2 establish a defense of not guilty to the charges pending against him or her, other than the defense of not  
3 guilty by reason of mental illness, the defendant may request an opportunity to offer a defense thereto on  
4 the merits before the court which has criminal jurisdiction. If the defendant is unable to obtain legal  
5 counsel, the court of record shall appoint counsel for the defendant to assist him or her in supporting the  
6 request by affidavit or other evidence. If the court of record in its discretion grants such a request, the  
7 evidence of the defendant and of the state shall be heard by the court of record sitting without a jury. If  
8 after hearing such petition the court of record finds insufficient evidence to support a conviction, it shall



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9 dismiss the indictment and order the release of the defendant from criminal custody. The release order,  
10 however, may be stayed for ten days to allow civil commitment proceedings to be instituted by the  
11 prosecutor pursuant to article fourteen of this chapter. A defendant committed to a behavioral health  
12 facility pursuant to subsection (f) or (h), section three of this article shall be immediately released from the  
13 facility unless civilly committed.

**§27-6-7. Release of defendant during course of criminal proceedings.**

1 Notwithstanding any finding of incompetence to stand trial pursuant to the provisions of this  
2 article, the court of record may at any stage of the criminal proceedings allow a defendant to be released  
3 with or without bail.

**§27-6-8. Credit for time; expenses.**

1 (a) If a person is convicted of a crime, any time spent in involuntary confinement in a behavioral  
2 health facility as a result of being charged with the crime shall be credited to the sentence.

3 (b) All inpatient care and treatment shall be paid by the department.

**§27-6-9. Competency to be adjudicated in juvenile court.**

1 In a similar manner and in accordance with procedures set forth in subsection (a), section two of  
2 this article or subsection (a), section four of this article, a juvenile court may order a qualified forensic  
3 evaluator to conduct an evaluation of a juvenile to aid the court in its disposition pursuant to chapter forty-  
4 nine of this code. In a similar manner and in accordance with procedures set forth in subsection (d),  
5 section two of this article or subsection (d), section four of this article, a juvenile court may order a period  
6 of observation for an alleged delinquent or neglected juvenile at a behavioral health facility designated by  
7 the department to aid the court in its disposition. The period of observation may not exceed fifteen days.

**§27-6-10. Medications and management of court-ordered individuals.**

1 (a) At any time pursuant to sections two, three or four of this article an individual is court ordered  
2 to a behavioral health facility, the individual has the right to receive treatment under the standards of  
3 medical management.

4 (b) An individual with health care decision-making capacity may refuse medications or other  
5 management unless court-ordered to be treated or unless a treating clinician determines that medication  
6 or other management is necessary in emergencies or to prevent danger to the individual or others.

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**§27-6-11. Payment to forensic evaluators.**

1           The Department shall pay qualified forensic evaluators for all matters related to conducting a  
2 court-ordered forensic evaluation. The Department shall develop and implement a process for prompt  
3 payment to qualified forensic evaluators. The Department shall establish policies and procedures for  
4 establishing a maximum rate schedule for each of the four evaluation types (competency to stand trial,  
5 criminal responsibility, diminished capacity, dangerousness) to include all efforts towards the completion  
6 of each evaluation such as scheduling and administrative tasks, record review, psychological and other  
7 testing, interviews, report writing, research, preparation and consultation. Such policies and procedures  
8 shall include input from provider representatives as necessary and appropriate. Any rate schedule shall  
9 be fair and reasonable. The Department shall consider requests for payment in excess of established  
10 rates           or           other           expenses           for           good           cause           shown.

**ARTICLE 7. INTERSTATE COMPACT ON MENTAL HEALTH.**

**§27-7-1. Governor to execute compact.**

1           The Governor of this state is hereby authorized and directed to execute a compact on behalf of  
2 the State of West Virginia with any state or states of the United States legally joining therein in form  
3 substantially as follows:

4           INTERSTATE COMPACT ON MENTAL HEALTH

5           The contracting states solemnly agree that:

6           ARTICLE I

7           The party states find that the proper and expeditious treatment of the mentally ill and mentally  
8 deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society  
9 as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and  
10 treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary,  
11 the controlling factors of community safety and humanitarianism require that facilities and services be  
12 made available for all who are in need of them. Consequently, it is the purpose of this compact and of the  
13 party states to provide the necessary legal basis for the institutionalization or other appropriate care and  
14 treatment of the mentally ill and mentally deficient under a system that recognizes the paramount  
15 importance of patient welfare and to establish the responsibilities of the party states in terms of such

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16 welfare.

17 ARTICLE II

18 As used in this compact:

19 (a) "Sending state" shall mean a party state from which a patient is transported pursuant to the  
20 provisions of the compact or from which it is contemplated that a patient may be so sent.

21 (b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the  
22 provisions of the compact or to which it is contemplated that a patient may be so sent.

23 (c) "Institution" shall mean any hospital or other facility maintained by a party state or political  
24 subdivision thereof for the care and treatment of mental illness or mental deficiency.

25 (d) "Patient" shall mean any person subject to or eligible as determined by the laws of the  
26 sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of  
27 this compact.

28 (e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on  
29 convalescent status or conditional release.

30 (f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires  
31 care and treatment for his or her own welfare, or the welfare of others, or of the community.

32 (g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authority to  
33 such extent that a person so afflicted is incapable of managing himself or herself and his or her affairs,  
34 but shall not include mental illness as defined herein.

35 (h) "State" shall mean any state, territory or possession of the United States, the District of  
36 Columbia, and the Commonwealth of Puerto Rico.

37 ARTICLE III

38 (a) Whenever a person physically present in any party state shall be in need of institutionalization  
39 by reason of mental illness or mental deficiency, he or she shall be eligible for care and treatment in an  
40 institution in that state irrespective of his or her residence, settlement or citizenship qualifications.

41 (b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may  
42 be transferred to an institution in another state whenever there are factors based upon clinical  
43 determinations indicating that the care and treatment of said patient would be facilitated or improved

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44 thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion  
45 or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due  
46 regard for the location of the patient's family, character of the illness and probable duration thereof, and  
47 such other factors as shall be considered appropriate.

48 (c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of  
49 this article unless the sending state has given advance notice of its intention to send the patient; furnished  
50 all available medical and other pertinent records concerning the patient; given the qualified medical or  
51 other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said  
52 authorities so wish; and unless the receiving state shall agree to accept the patient.

53 (d) In the event that the laws of the receiving state establish a system of priorities for the  
54 admission of patients, an interstate patient under this compact shall receive the same priority as a local  
55 patient and shall be taken in the same order and at the same time that he or she would be taken if he or  
56 she were a local patient.

57 (e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a  
58 patient may be reviewed at any time and such further transfer of the patient may be made as seems likely  
59 to be in the best interest of the patient.

## 60 ARTICLE IV

61 (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be  
62 determined that the patient should receive aftercare or supervision, such care or supervision may be  
63 provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility  
64 for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in  
65 another state would be in the best interest of the patient and would not jeopardize the public safety, they  
66 shall request the appropriate authorities in the receiving state to investigate the desirability of affording  
67 the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable  
68 speed. The request for investigation shall be accompanied by complete information concerning the  
69 patient's intended place of residence and the identity of the person in whose charge it is proposed to  
70 place the patient, the complete medical history of the patient, and such other documents as may be  
71 pertinent.

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72 (b) If the medical or other appropriate clinical authorities having responsibility for the care and  
73 treatment of the patient in the sending state and the appropriate authorities in the receiving state find that  
74 the best interest of the patient would be served thereby, and if the public safety would not be jeopardized  
75 thereby, the patient may receive aftercare or supervision in the receiving state.

76 (c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article,  
77 a receiving state shall employ the same standards of visitation, examination, care, and treatment that it  
78 employs for similar local patients.

### 79 ARTICLE V

80 Whenever a dangerous or potentially dangerous patient escapes from an institution in any party  
81 state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the  
82 escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee.  
83 Immediately upon the apprehension and identification of any such dangerous or potentially dangerous  
84 patient, he or she shall be detained in the state where found pending disposition in accordance with law.

### 85 ARTICLE VI

86 The duly accredited officers of any state party to this compact, upon the establishment of their  
87 authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant  
88 to this compact through any and all states party to this compact, without interference.

### 89 ARTICLE VII

90 (a) No person shall be deemed a patient of more than one institution at any given time.  
91 Completion of transfer of any patient to an institution in a receiving state shall have the effect of making  
92 the person a patient of the institution in the receiving state.

93 (b) The sending state shall pay all costs of an incidental to the transportation of any patient  
94 pursuant to this compact, but any two or more party states may, by making a specific agreement for that  
95 purpose, arrange for a different allocation of costs as among themselves.

96 (c) No provision of this compact shall be construed to alter or affect any internal relationships  
97 among the departments, agencies and officers of and in the government of a party state, or between a  
98 party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

99 (d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof

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100 from asserting any right against any person, agency or other entity in regard to costs for which such party  
101 state or subdivision thereof may be responsible pursuant to any provision of this compact.

102 (e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a  
103 party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or  
104 mentally deficient, or any statutory authority pursuant to which such agreements may be made.

105 ARTICLE VIII

106 (a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the  
107 rights, duties, and responsibilities of any patient's guardian on his or her own behalf or in respect of any  
108 patient for whom he or she may serve, except that where the transfer of any patient to another jurisdiction  
109 makes advisable the appointment of a supplemental or substitute guardian, any court of competent  
110 jurisdiction in the receiving state may make such supplemental or substitute appointment and the court  
111 which appointed the previous guardian shall upon being duly advised of the new appointment, and upon  
112 the satisfactory completion of such accounting and other acts as such court may by law require, relieve  
113 the previous guardian of power and responsibility to whatever extent shall be appropriate in the  
114 circumstances: *Provided, however,* That in the case of any patient having settlement in the sending state,  
115 the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian  
116 appointed by it or continue his or her power and responsibility, whichever it shall deem advisable. The  
117 court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously  
118 serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

119 (b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee,  
120 legal committee, conservator, or other person or agency however denominated who is charged by law  
121 with power to act for or responsibility for the person or property of a patient.

122 ARTICLE IX

123 (a) No provision of this compact except article V shall apply to any person institutionalized while  
124 under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose  
125 institutionalization is due to the commission of an offense for which, in the absence of mental illness or  
126 mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

127 (b) To every extent possible, it shall be the policy of states party to this compact that no patient

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128 shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be  
129 taken to a suitable institutional facility for mental illness or mental deficiency.

130 ARTICLE X

131 (a) Each party state shall appoint a "compact administrator" who, on behalf of his or her state,  
132 shall act as general coordinator of activities under the compact in his or her state and who shall receive  
133 copies of all reports, correspondence, and other documents relating to any patient processed under the  
134 compact by his or her state either in the capacity of sending or receiving state. The compact administrator  
135 or his or her duly designated representative shall be the official with whom other party states shall deal in  
136 any matter relating to the compact or any patient processed thereunder.

137 (b) The compact administrators of the respective party states shall have power to promulgate  
138 reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

139 ARTICLE XI

140 The duly constituted administrative authorities of any two or more party states may enter into  
141 supplementary agreements for the provision of any service or facility or for the maintenance of any  
142 institution on a joint or cooperative basis whenever the states concerned shall find that such agreements  
143 will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental  
144 deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any  
145 obligation which it otherwise would have under other provisions of this compact.

146 ARTICLE XII

147 This compact shall enter into full force and effect as to any state when enacted by it into law, and  
148 such state shall thereafter be a party thereto with any and all states legally joining therein.

149 ARTICLE XIII

150 (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the  
151 same. Such withdrawal shall take effect one year after notice thereof has been communicated officially  
152 and in writing to the Governors and compact administrators of all other party states. However, the  
153 withdrawal of any state shall not change the status of any patient who has been sent to said state or sent  
154 out of said state pursuant to the provisions of the compact.

155 (b) Withdrawal from any agreement permitted by article VII (b) as to costs or from any

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156 supplementary agreement made pursuant to article XI shall be in accordance with the terms of such  
157 agreement.

158 ARTICLE XIV

159 This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions  
160 of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is  
161 declared to be contrary to the Constitution of any party state or of the United States or the applicability  
162 thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of  
163 this compact and the applicability thereof to any government, agency, person or circumstance shall not be  
164 affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the  
165 compact shall remain in full force and effect as to the remaining states and in full force and effect as to  
166 the \_\_\_\_\_ state \_\_\_\_\_ affected \_\_\_\_\_ as \_\_\_\_\_ to \_\_\_\_\_ all \_\_\_\_\_ severable \_\_\_\_\_ matters.

**§27-7-2. Compact administrator.**

1 The Commissioner shall be the compact administrator and, acting jointly with like officers of other  
2 party states, shall have power to promulgate rules and regulations to carry out more effectively the terms  
3 of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate  
4 with all departments, agencies and officers of and in the government of this state and its subdivisions in  
5 facilitating the proper administration of the compact or of any supplementary agreement or agreements  
6 entered \_\_\_\_\_ into \_\_\_\_\_ by \_\_\_\_\_ this \_\_\_\_\_ state \_\_\_\_\_ thereunder.

**§27-7-3. Supplementary agreements.**

1 The compact administrator is hereby authorized and empowered to enter into supplementary  
2 agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the  
3 event that any such supplementary agreements shall require or contemplate the use of any institution or  
4 facility of this state or require or contemplate the provision of any service by this state, no such agreement  
5 shall have force or effect until approved by the head of the department or agency under whose jurisdiction  
6 said institution or facility is operated or whose department or agency will be charged with the rendering of  
7 such \_\_\_\_\_ service.

**§27-7-4. Financial arrangements.**

1 The compact administrator, subject to the approval of the State Auditor, may make or arrange for



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2 any payments necessary to discharge any financial obligations imposed upon this state by the compact or  
3 by any supplementary agreement entered into thereunder.

**§27-7-5. Transmittal of copies of article.**

1 Duly authenticated copies of this article shall, upon its approval, be transmitted by the Secretary  
2 of State to the Governor of each state, the Attorney General and the Secretary of State of the United  
3 States, and the council of state governments.

**ARTICLE 8. INTERSTATE COMPACT ON THE MENTALLY DISORDERED**  
**OFFENDER.**

**§27-8-1. Enactment of compact.**

1 The interstate compact on the mentally disordered offender, hereinafter called "the compact," is  
2 hereby ratified, enacted into law and entered into with all jurisdictions legally joining therein, in the form  
3 substantially as follows:

Interstate Compact on the Mentally

Disordered Offender

Article I. Purpose and Policy.

7 (a) The party states, desiring by common action to improve their programs for the care and  
8 treatment of mentally disordered offenders, declare that it is the policy of each of the party states to:

9 (1) Strengthen their own programs and laws for the care and treatment of the mentally disordered  
10 offender.

11 (2) Encourage and provide for such care and treatment in the most appropriate locations, giving  
12 due recognition to the need to achieve adequacy of diagnosis, care, treatment, aftercare and auxiliary  
13 services and facilities and, to every extent practicable, to do so in geographic locations convenient for  
14 providing a therapeutic environment.

15 (3) Authorize cooperation among the party states in providing services and facilities, when it is  
16 found that cooperative programs can be more effective and efficient than programs separately pursued.

17 (4) Place each mentally disordered offender in a legal status which will facilitate his or her care,  
18 treatment and rehabilitation.

19 (5) Authorize research and training of personnel on a cooperative basis, in order to improve the

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20 quality or quantity of personnel available for the proper staffing of programs, services and facilities for  
21 mentally disordered offenders.

22 (6) Care for and treat mentally disordered offenders under conditions which will improve the  
23 public safety.

24 (b) Within the policies set forth in this article, it is the purpose of this compact to:

25 (1) Authorize negotiation, entry into, and operations under contractual arrangements among any  
26 two or more of the party states for the establishment and maintenance of cooperative programs in any  
27 one or more of the fields for which specific provision is made in the several articles of this compact.

28 (2) Set the limits within which such contracts may operate, so as to assure protection of the civil  
29 rights of mentally disordered offenders and protection of the rights and obligations of the public and of the  
30 party states.

31 (3) Facilitate the proper disposition of criminal charges pending against mentally disordered  
32 offenders, so that programs for their care, treatment and rehabilitation may be carried on efficiently.

33 Article II. Definitions.

34 As used in this compact:

35 (a) "Mentally disordered offender" means a person who has been determined, by adjudication or  
36 other method legally sufficient for the purpose in the party state where the determination is made, to be  
37 mentally ill and:

38 (1) Is under sentence for the commission of crime; or

39 (2) Who is confined or committed on account of the commission of an offense for which, in the  
40 absence of mental illness, said person would be subject to incarceration in a penal or correctional facility.

41 (b) "Patient" means a mentally disordered offender who is cared for, treated, or transferred  
42 pursuant to this compact.

43 (c) "Sending state" means a state party to this compact in which the mentally disordered offender  
44 was convicted; or the state in which he or she would be subject to trial on or conviction of an offense,  
45 except for his or her mental condition; or, within the meaning of Article V of this compact, the state whose  
46 authorities have filed a petition in connection with an untried indictment, information or complaint.

47 (d) "Receiving state" means a state party to this compact to which a mentally disordered offender

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48 is sent for care, aftercare, treatment or rehabilitation, or within the meaning of Article V of this compact,  
49 the state in which a petition in connection with an untried indictment, information or complaint has been  
50 filed.

51 Article III. Contracts.

52 (a) Each party state may make one or more contracts with any one or more of the other party  
53 states for the care and treatment of mentally disordered offenders on behalf of a sending state in facilities  
54 situated in receiving states, or for the participation of such mentally disordered offenders in programs of  
55 aftercare on conditional release administered by the receiving state. Any such contract shall provide for:

56 (1) Its duration.

57 (2) Payments to be made to the receiving state by the sending state for patient care, treatment  
58 and extraordinary services, if any.

59 (3) Determination of responsibility for ordering or permitting the furnishing of extraordinary  
60 services, if any.

61 (4) Participation in compensated activities, if any, available to patients; the disposition or crediting  
62 of any payment received by patients on account thereof; and the crediting of proceeds from or disposal of  
63 any products resulting therefrom.

64 (5) Delivery and retaking of mentally disordered offenders.

65 (6) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities  
66 and rights of the sending and receiving states.

67 (b) Prior to the construction or completion of construction of any facility for mentally disordered  
68 offenders or addition to such facility by a party state, any other party state or states may contract  
69 therewith for the enlargement of the planned capacity of the facility or addition thereto, or for the inclusion  
70 therein of particular equipment or structures, and for the reservation of a specific per centum of the  
71 capacity of the facility to be kept available for use by patients of the sending state or states so contracting.  
72 Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the  
73 receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of  
74 equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in  
75 installments as provided in the contract.

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76 (c) A party state may contract with any one or more other party states for the training of  
77 professional or other personnel whose services, by reason of such training, would become available for or  
78 be improved in respect of ability to participate in the care and treatment of mentally disordered offenders.  
79 Such contracts may provide for such training to take place at any facility being operated or to be operated  
80 for the care and treatment of mentally disordered offenders; at any institution or facility having resources  
81 suitable for the offering of such training; or may provide for the separate establishment of training  
82 facilities: *Provided*, That no such separate establishment shall be undertaken, unless it is determined that  
83 an appropriate existing facility or institution cannot be found at which to conduct the contemplated  
84 program. Any contract entered into pursuant to this paragraph shall provide for:

85 (1) The administration, financing and precise nature of the program.

86 (2) The status and employment or other rights of the trainees.

87 (3) All other necessary matters.

88 (d) No contract entered into pursuant to this compact shall be inconsistent with any provision  
89 thereof.

90 Article IV. Procedures and Rights.

91 (a) Whenever the duly constituted judicial or administrative authorities in a state party to this  
92 compact, and which has entered into a contract pursuant to Article III, shall decide that custody, care and  
93 treatment in, or transfer of a patient to, a facility within the territory of another party state, or conditional  
94 release for aftercare in another party state is necessary in order to provide adequate care and treatment  
95 or is desirable in order to provide an appropriate program of therapy or other treatment, or is desirable for  
96 clinical reasons, said officials may direct that the custody, care and treatment be within a facility or in a  
97 program of aftercare within the territory of said other party state, the receiving state to act in that regard  
98 solely as agent for the sending state.

99 (b) The appropriate officials of any state party to this compact shall have access, at all reasonable  
100 times, to any facility in which it has a contractual right to secure care or treatment of patients for the  
101 purpose of inspection and visiting such of its patients as may be in the facility or served by it.

102 (c) Except as otherwise provided in Article VI, patients in a facility pursuant to the terms of this  
103 compact shall at all times be subject to the jurisdiction of the sending state and may at any time be

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104 removed for transfer to a facility within the sending state, for transfer to another facility in which the  
105 sending state may have a contractual or other right to secure care and treatment of patients, for release  
106 on aftercare or other conditional status, for discharge, or for any other purpose permitted by the laws of  
107 the sending state: *Provided*, That the sending state shall continue to be obligated to such payments as  
108 may be required pursuant to the terms of any contract entered into under the terms of Article III.

109 (d) Each receiving state shall provide regular reports to each sending state on the patients of that  
110 sending state in facilities pursuant to this compact including a psychiatric and behavioral record of each  
111 patient and certify said record to the official designated by the sending state, in order that each patient  
112 may have the benefit of his or her record in determining and altering the disposition of said patient in  
113 accordance with the law which may obtain in the sending state and in order that the same may be a  
114 source of information for the sending state.

115 (e) All patients who may be in a facility or receiving aftercare from a facility pursuant to the  
116 provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for,  
117 treated and supervised in accordance with the standards pertaining to the program administered at the  
118 facility. The fact of presence in a receiving state shall not deprive any patient of any legal rights which  
119 said patient would have had if in custody or receiving care, treatment or supervision as appropriate in the  
120 sending state.

121 (f) Any hearing or hearings to which a patient present in a receiving state pursuant to this  
122 compact may be entitled by the laws of the sending state shall be had before the appropriate authorities  
123 of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall  
124 provide adequate facilities for such hearings as may be conducted by the appropriate officials of a  
125 sending state. In the event such hearing or hearings are had before officials of the receiving state, the  
126 governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by  
127 the sending state shall be made. Said record together with any recommendations of the hearing officials  
128 shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it  
129 had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this  
130 paragraph, the officials of the receiving state shall act solely as agents of the sending state and no final  
131 determination shall be made in any matter except by the appropriate officials of the sending state. Costs

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132 of records made pursuant to this paragraph shall be borne by the sending state.

133 (g) Any patient confined pursuant to this compact shall be released within the territory of the  
134 sending state unless the patient, and the sending and receiving states, shall agree upon release in some  
135 other place. The sending state shall bear the cost of such return to its territory.

136 (h) Any patient pursuant to the terms of this compact shall be subject to civil process and shall  
137 have any and all rights to sue, be sued and participate in and derive any benefits or incur or be relieved of  
138 any obligations or have such obligations modified or his or her status changed on account of any action or  
139 proceeding in which he or she could have participated if in any appropriate facility of the sending state or  
140 being supervised therefrom, as the case may be, located within such state.

141 (i) The parent, guardian, trustee, or other person or persons entitled under the laws of the  
142 sending state to act for, advise, or otherwise function with respect to any patient shall not be deprived of  
143 or restricted in his or her exercise of any power in respect of any patient pursuant to the terms of this  
144 compact.

145 Article V. Disposition of Charges.

146 (a) Whenever the authorities responsible for the care and treatment of a mentally disordered  
147 offender, whether convicted or adjudicated in the state or subject to care, aftercare, treatment or  
148 rehabilitation pursuant to a contract, are of the opinion that charges based on untried indictments,  
149 informations or complaints in another party state present obstacles to the proper care and treatment of a  
150 mentally disordered offender or to the planning or execution of a suitable program for him or her, such  
151 authorities may petition the appropriate court in the state where the untried indictment, information or  
152 complaint is pending for prompt disposition thereof. If the mentally disordered offender is a patient in a  
153 receiving state, the appropriate authorities of the sending state, upon recommendation of the appropriate  
154 authorities in the receiving state, shall, if they concur in the recommendation, file the petition  
155 contemplated by this paragraph.

156 (b) The court shall hold a hearing on the petition within thirty days of the filing thereof. Such  
157 hearing shall be only to determine whether the proper safeguarding and advancement of the public  
158 interest; the condition of the mentally disordered offender; and the prospects for more satisfactory care,  
159 treatment and rehabilitation of him or her warrant disposition of the untried indictment, information or

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160 complaint prior to termination of the defendant's status as a mentally disordered offender in the sending  
161 state. The prosecuting officer of the jurisdiction from which the untried indictment, information or  
162 complaint is pending, the petitioning authorities, and such other persons as the court may determine shall  
163 be entitled to be heard.

164 (c) Upon any hearing pursuant to this article, the court may order such adjournments or  
165 continuances as may be necessary for the examination or observation of the mentally disordered offender  
166 or for the securing of necessary evidence. In granting or denying any such adjournment or continuance,  
167 the court shall give primary consideration to the purposes of this compact, and more particularly to the  
168 need for expeditious determination of the legal and mental status of a mentally disordered offender so  
169 that his or her care, treatment and discharge to the community only under conditions which will be  
170 consonant with the public safety may be implemented.

171 (d) The presence of a mentally disordered offender within a state wherein a petition is pending or  
172 being heard pursuant to this article, or his or her presence within any other state through which he or she  
173 is being transported in connection with such petition or hearing, shall be only for the purposes of this  
174 compact, and no court, agency or person shall have or obtain jurisdiction over such mentally disordered  
175 offender for any other purpose by reason of his or her presence pursuant to this article. The mentally  
176 disordered offender shall, at all times, remain in the custody of the sending state. Any acts of officers,  
177 employees, or agencies of the receiving state in providing or facilitating detention, housing or  
178 transportation for the mentally disordered offender shall be only as agents for the sending state.

179 (e) Promptly upon conclusion of the hearing the court shall dismiss the untried indictment,  
180 information or complaint, if it finds that the purposes enumerated in paragraph (b) of this article would be  
181 served thereby. Otherwise, the court shall make such order with respect to the petition and the untried  
182 indictment, information or complaint as may be appropriate in the circumstances and consistent with the  
183 status of the defendant as a mentally disordered offender in the custody of and subject to the jurisdiction  
184 of the sending state.

185 (f) No fact or other matter established or adjudicated at any hearing pursuant to this article, or in  
186 connection therewith, shall be deemed established or adjudicated, nor shall the same be admissible in  
187 evidence, in any subsequent prosecution of the untried indictment, information or complaint concerned in

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188 a petition filed pursuant to this article unless:

189 (1) The defendant or his or her duly empowered legal representative requested or expressly  
190 acquiesced in the making of the petition, and was afforded an opportunity to participate in person in the  
191 hearing; or

192 (2) The defendant himself or herself offers or consents to the introduction of the determination or  
193 adjudication at such subsequent proceedings.

194 Article VI. Acts Not Reviewable in Receiving

195 State; Return.

196 (a) Any decision of the sending state in respect of any matter over which it retains jurisdiction  
197 pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at  
198 the time the sending state seeks to remove a patient from the receiving state there is pending against the  
199 patient within such state any criminal charge or if the patient is suspected of having committed within  
200 such state a criminal offense, the patient shall not be returned without the consent of the receiving state  
201 until discharged from prosecution or other form of proceeding, imprisonment or detention for such  
202 offense. The duly accredited officers of the sending state shall be permitted to transport patients pursuant  
203 to this compact through any and all states party to this compact without interference.

204 (b) A patient who escapes while receiving care and treatment or who violates provisions of  
205 aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this compact shall  
206 be deemed an escapee from the sending state and from the state in which the facility is situated or the  
207 aftercare was being provided. In the case of an escape to a jurisdiction other than the sending or  
208 receiving state, the responsibility for return shall be that of the sending state, but nothing contained herein  
209 shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed  
210 toward the apprehension and return of an escapee.

211 Article VII. Federal Aid.

212 Any state party to this compact may accept federal aid for use in connection with any facility or  
213 program, the use of which is or may be affected by this compact or any contract pursuant thereto and any  
214 patient in a receiving state pursuant to this compact may participate in any such federally aided program  
215 or activity for which the sending and receiving states have made contractual provision: *Provided*, That if



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216 such program or activity is not part of the customary regimen of the facility or program the express  
217 consent of the appropriate official of the sending state shall be required therefor.

218 Article VIII. Entry into Force.

219 This compact shall enter into force and become effective and binding upon the states so acting  
220 when it has been enacted into law by any two states from among the states of Illinois, Indiana, Iowa,  
221 Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.  
222 Thereafter, this compact shall enter into force and become effective and binding as to any other of said  
223 states, or any other state upon similar action by such state.

224 Article IX. Withdrawal and Termination.

225 This compact shall continue in force and remain binding upon a party state until it shall have  
226 enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal  
227 from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take  
228 effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not  
229 relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of  
230 withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its  
231 own expense, such patients as it may have in other party states pursuant to the provisions of this  
232 compact.

233 Article X. Other Arrangements Unaffected.

234 Nothing contained in this compact shall be construed to abrogate or impair any agreement or  
235 other arrangement which a party state may have with a nonparty state for the custody, care, treatment,  
236 rehabilitation or aftercare of patients nor to repeal any other laws of a party state authorizing the making  
237 of cooperative arrangements.

238 Article XI. Construction and Severability.

239 The provisions of this compact shall be liberally construed and shall be severable. If any phrase,  
240 clause, sentence or provision of this compact is declared to be contrary to the Constitution of any  
241 participating state or of the United States or the applicability thereof to any government, agency, person  
242 or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to  
243 any government, agency, person or circumstance shall not be affected thereby. If this compact shall be

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244 held contrary to the Constitution of any state participating therein, the compact shall remain in full force  
245 and effect as to the remaining states and in full force and effect as to the state affected as to all severable  
246 matters.

**§27-8-2. Who may enter into contracts under compact.**

1 The Governor, the State Board of Education, the Division of Rehabilitative Services, the Higher  
2 Education Policy Commission, the West Virginia Board of Regents, the Department of Military and Public  
3 Safety, the Department of Health and Compliance and the West Virginia Division of Probation Services  
4 may negotiate and enter into contracts on behalf of this state pursuant to Article III of the compact and  
5 may perform such contracts: *Provided*, That no funds, personnel, facilities, equipment, supplies or  
6 materials shall be pledged for, committed or used on account of any such contract, unless legally  
7 available therefor.

**§27-8-3. Effective date.**

1 The effective date of this article shall be July 1, 1970.

**ARTICLE 9. MISCELLANEOUS PROVISIONS RELATED TO BEHAVIORAL HEALTH.**

**§27-9-1. Independent Informal Dispute Resolution.**

1 (a) A behavioral health provider licensed by the department adversely affected by an  
2 order or citation of a deficient practice issued pursuant to this article or pursuant to federal law  
3 may request to use the independent informal dispute resolution process established by this  
4 section. A licensee may contest a cited deficiency as contrary to rule, regulation or law or  
5 unwarranted by the facts, or any combination thereof.

6 (b) The independent informal dispute resolution process is not a formal evidentiary  
7 proceeding and utilization of the independent informal dispute resolution process does not  
8 waive the right of the licensee to request a formal hearing with the secretary.

9 (c) The independent informal dispute resolution process shall consist of the following:

10 (1) The secretary shall transmit to the licensee a statement of deficiencies attributed to  
11 the licensee and request that the licensee submit a plan of correction addressing the cited  
12 deficiencies no later than ten working days following the last day of the survey or inspection, or

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13 no later than ten working days following the last day of a complaint investigation. Notification of  
14 the availability of the independent informal dispute resolution process and an explanation of the  
15 independent informal dispute resolution process shall be included in the transmittal.

16 (2) When the licensee returns its plan of correction to the secretary, the licensee may  
17 request, in writing, to participate in the independent informal dispute resolution process to  
18 protest or refute all or part of the cited deficiencies within ten working days. The secretary may  
19 not release the final report until all dispute processes are resolved.

20 (3) The secretary shall approve and establish a panel of at least three independent  
21 review providers: *Provided*, That in lieu of establishing a panel, the secretary may use an  
22 existing panel of approved independent review providers. The secretary shall contract with the  
23 independent review providers to conduct the independent informal dispute resolution processes.  
24 Each independent review provider shall be accredited by the Utilization Review Accreditation  
25 Commission. When a licensee requests an independent informal dispute resolution process, the  
26 secretary shall choose one independent review provider from the approved panel to conduct the  
27 process.

28 (4) The secretary shall refer the request to an independent review provider from the  
29 panel of certified independent review providers approved by the department within five working  
30 days of receipt of the written request for the independent informal dispute resolution process  
31 made by a licensee. The secretary shall vary the selection of the independent review providers  
32 on a rotating basis. The secretary shall acknowledge in writing to the licensee that the request  
33 for independent review has been received and forwarded to the independent review provider.  
34 The notice shall include the name and professional address of the independent review provider.

35 (5) The independent review provider shall hold an independent informal dispute

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36 resolution conference, unless additional time is requested by either the licensee, the department  
37 or the independent review provider and approved by the secretary, within ten working days of  
38 receipt of the written request for the independent informal dispute resolution process made by a  
39 licensee. The licensee or the department may submit additional information before the  
40 independent informal dispute resolution conference.

41 (6) Neither the secretary nor the licensee may be accompanied by counsel during the  
42 independent informal dispute resolution conference. The manner in which the independent  
43 informal dispute resolution conference is held is at the discretion of the licensee, but is limited  
44 to:

45 (A) A review of written information submitted by the licensee;

46 (B) A telephonic conference; or

47 (C) A face-to-face conference held at a mutually agreed upon location.

48 (7) If the independent review provider determines the need for additional information,  
49 clarification or discussion at the conclusion of the independent informal dispute resolution  
50 conference, the secretary and the licensee shall present the requested information.

51 (8) The independent review provider shall make a determination within ten working days  
52 of receipt of any additional information as provided in subdivision (7) of this section or the  
53 conclusion of the independent informal dispute resolution conference, based upon the facts and  
54 findings presented, and shall transmit a written decision containing the rationale for its  
55 determination to the secretary.

56 (9) If the secretary disagrees with the determination, the secretary may reject the  
57 determination made by the independent review provider and shall issue an order setting forth  
58 the rationale for the reversal of the independent review provider's decision to the licensee within

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59 ten working days of receiving the independent review provider's determination.

60 (10) If the secretary accepts the determination, the secretary shall issue an order  
61 affirming the independent review provider's determination within ten working days of receiving  
62 the independent review provider's determination.

63 (11) If the independent review provider determines that the original statement of  
64 deficiencies should be changed as a result of the independent informal dispute resolution  
65 process and the secretary accepts the determination, the secretary shall transmit a revised  
66 statement of deficiencies to the licensee within ten working days of the independent review  
67 provider's determination.

68 (12) The licensee shall submit a revised plan to correct any remaining deficiencies to the  
69 secretary within ten working days of receipt of the secretary's order and the revised statement of  
70 deficiencies.

71 (d) Under the following circumstances, the licensee is responsible for certain costs of the  
72 independent informal dispute resolution review, which shall be remitted to the secretary within  
73 sixty days of the informal conference order:

74 (1) If the licensee requests a face-to-face conference, the licensee shall pay any costs  
75 incurred by the independent review provider that exceed the cost of a telephonic conference,  
76 regardless of which party ultimately prevails;

77 (2) If the independent review provider's decision supports the entirety of the originally  
78 written contested deficiency or adverse action taken by the secretary, the licensee shall  
79 reimburse the secretary for the cost charged by the independent review provider; or

80 (3) If the independent review provider's decision supports some of the originally written  
81 contested deficiencies, but not all of them, the licensee shall reimburse the secretary for the

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82 cost charged by the independent review provider on a pro-rata basis as determined by the  
83 secretary.

84 (e) Establishment of the independent informal dispute resolution process does not  
85 preclude licensees from utilizing other informal dispute resolution processes provided by statute  
86 or rule in lieu of the independent informal dispute resolution process.

87 (f) Administrative and judicial review of a decision rendered through the independent  
88 informal dispute resolution process may be made in accordance with article five, chapter twenty-  
89 nine-a of this code.

90 (g) Any decision issued by the secretary as a result of the independent informal dispute  
91 resolution process shall be made effective from the date of issuance.

92 (h) The pendency of administrative or judicial review does not prevent the secretary or a  
93 licensee from obtaining injunctive relief as provided by statute or rule.

**§27-9-2. Behavioral Mental Health Services Fund created.**

1 There is created in the State Treasury a special revenue account to be designated the  
2 "Behavioral Mental Health Services Fund" which is an interest-bearing account that may be  
3 invested and retain all earnings. On or before August 1, 2010, the State Treasurer shall make a  
4 one-time transfer of \$14,750,000 from Fund 1509 – Consumer Protection Recovery Fund,  
5 administered by the Attorney General, into the Behavioral Mental Health Services Fund. All  
6 moneys transferred to this fund shall be expended in accordance with the settlement provisions  
7 of *State of West Virginia v. Eli Lilly and Company, Inc.*, United States District Court of the  
8 Eastern District of New York, Civil Action No. 06-CV-5826. Nothing in this article may be  
9 construed to mandate additional funding or to require any additional appropriation by the  
10 Legislature.

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**§27-9-3. Summary review for certain behavioral health facilities and services.**

1           (a) A certificate of need as provided in article two-d, chapter sixteen of this code is not  
2 required by an entity proposing additional behavioral health care services, but only to the extent  
3 necessary to gain federal approval of the Medicaid MR/DD waiver program, if a summary review  
4 is performed in accordance with the provisions of this section.

5           (b) Prior to initiating any summary review, the Secretary shall direct the revision of the  
6 state mental health plan as required by the provisions of 42 U.S.C. 300x and chapter twenty-  
7 seven of this code. In developing those revisions, the secretary is to appoint an advisory  
8 committee composed of representatives of the associations representing providers, child care  
9 providers, physicians and advocates. The Secretary shall request representatives from  
10 appropriate departments with employees representing regulatory agencies, reimbursement  
11 agencies and oversight agencies of the behavioral health system.

12           (c) If the Secretary determines that specific services are needed but unavailable, he or  
13 she shall provide notice of the department's intent to develop those services. Notice may be  
14 provided through publication in the state register, publication in newspapers or a modified  
15 request for proposal as developed by the Secretary.

16           (d) The Secretary may initiate a summary review of additional behavioral health care  
17 services, but only to the extent necessary to gain federal approval of the Medicaid MR/DD  
18 waiver program, by recommending exemption from the provisions of article two-d, chapter  
19 sixteen of this code to the Health Care Authority. The recommendation is to include the  
20 following findings:

21           (1) That the proposed service is consistent with the state health plan and the state  
22 mental health plan;

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23 (2) That the proposed service is consistent with the Department's programmatic and  
24 fiscal plan for behavioral health services;

25 (3) That the proposed service contributes to providing services that prevent admission to  
26 restrictive environments or enables an individual to remain in a nonrestrictive environment;

27 (4) That the proposed service contributes to reducing the number of individuals admitted  
28 to inpatient or residential treatment programs or services;

29 (5) If applicable, that the proposed service will be community-based, locally accessible,  
30 provided in an appropriate setting consistent with the unique needs and potential of each client  
31 and his or her family and located in an area that is unserved or underserved or does not allow  
32 consumers a choice of providers; and

33 (6) That sufficient funds are available for the proposed service without decreasing  
34 access to or provision of existing services. The Secretary may, from time to time, transfer funds  
35 pursuant to the general provisions of the budget bill.

36 (e) The Secretary's findings shall be filed with the Secretary's recommendation and  
37 appropriate documentation. If the Secretary's findings are supported by the accompanying  
38 documentation, the proposal does not require a certificate of need.

39 (f) Any entity that does not qualify for summary review is subject to a certificate of need  
40 review.

41 (g) Any provider of the proposed services denied authorization to provide those services  
42 pursuant to the summary review has the right to appeal that decision to the Board of Review as  
43 set forth in chapter nine of this code.

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

45 **§27-10-1. Creation of department.**

1 (a) The Legislature creates the Department of Healthcare Facilities. In creating this department,



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2 the Legislature intends to continue on a reorganized basis state owned and operated hospitals and  
3 behavioral health facilities. These changes shall become effective July 1, 2019.

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

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

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

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

**§27-10-2. State facilities.**

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

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

1 The Department is charged with:

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

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

9 (3) Making periodic reports to the Secretary, Governor and to the Legislature on the condition of

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10 the state hospitals, centers and institutions or on other matters within the authority of the Department,  
11 which shall include recommendations for improvement of any behavioral health facility and any other  
12 matters affecting the mental health of the people of the state.

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

1 (a) The administrative head of the department is the Secretary, who shall be appointed  
2 and compensated, as provided by article seven, chapter six of this code.

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

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

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

1 Consistent with the provisions of section one, article two, chapter five-f of this code, the  
2 secretary may organize the department into such other offices, divisions, agencies and other  
3 administrative units as he or she sees as necessary.

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

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

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

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

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

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

12           (3) Obtain by purchase or lease grounds, buildings, office or other space, equipment,  
13 facilities and services as may be necessary for the execution and administration of those  
14 powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law  
15 to the department and the secretary.

16           (4) Sign and execute in the name of the state by the Department of Healthcare Facilities  
17 any contract or agreement with the federal government or its agencies, other states, political  
18 subdivisions of this state, corporations, associations, partnerships or individuals: *Provided*, That  
19 the provisions of article three, chapter five-a are followed.

20           (5) Provide at department expense a program of continuing professional, technical and  
21 specialized instruction for the personnel of the department.

22           (6) Pay from available funds all or part of the reasonable expenses incurred by a person

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23 newly employed by the department in moving his household furniture, effects and immediate  
24 family from his or her place of residence in this state to his or her place of employment in this  
25 state; and to pay from available funds all or part of the reasonable expenses incurred by a  
26 department employee in moving his or her household furniture, effects and immediate family as  
27 a result of a reassignment of the employee which is considered desirable, advantageous to and  
28 in the best interests of the state, but no part of the moving expenses of any one such employee  
29 shall be paid more frequently than once in twelve months or for any movement other than from  
30 one place of employment in this state to another place of employment in this state.

31 (7) Establish a program to provide reimbursement to employees of the department  
32 whose items of personal property, as defined by the department by policy, are damaged during  
33 the course of employment or other work-related activity as a result of aggressive behavior by a  
34 client or patient receiving services from the department: *Provided*, That such reimbursement is  
35 limited to a maximum amount of \$250.00 per claim.

36 (8) Delegate to the personnel of the department all powers and duties vested in the  
37 secretary, except the power and authority to sign contracts and agreements.

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

40 (10) (A) Serve, by certified mail or personal service, an administrative subpoena on any  
41 person, corporation, partnership, financial institution, labor organization or state agency for an  
42 appearance or for production of documents necessary for administration of the public  
43 assistance programs of the department. In the case of disobedience to the subpoena, the  
44 Secretary may invoke the aid of any circuit court in requiring the appearance or production of  
45 records and documents.

46 (B) Apply to the circuit court of any county in which any hearing is to be held, or the  
47 circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of  
48 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to

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49 compel the attendance of witnesses or the production of documents, before any hearing or  
50 administrative tribunal convened to consider suspension or termination of any person or  
51 corporation from providing services under the public assistance programs administered by the  
52 department.

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

59 (12) To establish policies and procedures for governing the administration and business  
60 management of the state hospitals;

61 (13) To formulate standard fiscal procedures and make recommendations for  
62 improvement of state hospitals;

63 (14) To maintain the land, buildings and equipment of state hospitals;

64 (15) To provide for a procedure for supplies and equipment of state hospitals;

65 (16) Acquire by condemnation or otherwise any interest, right, privilege, land or improvement and  
66 hold title to the land or improvement, for the use or benefit of the state or a state hospital or facility;

67 (17) Sell, exchange or otherwise convey any interest, right, privilege, land or improvement  
68 acquired or held by the state, state hospital or state facility and deposit the proceeds from the sale,  
69 exchange or other conveyance into the hospital services revenue account. This may only be done with  
70 the consent of the Governor, and any condemnation proceedings shall be conducted pursuant to chapter  
71 fifty-four of this code;

72 (18) (A)Divest of the facilities; land; buildings and improvements; contents; employment, patient  
73 and contractual interests; licenses for staffed beds; and all other assets utilized in the current operation of  
74 the facility excluding any cash, cash equivalents and marketable securities of any state-owned hospital,  
75 center and institution.

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- 76 (B) Any sale pursuant to this subdivision:  
77 (i) Is not subject to the purchasing requirements of article three, chapter five-a of this code;  
78 (ii) Are exempt from certificate of need requirements provided in article two-d, chapter sixteen of  
79 this code; and  
80 (iii) Are exempt from Medicaid rules and policies.  
81 (19) Make such reports in such form and containing such information as may be  
82 required by applicable federal laws and rules respecting federal-state assistance and federal  
83 assistance; and  
84 (20) Invoke any legal, equitable or special remedies for the enforcement of the  
85 provisions of this article.

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

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

**ARTICLE 9. STATE HOSPITALS AND BEHAVIORAL HEALTH FACILITIES.**

**§27-9-1. State hospitals and other facilities; transfer of control and property from Department of Health and Human Resources to Department of Healthcare Facilities.**

1 (a) The state hospitals are continued and known respectively as the Welch Community Hospital,  
2 William R. Sharpe, Jr. Hospital, Mildred-Mitchell Bateman Hospital, Hopemont Hospital, John Manchin  
3 Health Care Center, and Lakin Hospital. These state hospitals and centers are managed, directed and  
4 controlled by the Department.

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

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

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

**§27-9-2. Chief Executive Officers; qualifications; salaries of officers and employees.**

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

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

**§27-9-3. Rulemaking as to patients.**

1           (a) The Secretary shall propose rules for legislative approval in accordance with the provision of  
2 article three, chapter twenty-nine-a of this code regarding to the admission of patients to behavioral  
3 health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of such  
4 facilities and the release, trial visit and discharge of patients therefrom.

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

6           (1) That no patient under eighteen years of age in any state hospital shall be housed in any area

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7 also occupied by any patient over eighteen years of age;

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

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

**ARTICLE 10. MAINTENANCE OF BEHAVIORAL HEALTH PATIENTS AND**  
**PERSONS WITH INTELLECTUAL DISABILITIES.**

**§27-10-1. Maintenance of patients; patient assets; reimbursement procedures.**

1 (a) The cost of the maintenance of patients admitted to the state hospitals shall be paid out of  
2 funds appropriated for the Department. State hospitals, through the Commissioner, shall have a right of  
3 reimbursement, for all or any part of such maintenance from:

4 (1) Private insurance, if available;

5 (2) Each patient or from the committee or guardian of the estate of the patient;

6 (3) The estate of the patient if deceased;

7 (4) If that be insufficient, from the patient's husband or wife; or

8 (5) If the patient be an unemancipated child, the father and mother, or any of them.

9 (b) If such a relative so liable does not reside in this state and has no estate or debts due him or  
10 her within the state by means of which the liability can be enforced against him or her, the other relatives  
11 shall be liable as provided by this section.

12 (c) In exercising this right of reimbursement, the Commissioner may, whenever it is deemed just  
13 and expedient to do so, exonerate any person chargeable with such maintenance from the payment  
14 thereof in whole or in part, if the Commissioner finds that such person is unable to pay or that payment  
15 would work an undue hardship on him or her or on those dependent upon him or her.

16 (d) There shall be no discrimination on the part of the state hospitals as to food, care, protection,  
17 treatment or rehabilitation, between patients who pay for their maintenance and those who are unable to  
18 do so.

19 (e) It shall be the responsibility of the Commissioner as provided by rules promulgated by the  
20 Secretary to determine the ability of the patient or of his or her relative to pay for his or her maintenance.



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21 Any such determination shall be in writing and shall be considered an "order" under the provisions of  
22 chapter twenty-nine-a of this code. Any such determination shall be subject to review upon application of  
23 any such patient, relative or personal representative in the manner provided in chapter twenty-nine-a of  
24 this \_\_\_\_\_ code.

**§27-10-2. Local mental health programs -- Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.**

1 (a) A circuit court establishing a local mental health program as provided for in this article shall  
2 have the power and authority to establish a separate account and to deposit in said separate account all  
3 gifts, bequests and donations from any person, corporation, firm or association and any fees or other  
4 income derived from the operation of such local mental health program and may expend such funds  
5 accruing in said separate account for the operation and maintenance of such local program.

6 (b) Any moneys remaining in said separate account at the end of the fiscal year shall not revert to  
7 the General Fund of the county nor otherwise expire, but shall be carried over from year to year until  
8 expended for the operation and maintenance of said local mental health program.

**§27-10-3. Care of patients in boarding homes.**

1 (a) The Commissioner may, upon the recommendation of the Chief Executive Officer of a the  
2 state hospital, provide care in a suitable boarding home for any patient in a state hospital, if the condition  
3 of the patient is such that his or her and the public welfare will not be prejudiced thereby.

4 (b) A patient in a boarding home shall be deemed to be a patient of the state hospital from which  
5 he or she was removed and shall, on the approval of the Chief Executive Officer, be placed under the  
6 supervision of a psychiatric social worker employed by the state hospital.

7 (c) All patients in such homes shall be visited at least once every three months and if upon the  
8 visitation they are found to be abused, neglected or improperly cared for, they shall be returned to the  
9 state hospital or placed in a better boarding home.

10 (d) The cost of the boarding home care shall be paid by the state hospital from which he or she  
11 was \_\_\_\_\_ removed.

**§27-10-4. Reports and records.**

1 (a) The chief executive officer of each state hospital shall furnish to the Secretary of the

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2 Department of Healthcare Facilities such information as he or she may require concerning admissions,  
3 discharges, deaths and other matters.

4 (b) The Secretary of the Department of Healthcare Facilities shall keep such records as are  
5 necessary to enable him or her to have current information concerning the extent of mental illness in this  
6 state.

7 (c) The names of individuals shall not be accessible to anyone except by permission of the  
8 Commissioner or by order of a judge of a court of record.

**§27-10-5. Moneys received by state hospitals and facilities.**

1 All moneys and funds belonging to the state which shall come into the possession or under the  
2 control of the chief executive officer or other employees or officers of a state hospital or facility under the  
3 control of the Department of Healthcare Facilities shall be paid to the Secretary of the Department of  
4 Healthcare Facilities, or his or her designee, in a manner prescribed by the Secretary. The Secretary, or  
5 his or her designee, shall pay such moneys and funds into the State Treasury immediately in the manner  
6 provided in article two, chapter twelve of this code.

**ARTICLE 11. BEHAVIORAL HEALTH-INTELLECTUAL DISABILITY CENTERS.**

**§27-11-1. Comprehensive community behavioral health-intellectual disability centers;**  
**establishment, operation and location; access to treatment.**

1 (a) Subject to available funding, the Department of Healthcare Facilities is authorized to establish,  
2 maintain and operate comprehensive community behavioral health centers and comprehensive  
3 intellectual disability facilities, at locations within the state that are determined by the Secretary in  
4 accordance with the state's comprehensive behavioral health plan and the state's comprehensive  
5 intellectual disability plan.

6 (b) Any such facility may be integrated with a general health care or other facility or remain  
7 separate.

8 (c) Nothing contained herein may be construed to allow the Department to assume the operation  
9 of comprehensive regional behavioral health centers or comprehensive intellectual disability facilities  
10 which have been previously been established according to law and which, as of the effective date of this  
11 article, are being operated by local nonprofit organizations.

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12 (d) Any new behavioral health centers and comprehensive mental disability facilities may be  
13 operated and controlled by the Department or operated, maintained and controlled by local nonprofit  
14 organizations and licensed according to state law and rules.

**§27-4-2. Minimum requirements.**

1 (a) All comprehensive regional behavioral health and intellectual disability facilities licensed in the  
2 state shall:

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

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

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

7 (4) Render outpatient services in the aftercare of any patient discharged from an inpatient  
8 hospital, consistent with the needs of the individual;

9 (5) Have a chief administrative officer directly responsible to a legally constituted board of  
10 directors of a comprehensive mental health or intellectual disability facility operated by a local nonprofit  
11 organization, or to the Commissioner if the comprehensive mental health or intellectual disability center or  
12 facility is operated by the Department; and

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

15 (b) No person who can be treated as an outpatient at a community mental health center may be  
16 admitted involuntarily into a state hospital.

17 (c) The state's share of costs of operating the facilities may be provided from funds appropriated  
18 for this purpose within the budget of the Department. The Secretary shall administer these funds among  
19 all comprehensive mental health and intellectual disability facilities that are required to best provide  
20 comprehensive community mental health care and services to the citizens of the state.

**§27-4-3. Reporting Requirements.**

1 After July 1, but not later than August 1 of each year, the chief administrative officer of each  
2 comprehensive regional behavioral health center and intellectual disability facility shall submit a report to  
3 the Commissioner and to the Legislative Auditor containing a listing of:

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- 4           (1) All funds received by the center or facility;
- 5           (2) All funds expended by the center or facility;
- 6           (3) All funds obligated by the center or facility;
- 7           (4) All services provided by the center or facility;
- 8           (5) The number of persons served by the center or facility; and
- 9           (6) Other information as the Secretary prescribes by rule.

**§27-4-4. Rulemaking.**

1           The Secretary may propose rules for legislative approval in accordance with the provisions of  
2 article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.

**ARTICLE           12.           GROUP           RESIDENTIAL           FACILITIES.**

**§27-12-1. Definitions.**

1           (a) "Developmental disability" means a chronic disability of a person which:

2           (1) Is attributable to a mental or physical impairment or combination of mental and physical  
3 impairments;

4           (2) Is likely to continue indefinitely;

5           (3) Results in substantial functional limitations in self-direction, capacity for independent living or  
6 economic self-sufficiency; and

7           (4) Reflects the person's need for a combination and sequence of special, interdisciplinary or  
8 generic care, treatment or other services which are of lifelong or extended duration and are individually  
9 planned and coordinated.

10          (b) "Behavioral disability" means a disability of a person which:

11          (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical  
12 dependency; and

13          (2) Results in substantial functional limitations in self-direction, capacity for independent living or  
14 economic self-sufficiency.

15          (c) "Group residential facility" means a facility which is owned, leased or operated by a behavioral  
16 health service provider and which:

17          (1) Provides residential services and supervision for individuals who are developmentally disabled

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18 or behaviorally disabled;

19 (2) Is occupied as a residence by not more than eight individuals who are developmentally  
20 disabled and not more than three supervisors or is occupied as a residence by not more than twelve  
21 individuals who are behaviorally disabled and not more than three supervisors;

22 (3) Is licensed by the Office of Health Facility Licensure and Certification; and

23 (4) Complies with the state Fire Commission for residential facilities.

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

**§27-12-2. Permitted use of group residential facilities; restrictions.**

1 Both a group residential facility and a group residential home shall be a permitted residential use  
2 of property for the purposes of zoning and shall be a permitted use in all zones or districts. No county  
3 commission, governing board of a municipality or planning commission shall require a group residential  
4 facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or  
5 variance for location of such facility in any zone or district.

**§27-12-3. License from Office of Health Facility Licensure and Certification.**

1 (a) No group residential facility shall be established, maintained or operated unless a license  
2 therefor shall be first obtained from the Office of Health Facility Licensure and Certification, except that a  
3 group residential facility for behaviorally disabled juveniles shall be deemed to satisfy all requirements of  
4 this section by obtaining a license from the Office of Health Facility Licensure and Certification. The  
5 application for such license shall contain such data as required by rule promulgated pursuant to this  
6 section.

7 (b) The Office of Health Facility Licensure and Certification may promulgate rules for legislative  
8 approval pursuant to article three, chapter twenty-nine-a for the licensing and operation of such facilities,  
9 including, but not limited to, a statement of the rights of patients in group residential facilities for the  
10 mentally and physically impaired to ensure the adequate care and supervision of such patients, and shall  
11 have the authority to investigate and inspect any such facility, and may revoke the license of any such

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12 facility for good cause after notice and hearing.

13 (c) A group residential home is not required to obtain a license.

**§27-12-4. Exclusion by private agreement void.**

1 Any restriction, reservation, condition, exception or covenant in any subdivision plan, deed, or  
2 other instrument of, or pertaining to, the transfer, sale, lease or use of property which would permit  
3 residential use of property but prohibit the use of such property as a group residential facility or group  
4 residential home shall, to the extent of such prohibition, be void as against the public policy of this state  
5 and shall be given no legal or equitable force or effect.

**ARTICLE 13. VOLUNTARY HOSPITALIZATION.**

**§27-13-1. Authority to receive voluntary patients.**

1 (a) The chief medical officer of a behavioral health facility, subject to the availability of suitable  
2 accommodations and to the rules promulgated by the Commissioner shall admit for diagnosis, care and  
3 treatment any individual:

4 (1) Eighteen years of age or older who is mentally ill, intellectually disabled or addicted or who  
5 has manifested symptoms of mental illness, intellectual disability or addiction and who makes application  
6 for hospitalization; or

7 (2) Under eighteen years of age who is mentally ill, intellectually disabled or addicted or who has  
8 manifested symptoms of mental illness, intellectual disability or addiction and where there is an  
9 application for hospitalization, either made in person at the time of admission or by a notarized written  
10 application submitted by facsimile, e-mail or in person prior to, or at the time of, admission, on his or her  
11 behalf as follows:

12 (A) By the parents of such person;

13 (B) If only one parent is living, then by such parent;

14 (C) If the parents are living separate and apart, then by the parent who has primary custody of  
15 such person; or

16 (D) If there is a guardian who has legal custody of such person, then by such guardian.

17 (E) If the subject person under eighteen years of age is an emancipated minor, the admission of  
18 that person as a voluntary patient shall be conditioned upon the consent of the patient.

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19 (F) If the application for the subject person under eighteen years of age does not satisfy one of  
20 paragraphs (A) through (E) of this subdivision, the provisions for involuntary hospitalization as set forth in  
21 this chapter shall be followed with respect to any hospitalization.

22 (b) For any application for hospitalization made pursuant to subdivision (2) of subsection (a) of  
23 this section, the person making the application shall transport the minor to the behavioral health facility,  
24 except as provided in this section.

25 (c) If the minor is violent or combative or the parent or guardian faces other circumstances that  
26 make the parent or guardian unable to transport the minor to the behavioral health facility, the parent or  
27 guardian may file an affidavit with the circuit court of the county in which the minor resides or of the  
28 county in which the minor may be found. The parent or guardian shall give information and state facts in  
29 the affidavit as may be required by the form provided for this purpose by the Supreme Court of Appeals.  
30 Upon ex parte review of the affidavit, a mental hygiene commissioner or circuit court judge, or when none  
31 are available the magistrate designated pursuant to the involuntary hospitalization procedure set forth in  
32 this chapter, may determine that the parent or guardian is unable to transport the minor for voluntary  
33 hospitalization and, if such a determination is made, shall enter an order requiring the sheriff of that  
34 county to transport the minor to the behavioral health facility.

35 (d) No person under eighteen years of age may be admitted pursuant to this section to any state  
36 hospital unless the person has first been reviewed and evaluated by a local behavioral health facility and  
37 recommended for admission.

38 (e) If the candidate for voluntary admission is a minor who is fourteen years of age or older, the  
39 admitting health care facility shall determine if the minor consents to, or objects to, his or her admission to  
40 the facility.

41 (f) If the parent or guardian who requested the minor's admission pursuant to this section revokes  
42 his or her consent at any time, or if the minor fourteen years of age or older objects at any time to his or  
43 her further treatment, the minor shall be discharged within ninety-six hours to the custody of the  
44 consenting parent or guardian, unless the chief medical officer of the behavioral health facility files a  
45 petition for involuntary hospitalization or the minor's continued hospitalization is authorized as an  
46 involuntary hospitalization pursuant to this chapter. If the ninety-six hour time period would result in the

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47 minor being discharged and released on a Saturday, a Sunday or a holiday on which the court is closed,  
48 the period of time in which the patient shall be released by the facility shall be extended until the next day  
49 which is not a Saturday, Sunday or legal holiday on which the court is lawfully closed.

50 (g) Nothing in this section may be construed to obligate the State of West Virginia for costs of  
51 voluntary hospitalizations permitted by the provisions of this section.

52 (h) For the purposes of this section, all behavioral health facilities in this state shall make a blank  
53 copy of their application for admission immediately available to any person or entity who requests the  
54 application. The application is "immediately available" if it is promptly sent by facsimile or e-mail to the  
55 requesting person or entity, or available through other immediate electronic means, such as posting the  
56 blank application on the facility's public website.

**§27-13-2. Release of voluntary patients.**

1 The chief medical officer of a behavioral health facility shall release any voluntary patient who, in  
2 his or her opinion, has recovered or whose hospitalization is no longer advisable but he or she shall make  
3 every effort to assure that any further supportive services required to meet the patient's need upon his or  
4 her release will be provided.

**§27-13-3. Right to release on application.**

1 (a) A voluntary patient who requests his or her release or whose release is requested in writing by  
2 his or her parents, parent, guardian, spouse or adult next of kin shall be released immediately except that:

3 (1) If the patient was admitted on his or her own application, and request for release is made by a  
4 person other than the patient, release shall be conditioned upon the agreement of the patient thereto;

5 (2) If the patient is under eighteen years of age, his or her release prior to becoming eighteen  
6 years of age may be conditioned upon the consent of the person or persons who applied for his or her  
7 admission; or

8 (3) If, within ninety-six hours of the receipt of the request, the chief medical officer of the  
9 behavioral health facility in which the patient is hospitalized files with the clerk of the circuit court or  
10 mental hygiene commissioner of the county where the facility is situated an application for involuntary  
11 hospitalization as provided in this chapter, release may be postponed for twenty days pending a finding in  
12 accordance with the legal proceedings prescribed therein.



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13 (b) Legal proceedings for involuntary hospitalization shall not be commenced with respect to a  
14 voluntary patient unless release of the patient has been requested by him or her or the individual or  
15 individuals who applied for his or her admission.

**§27-13-4. Admission and treatment of voluntary patients; statement of rights; consent for treatment.**

1 (a) No person shall be admitted as an inpatient into a behavioral health facility as a voluntary  
2 patient until such person has been told and has received a written statement containing in bold print a  
3 statement that:

4 (1) Once he or she voluntarily admits himself or herself into such facility, his or her release may  
5 not be voluntary;

6 (2) That the facility may seek to involuntarily commit him or her and may hold him or her against  
7 his or her will for thirty days pending a hearing and indefinitely after the hearing if he or she is committed;  
8 and

9 (3) That such statement shall inform the individual that he or she may request release at any  
10 time.

11 (b) The individual shall be advised in writing of his or her rights upon admission as an inpatient to  
12 a behavioral health facility, including, but not limited to, the right to judiciary review as set forth this  
13 chapter. A copy of the statement shall be filed in the individual's permanent records and shall contain the  
14 name of the person who made the oral and written disclosure.

15 (c) No voluntary inpatient shall be subjected to any course of treatment without such patient's  
16 written consent. Such consent shall be revocable at any time and shall not be valid for a period exceeding  
17 six months.

18 (d) One person in every behavioral health facility shall be designated as the voluntary patient  
19 coordinator. Such coordinator, or his or her designee while the coordinator is not on duty, shall be  
20 responsible for the disclosures required by this section and for any and all discussions with voluntary  
21 patients relative to release.

**ARTICLE 14. INVOLUNTARY HOSPITALIZATION.**

**§27-14-1. Appointment of mental hygiene Commissioner; duties of Mental Hygiene Commissioner,**

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**prosecuting attorney, sheriff and Supreme Court of Appeals.**

1 (a) Appointment of mental hygiene commissioners. --

2 (1) The chief judge in each judicial circuit of this state shall appoint a competent attorney and  
3 may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over  
4 involuntary hospitalization hearings. mental hygiene commissioners shall be persons of good moral  
5 character and of standing in their profession and they shall, before assuming the duties of such  
6 commissioner, take the oath required of other special commissioners as provided in article one, chapter  
7 six of this code.

8 (2) All persons newly appointed to serve as mental hygiene commissioners shall attend and  
9 complete an orientation course, within one year of their appointment, consisting of at least three days of  
10 training provided annually by the Supreme Court of Appeals. In addition, existing mental hygiene  
11 commissioners and any magistrates designated by the chief judge of a judicial circuit to hold probable  
12 cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a  
13 course provided by the Supreme Court of Appeals, which course shall include, but not be limited to,  
14 instruction on the manifestations of mental illness and addiction. Persons attending such courses outside  
15 the county of their residence shall be reimbursed out of the budget of the Supreme Court -- General  
16 Judicial for reasonable expenses incurred. The Supreme Court shall establish rules for such courses,  
17 including rules providing for the reimbursement of reasonable expenses as authorized herein.

18 (3) All mental hygiene commissioners shall be reasonably compensated at a uniform rate  
19 determined by the Supreme Court of Appeals. mental hygiene commissioners shall submit all requests for  
20 compensation to the administrative director of the courts for payment.

21 (4) mental hygiene commissioners shall discharge their duties and hold their offices at the  
22 pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at  
23 any time by such chief judge.

24 (b) Duties of mental hygiene commissioners. --

25 (1) mental hygiene commissioners may sign and issue summonses for the attendance, at any  
26 hearing held pursuant to this article, of the individual sought to be committed; may sign and issue  
27 subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may

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28 elicit testimony from applicants, respondents and witnesses regarding factual issues raised in the petition;  
29 and may make findings of fact on evidence and may make conclusions of law, but such findings and  
30 conclusions shall not be binding on the circuit court.

31 (2) It shall be the duty of a mental hygiene commissioner to conduct orderly inquiries into the  
32 mental health of the individual sought to be committed concerning the advisability of committing the  
33 individual to a behavioral health facility.

34 (3) The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the  
35 individual as well as the interests of the state.

36 (4) The mental hygiene commissioner shall make a written report of his or her findings to the  
37 circuit court.

38 (5) A mental hygiene commissioner appointed by the circuit court of one county or multiple  
39 county circuit may serve in such capacity in a jurisdiction other than that of his or her original appointment  
40 if such be agreed upon by the terms of a cooperative agreement between the circuit courts and county  
41 commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters  
42 during noncourt hours or on nonjudicial days.

43 (6) In any proceedings before any court of record as set forth in this article, the court of record  
44 shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks a foreign  
45 language and who may be subject to involuntary commitment to a behavioral health facility.

46 (c) *Duties of prosecuting attorney.* -- It shall be the duty of the prosecuting attorney or one of his  
47 or her assistants to represent the applicants in all final commitment proceedings filed pursuant to the  
48 provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the  
49 provisions of this article if he or she deems it to be in the public interest.

50 (d) *Duties of sheriff.* --

51 (1) Upon written order of the circuit court, Mental Hygiene Commissioner or magistrate in the  
52 county where the individual formally accused of being mentally ill or addicted is a resident or is found, the  
53 sheriff of that county shall take said individual into custody and transport him or her to and from the place  
54 of hearing and the behavioral health facility. The sheriff shall also maintain custody and control of the  
55 accused individual during the period of time in which the individual is waiting for the involuntary

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56 commitment hearing to be convened and while such hearing is being conducted.

57 (2) An individual who is a resident of a state other than West Virginia shall, upon a finding of  
58 probable cause, be transferred to his or her state of residence for treatment pursuant to this article.  
59 Where an individual is a resident of West Virginia but not a resident of the county in which he or she is  
60 found and there is a finding of probable cause, the county in which the hearing is held may seek  
61 reimbursement from the county of residence for reasonable costs incurred by the county attendant to the  
62 mental hygiene proceeding.

63 (3) Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative  
64 agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit  
65 courts and county commissions, whereby transportation and security responsibilities for hearings held  
66 pursuant to the provisions of this article during noncourt hours or on nonjudicial days may be shared in  
67 order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment.

68 (e) Duty of sheriff upon presentment to behavioral health care facility. -- Where a person is  
69 brought to a behavioral health care facility for purposes of evaluation for commitment pursuant to this  
70 article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the  
71 person in the facility until the evaluation is completed or the county commission shall reimburse the  
72 behavioral health care facility at a reasonable rate for security services provided by the behavioral health  
73 care facility for the period of time the person is at the hospital prior to the determination of mental  
74 competence or incompetence.

75 (f) Duties of Supreme Court of Appeals. -- The Supreme Court of Appeals shall provide uniform  
76 petition, procedure and order forms which shall be used in all involuntary hospitalization proceedings  
77 brought \_\_\_\_\_ in \_\_\_\_\_ this \_\_\_\_\_ state.

**§27-14-2. Appointment of attorney to aid prosecutor; certification of performance; fee.**

1 If, in any case, the prosecuting attorney and his or her assistants in a county in which there is a  
2 state behavioral health hospital are unable to act due to a burdensome number of cases brought pursuant  
3 to this article, the circuit court shall appoint a competent practicing attorney to act in that case. The court  
4 shall certify to the director of the administrative office of the Supreme Court of Appeals the performance  
5 of that service when completed and may allow the attorney a reasonable fee not to exceed the amount

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6 allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine  
7 of this code. Compensation shall be paid out of the "Mental Hygiene Fund" provided for in this article.

**§27-14-3. Institution of proceedings for involuntary custody for examination; custody; probable  
cause hearing; examination of individual.**

1 (a) Any adult person may make an application for involuntary hospitalization for examination of an  
2 individual when the person making the application has reason to believe that the individual to be  
3 examined is addicted, as defined in this chapter, or is mentally ill and, because of his or her addiction or  
4 mental illness, the individual is likely to cause serious harm to himself, herself or to others if allowed to  
5 remain at liberty while awaiting an examination and certification by a physician or psychologist.

6 (b) Notwithstanding any language in this section to the contrary, if the individual to be examined  
7 pursuant to the provisions of this section is incarcerated in a jail, prison or other correctional facility, then  
8 only the chief administrative officer of the facility holding the individual may file the application and the  
9 application must include the additional statement that the correctional facility itself cannot reasonably  
10 provide treatment and other services for the individual's mental illness or addiction.

11 (c) The person making the application shall make the application under oath.

12 (d) Application for involuntary custody for examination may be made to the circuit court or a  
13 mental hygiene commissioner of the county in which the individual resides or of the county in which he or  
14 she may be found. When no circuit court judge or mental hygiene commissioner is available for  
15 immediate presentation of the application, the application may be made to a magistrate designated by the  
16 chief judge of the judicial circuit to accept applications and hold probable cause hearings. A designated  
17 magistrate before whom an application or matter is pending may, upon the availability of a mental  
18 hygiene commissioner or circuit court judge for immediate presentation of an application or pending  
19 matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court  
20 judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

21 (e) The person making the application shall give information and state facts in the application as  
22 may be required by the form provided for this purpose by the Supreme Court of Appeals.

23 (f)(1) The circuit court, mental hygiene commissioner or designated magistrate may enter an  
24 order for the individual named in the application to be detained and taken into custody for the purpose of

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25 holding a probable cause hearing as provided in subsection (g) of this section for the purpose of an  
26 examination of the individual by a physician, psychologist, a licensed independent clinical social worker  
27 practicing in compliance with article thirty, chapter thirty of this code, an advanced practice registered  
28 nurse with psychiatric certification practicing in compliance with article seven of said chapter, a physician  
29 assistant practicing in compliance with article three of said chapter or a physician assistant practicing in  
30 compliance with article fourteen-a of said chapter.

31 (2) A licensed independent clinical social worker, a physician assistant or an advanced practice  
32 registered nurse with psychiatric certification may only perform the examination if he or she has  
33 previously been authorized by an order of the circuit court to do so, the order having found that the  
34 licensed independent clinical social worker, physician assistant or advanced practice registered nurse  
35 with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene  
36 or addiction sufficient to make the determinations as are required by the provisions of this section.

37 (3) The examination is to be provided or arranged by a community mental health center  
38 designated by the Secretary to serve the county in which the action takes place.

39 (4) The order is to specify that the hearing be held forthwith and is to provide for the appointment  
40 of counsel for the individual.

41 (5) The order may allow the hearing to be held up to twenty-four hours after the person to be  
42 examined is taken into custody rather than forthwith if the circuit court of the county in which the person is  
43 found has previously entered a standing order which establishes within that jurisdiction a program for  
44 placement of persons awaiting a hearing which assures the safety and humane treatment of persons.

45 (6) The time requirements set forth in this subsection only apply to persons who are not in need  
46 of medical care for a physical condition or disease for which the need for treatment precludes the ability to  
47 comply with the time requirements.

48 (7) During periods of holding and detention authorized by this subsection, upon consent of the  
49 individual or in the event of a medical or psychiatric emergency, the individual may receive treatment. The  
50 medical provider shall exercise due diligence in determining the individual's existing medical needs and  
51 provide treatment the individual requires, including previously prescribed medications. As used in this  
52 section, "psychiatric emergency" means an incident during which an individual loses control and behaves

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53 in a manner that poses substantial likelihood of physical harm to himself, herself or others.

54 (8) Where a physician, psychologist, licensed independent clinical social worker, physician  
55 assistant or advanced practice registered nurse with psychiatric certification has, within the preceding  
56 seventy-two hours, performed the examination required by the provisions of this subdivision, the  
57 community mental health center may waive the duty to perform or arrange another examination upon  
58 approving the previously performed examination.

59 (9) Notwithstanding the provisions of this subsection, subsection (r) of this article applies  
60 regarding payment by the county commission for examinations at hearings.

61 (10) If the examination reveals that the individual is not mentally ill or addicted or is determined to  
62 be mentally ill or addicted but not likely to cause harm to himself, herself or others, the individual shall be  
63 immediately released without the need for a probable cause hearing and absent a finding of professional  
64 negligence the examiner is not civilly liable for the rendering of the opinion.

65 (11) The examiner shall immediately provide the mental hygiene commissioner, circuit court or  
66 designated magistrate before whom the matter is pending the results of the examination on the form  
67 provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of  
68 probable cause.

69 (g) A probable cause hearing is to be held before a magistrate designated by the chief judge of  
70 the judicial circuit, the mental hygiene commissioner or circuit judge of the county of which the individual  
71 is a resident or where he or she was found. If requested by the individual or his or her counsel, the  
72 hearing may be postponed for a period not to exceed forty-eight hours.

73 (h)(1) The individual must be present at the hearing and has the right to present evidence,  
74 confront all witnesses and other evidence against him or her and to examine testimony offered, including  
75 testimony by representatives of the community mental health center serving the area. Expert testimony at  
76 the hearing may be taken telephonically or via videoconferencing.

77 (2) The individual has the right to remain silent and to be proceeded against in accordance with  
78 the Rules of Evidence of the Supreme Court of Appeals, except as provided in section twelve, article one  
79 of this chapter.

80 (3) At the conclusion of the hearing, the magistrate, mental hygiene commissioner or circuit court

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81 judge shall find and enter an order stating whether or not there is probable cause to believe that the  
82 individual, as a result of mental illness or addiction, is likely to cause serious harm to himself or herself or  
83 to others.

84 (i) Probable cause hearings may occur in the county where a person is hospitalized. The judicial  
85 hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for  
86 addiction to be involuntarily hospitalized only until detoxification is accomplished; and specify other  
87 alternative or modified procedures that are consistent with the purposes and provisions of this article. The  
88 alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of  
89 the involuntary commitment proceeding and other interested parties due process of the law and access to  
90 the least restrictive available treatment needed to prevent serious harm to self or others.

91 (j)(1) If the magistrate, mental hygiene commissioner or circuit court judge at a probable cause  
92 hearing or at a final commitment hearing held pursuant to the provisions of this article finds that the  
93 individual, as a result of mental illness or addiction, is likely to cause serious harm to himself, herself or  
94 others and because of mental illness or addiction requires treatment, the magistrate, mental hygiene  
95 commissioner or circuit court judge may consider evidence on the question of whether the individual's  
96 circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital  
97 setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by  
98 the individual, his or her counsel and the magistrate, mental hygiene commissioner or circuit court judge.

99 (2) If the magistrate, mental hygiene commissioner or circuit court judge determines that  
100 appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may  
101 be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement.  
102 The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement  
103 to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient  
104 treatment is insufficient. After a hearing before a magistrate, mental hygiene commissioner or circuit judge  
105 on the issue of whether or not the individual failed or refused to comply with the terms and conditions of  
106 the voluntary treatment agreement and, whether the individual as a result of mental illness or addiction  
107 remains likely to cause serious harm to himself, herself or others, the entry of an order requiring  
108 involuntary hospitalization pursuant to the provisions of this article may be entered.



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109           (3) In the event a person released pursuant to a voluntary treatment agreement is unable to pay  
110 for the outpatient treatment and has no applicable insurance coverage, including, but not limited to,  
111 private insurance or Medicaid, the Secretary may transfer funds for the purpose of reimbursing  
112 community providers for services provided on an outpatient basis for individuals for whom payment for  
113 treatment is the responsibility of the Department. The Department may not authorize payment of  
114 outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of  
115 the cost of involuntary hospitalization of the individual.

116           (4) The Secretary shall establish and maintain fee schedules for outpatient treatment provided in  
117 lieu of involuntary hospitalization.

118           (5) Nothing in the provisions of this article regarding release pursuant to a voluntary treatment  
119 agreement or convalescent status may be construed as creating a right to receive outpatient mental  
120 health services or treatment or as obligating any person or agency to provide outpatient services or  
121 treatment.

122           (6) Time limitations set forth in this article relating to periods of involuntary commitment to a  
123 behavioral health facility for hospitalization do not apply to release pursuant to the terms of a voluntary  
124 treatment agreement.

125           (7) Release pursuant to a voluntary treatment agreement may not be for a period of more than  
126 six months if the individual has not been found to be involuntarily committed during the previous two  
127 years and for a period of no more than two years if the individual has been involuntarily committed during  
128 the preceding two years.

129           (8) If in any proceeding held pursuant to this article the individual objects to the issuance or  
130 conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge,  
131 magistrate or mental hygiene commissioner may not enter an order directing treatment pursuant to a  
132 voluntary treatment agreement.

133           (9) If involuntary commitment with release pursuant to a voluntary treatment agreement is  
134 ordered, the individual subject to the order may, upon request during the period the order is in effect,  
135 have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to  
136 have the order canceled or modified.

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137 (10) Nothing in this section affects the appellate and habeas corpus rights of any individual  
138 subject to any commitment order.

139 (k) If the certifying physician or psychologist determines that a person requires involuntary  
140 hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable  
141 likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical  
142 complications, the person certifying the individual shall recommend that the individual be closely  
143 monitored for possible medical complications. If the magistrate, mental hygiene commissioner or circuit  
144 court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that  
145 the individual be closely monitored in the order of commitment.

146 (l) The Supreme Court of Appeals and the Secretary shall specifically develop and propose a  
147 statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment  
148 schedules and recommendations regarding funding sources. Additionally, the Secretary shall also  
149 immediately seek reciprocal agreements with officials in contiguous states to develop  
150 interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state  
151 residents found in West Virginia and who are in need of mental hygiene services.

**§27-14-4. Admission under involuntary hospitalization for examination; hearing; release.**

1 (a) Admission to a behavioral health facility for examination. -- Any individual may be admitted to  
2 a behavioral health facility for examination and treatment upon entry of an order finding probable cause  
3 as provided in this article. The finding of probable cause shall be based upon a certification by a  
4 physician, psychologist, licensed independent clinical social worker practicing in compliance with the  
5 provisions of article thirty, chapter thirty of this code or an advanced practice registered nurse with  
6 psychiatric certification practicing in compliance with article seven of said chapter following an  
7 examination of the individual which concluded that the individual is mentally ill or addicted and as a result  
8 of such mental illness or addiction, is likely to cause serious harm to himself, herself or to others if not  
9 immediately restrained. The opinions offered by an independent clinical social worker or an advanced  
10 practice registered nurse with psychiatric certification must be within their particular areas of expertise, as  
11 recognized by the order of the authorizing court.

12 (b) Three-day time limitation on examination. -- If the examination does not take place within

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13 three days from the date the individual is taken into custody, the individual shall be released. If the  
14 examination reveals that the individual is not mentally ill or addicted, the individual shall be released.

15 (c) *Three-day time limitation on certification.* -- The certification required in subsection (a) of this  
16 section shall be valid for three days. Any individual with respect to whom the certification has been issued  
17 may not be admitted on the basis of the certification at any time after the expiration of three days from the  
18 date of the examination.

19 (d) *Findings and conclusions required for certification.* -- A certification pursuant to this section  
20 must include findings and conclusions of the mental examination, the date, time and place of the  
21 examination and the facts upon which the conclusion that involuntary commitment is necessary is based.

22 (e) *Notice requirements.* -- When an individual is admitted to a behavioral health facility pursuant  
23 to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the  
24 individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians  
25 or, if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the  
26 next of kin is not the applicant. Notice shall also be given to the community behavioral health facility, if  
27 any, having jurisdiction in the county of the individual's residence. The notices other than to the  
28 community behavioral health facility shall be in writing and shall be transmitted to the person or persons  
29 at his, her or their last known address by certified mail, return receipt requested.

30 (f) *Five-day time limitation for examination and certification at behavioral health facility.* -- After the  
31 individual's admission to a behavioral health facility, he or she may not be detained more than five days,  
32 excluding Sundays and holidays, unless, within the period, the individual is examined by a staff physician  
33 and the physician certifies that in his or her opinion the patient is mentally ill or addicted and is likely to  
34 injure himself, herself or others if allowed to be at liberty.

35 (g) *Fifteen-day time limitation for institution of final commitment proceedings.* -- If, in the opinion of  
36 the examining physician, the patient is mentally ill or addicted and because of the mental illness or  
37 addiction is likely to injure himself, herself or others if allowed to be at liberty, the chief medical officer  
38 shall, within fifteen days from the date of admission, institute final commitment proceedings as provided in  
39 this article. If the proceedings are not instituted within such fifteen-day period, the patient shall be  
40 immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis

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41 that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in  
42 the motion for cancellation of the hearing.

43 (h) *Thirty-day time limitation for conclusion of all proceedings.* -- If all proceedings as provided in  
44 this chapter are not completed within thirty days from the date of institution of the proceedings, the patient  
45 shall \_\_\_\_\_ be \_\_\_\_\_ immediately \_\_\_\_\_ released.

**§27-14-5. Institution of final commitment proceedings; hearing requirements; release.**

1 (a) *Involuntary commitment.* -- Except as provided in section four of this article, no individual may  
2 be involuntarily committed to a behavioral health facility except by order entered of record. The order may  
3 be entered at any time by the circuit court of the county in which the person resides or was found, or if the  
4 individual is hospitalized in a behavioral health facility located in a county other than where he or she  
5 resides or was found, in the county of the behavioral health facility. The order may be entered only after a  
6 full hearing on issues relating to the necessity of committing an individual to a behavioral health facility. If  
7 the individual objects to the hearing being held in the county where the behavioral health facility is  
8 located, the hearing shall be conducted in the county of the individual's residence.

9 (b) *How final commitment proceedings are commenced.* -- Final commitment proceedings for an  
10 individual may be commenced by the filing of a written application under oath by an adult person having  
11 personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit  
12 court or mental hygiene commissioner of the county where the individual is a resident or where he or she  
13 may be found or the county of a behavioral health facility if he or she is hospitalized in a behavioral health  
14 facility located in a county other than where he or she resides or may be found.

15 (c) *Oath; contents of application; who may inspect application; when application cannot be filed.* --

16 (1) The person making the application shall do so under oath.

17 (2) The application shall contain statements by the applicant that the individual is likely to cause  
18 serious harm to self or others due to what the applicant believes are symptoms of mental illness or  
19 addiction. The applicant shall state in detail the recent overt acts upon which the belief is based.

20 (3) The written application, certificate, affidavit and any warrants issued pursuant thereto,  
21 including any related documents, filed with a circuit court, mental hygiene commissioner or designated  
22 magistrate for the involuntary hospitalization of an individual are not open to inspection by any person

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23 other than the individual, unless authorized by the individual or his or her legal representative or by order  
24 of the circuit court. The records may not be published unless authorized by the individual or his or her  
25 legal representative. Disclosure of these records may, however, be made by the clerk, circuit court,  
26 mental hygiene commissioner or designated magistrate to provide notice to the Federal National Instant  
27 Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun  
28 Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with  
29 article seven-a, chapter sixty-one of this code. Disclosure may also be made to the prosecuting attorney  
30 and reviewing court in an action brought by the individual pursuant to section five, article seven-a, chapter  
31 sixty-one of this code to regain firearm and ammunition rights.

32 (4) Applications may not be accepted for individuals who only have epilepsy, a mental deficiency  
33 or senility.

34 (d) Certificate filed with application; contents of certificate; affidavit by applicant in place of  
35 certificate. --

36 (1) The applicant shall file with his or her application the certificate of a physician or a  
37 psychologist stating that in his or her opinion the individual is mentally ill or addicted and that because of  
38 the mental illness or addiction, the individual is likely to cause serious harm to self or others if allowed to  
39 remain at liberty and, therefore, should be hospitalized. The certificate shall state in detail the recent overt  
40 acts on which the conclusion is based.

41 (2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the  
42 individual has refused to submit to examination by a physician or a psychologist.

43 (e) Notice requirements; eight days notice required. -- Upon receipt of an application, the mental  
44 hygiene commissioner or circuit court shall review the application and if it is determined that the facts  
45 alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the  
46 clerk of the circuit court give notice of the hearing:

47 (1) To the individual;

48 (2) To the applicant or applicants;

49 (3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have  
50 a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not

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51 the applicant;

52 (4) To the mental health authorities serving the area;

53 (5) To the circuit court in the county of the individual's residence if the hearing is to be held in a  
54 county other than that of the individual's residence; and

55 (6) To the prosecuting attorney of the county in which the hearing is to be held.

56 (f)(1) The notice shall be served on the individual by personal service of process not less than  
57 eight days prior to the date of the hearing and shall specify:

58 (A) The nature of the charges against the individual;

59 (B) The facts underlying and supporting the application of involuntary commitment;

60 (C) The right to have counsel appointed;

61 (D) The right to consult with and be represented by counsel at every stage of the proceedings;

62 and

63 (E) The time and place of the hearing.

64 (2) The notice to the individual's spouse, parents or parent or guardian, the individual's adult next  
65 of kin or to the circuit court in the county of the individual's residence may be by personal service of  
66 process or by certified or registered mail, return receipt requested, and shall state the time and place of  
67 the hearing.

68 (g) Examination of individual by court-appointed physician or psychologist; custody for  
69 examination; dismissal of proceedings. --

70 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice  
71 of the commencement of final commitment proceedings is given, the circuit court or mental hygiene  
72 commissioner shall appoint a physician or psychologist to examine the individual and report to the circuit  
73 court or mental hygiene commissioner his or her findings as to the mental condition or addiction of the  
74 individual and the likelihood of causing serious harm to self or others.

75 (2) If the designated physician or psychologist reports to the circuit court or mental hygiene  
76 commissioner that the individual has refused to submit to an examination, the circuit court or mental  
77 hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental  
78 hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of

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79 an immediate examination by the designated physician or psychologist. All such orders shall be directed  
80 to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been  
81 completed, the individual shall be released from custody unless proceedings are instituted pursuant to  
82 section four of this article.

83 (3) If the reports of the appointed physician or psychologist do not confirm that the individual is  
84 mentally ill or addicted and might be harmful to self or others, then the proceedings for involuntary  
85 hospitalization shall be dismissed.

86 (h) Rights of the individual at the final commitment hearing. --

87 (1) The individual shall be present at the final commitment hearing and he or she, the applicant  
88 and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present  
89 and cross-examine witnesses.

90 (2) In the event the individual has not retained counsel, the court or mental hygiene  
91 commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the  
92 individual of the name, address and telephone number of his or her appointed counsel.

93 (3) The individual has the right to have an examination by an independent expert of his or her  
94 choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the  
95 independent expert is paid by the individual unless he or she is indigent.

96 (4) The individual may not be compelled to be a witness against himself or herself.

97 (i) Duties of counsel representing individual; payment of counsel representing indigent. -

98 (1) Counsel representing an individual shall conduct a timely interview, make investigation and  
99 secure appropriate witnesses, be present at the hearing and protect the interests of the individual.

100 (2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or  
101 otherwise.

102 (3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed  
103 the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter  
104 twenty-nine of this code.

105 (j) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. --

106 (1) The circuit court or mental hygiene commissioner shall hear evidence from all interested

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107 parties in chamber including testimony from representatives of the community behavioral health facility.

108 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material  
109 evidence which may be offered.

110 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence  
111 promulgated by the Supreme Court of Appeals except that statements made to physicians or  
112 psychologists by the individual may be admitted into evidence by the physician's or psychologist's  
113 testimony, notwithstanding failure to inform the individual that this statement may be used against him or  
114 her. A psychologist or physician testifying shall bring all records pertaining to the individual to the hearing.  
115 The medical evidence obtained pursuant to an examination under this section, or section three or four of  
116 this article, is not privileged information for purposes of a hearing pursuant to this section.

117 (4) All final commitment proceedings shall be reported or recorded, whether before the circuit  
118 court or mental hygiene commissioner, and a transcript made available to the individual, his or her  
119 counsel or the prosecuting attorney within thirty days if requested for the purpose of further proceedings.  
120 In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by  
121 order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

122 (k) Requisite findings by the court. --

123 (1) Upon completion of the final commitment hearing and the evidence presented in the hearing,  
124 the circuit court or mental hygiene commissioner shall make findings as to the following:

125 (A) Whether the individual is mentally ill or addicted;

126 (B) Whether, because of illness or addiction, the individual is likely to cause serious harm to self  
127 or others if allowed to remain at liberty;

128 (C) Whether the individual is a resident of the county in which the hearing is held or currently is a  
129 patient at a behavioral health facility in the county; and

130 (D) Whether there is a less restrictive alternative than commitment appropriate for the individual.  
131 The burden of proof of the lack of a less restrictive alternative than commitment is on the person or  
132 persons seeking the commitment of the individual.

133 (2) The findings of fact shall be incorporated into the order entered by the circuit court and must  
134 be based upon clear, cogent and convincing proof.



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135 (l) Orders issued pursuant to final commitment hearing; entry of order; change in order of court;  
136 expiration of order. –

137 (1) Upon the requisite findings, the circuit court may order the individual to a behavioral health  
138 facility for an indeterminate period or for a temporary observatory period not exceeding six months.

139 (2) The individual may not be detained in a behavioral health facility for a period in excess of ten  
140 days after a final commitment hearing pursuant to this section unless an order has been entered and  
141 received by the facility.

142 (3) If the order pursuant to a final commitment hearing is for a temporary observation period, the  
143 circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period, on  
144 the basis of a report by the chief medical officer of the behavioral health facility in which, the patient is  
145 confined, hold another hearing pursuant to the terms of this section. This hearing shall be in the same  
146 manner as the hearing was held as if it were an original petition for involuntary hospitalization to  
147 determine whether the original order for a temporary observation period should be modified or changed to  
148 an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court  
149 shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

150 (4) An order for an indeterminate period expires of its own terms at the expiration of two years  
151 from the date of the last order of commitment unless prior to the expiration, the Department, upon findings  
152 based on an examination of the patient by a physician or a psychologist, extends the order for  
153 indeterminate hospitalization. If the patient or his or her counsel requests a hearing, a hearing shall be  
154 held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection  
155 (a) of this section.

156 (m) Dismissal of proceedings. -- If the circuit court or mental hygiene commissioner finds that the  
157 individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental  
158 hygiene commissioner finds that the individual is mentally ill or addicted but is not, because of the illness  
159 or addiction, likely to cause serious harm to self or others if allowed to remain at liberty, the proceedings  
160 shall be dismissed.

161 (n) Immediate notification of order of hospitalization. -- The clerk of the circuit court in which an  
162 order directing hospitalization is entered, if not in the county of the individual's residence, shall

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163 immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of  
164 the county of which the individual is a resident.

165 (o) Consideration of transcript by circuit court of county of individual's residence; order of  
166 hospitalization; execution of order. --

167 (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be  
168 ordered but finds that the individual is not a resident of the county in which the hearing is held and the  
169 individual is not currently a resident of a behavioral health facility, a transcript of the evidence adduced at  
170 the final commitment hearing of the individual, certified by the clerk of the circuit court, shall forthwith be  
171 forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall  
172 immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

173 (2) If the circuit court or mental hygiene commissioner of the county of the residence of the  
174 individual is satisfied from the evidence contained in the transcript that the individual should be  
175 hospitalized as determined by the standard set forth above, the circuit court shall order the appropriate  
176 hospitalization as though the individual had been brought before the circuit court or its mental hygiene  
177 commissioner in the first instance.

178 (3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in which  
179 the hearing was held who shall execute the order promptly.

180 (p) Order of custody to responsible person. -- In lieu of ordering the patient to a behavioral health  
181 facility, the circuit court may order the individual delivered to a responsible person who will agree to take  
182 care of the individual and the circuit court may take from the responsible person a bond in an amount to  
183 be determined by the circuit court with condition to restrain and take proper care of the individual until  
184 further order of the court.

185 (q) Individual not a resident of this state. -- If the individual found to be mentally ill or addicted by  
186 the circuit court or mental hygiene commissioner is a resident of another state, this information shall be  
187 forthwith given to the Secretary, or to his or her designee, who shall make appropriate arrangements for  
188 transfer of the individual to the state of his or her residence conditioned on the agreement of the individual  
189 except as qualified by the interstate compact on mental health.

190 (r) Report to the Secretary of the Department of Health and Compliance. --

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191 (1) The chief medical officer of a behavioral health facility admitting a patient pursuant to  
192 proceedings under this section shall forthwith make a report of the admission to the Secretary, or to his or  
193 her designee.

194 (2) Whenever an individual is released from custody due to the failure of an employee of a  
195 behavioral health facility to comply with the time requirements of this article, the chief medical officer of  
196 the behavioral health facility shall forthwith, after the release of the individual, make a report to the  
197 Secretary, or to his or her designee, of the failure to comply.

198 (s) Payment of some expenses by the state; mental hygiene fund established; expenses paid by  
199 the county commission. --

200 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and  
201 reimbursed pursuant to article twenty-one, chapter twenty-nine of this code out of a special fund to be  
202 established within the Supreme Court of Appeals to be known as the "Mental Hygiene Fund".

203 (2) The county commission shall pay out of the county treasury all other expenses incurred in the  
204 hearings conducted pursuant to the provisions of this article whether or not hospitalization is ordered,  
205 including any fee allowed by the circuit court by order entered of record for any physician, psychologist  
206 and witness called by the indigent individual. The copying and mailing costs associated with providing  
207 notice of the final commitment hearing and issuance of the final order shall be paid by the county where  
208 the involuntary commitment petition was initially filed.

**§27-14-6. Judicial review.**

1 (a) Any individual adversely affected by any order of commitment entered by the circuit court  
2 pursuant to this article may seek review thereof by appeal to the state Supreme Court of Appeals and  
3 jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application  
4 made therefor in the manner and within the time provided by law for civil appeals generally.

5 (b) This section shall not be construed to in any way limit or precondition the right to seek release  
6 of such individual by habeas corpus.

**§27-14-7. Hospitalization by agency of the United States.**

1 (a) If an individual ordered to be hospitalized pursuant to section five of this article is eligible for  
2 hospital care or treatment by any agency of the United States, then, upon receipt of a certificate from

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3 such agency showing that facilities are available and that the individual is eligible for care or treatment  
4 therein, the circuit court or mental hygiene commissioner may order him or her to be placed in the custody  
5 of such agency for hospitalization.

6 (b) When any such individual is admitted pursuant to the order of such circuit court or mental  
7 hygiene commissioner to any hospital or institution established, maintained or operated by any agency of  
8 the United States within or without the state, he or she shall be subject to the rules and regulations of  
9 such agency.

10 (c) The chief officer of any hospital or institution operated by such agency and in which the  
11 individual is so hospitalized shall, with respect to such individual, be vested with the same powers as the  
12 chief medical officers of behavioral health facilities or the Commissioner within this state with respect to  
13 detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in the  
14 appropriate circuit court or mental hygiene commissioner of this state at any time to inquire into the  
15 mental condition of an individual so hospitalized, and to determine the necessity for continuance of his or  
16 her hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

### **§27-14-8. Rights of patients.**

1 (a) No person may be deprived of any civil right solely by reason of his or her receipt of services  
2 for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary  
3 any civil right of the person, including, but not limited to, civil service status and appointment, the right to  
4 register for and to vote at elections, the right to acquire and to dispose of property, the right to execute  
5 instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit  
6 pursuant to any law, but a person who has been adjudged incompetent pursuant to this chapter and who  
7 has not been restored to legal competency may be deprived of such rights. Involuntary commitment  
8 pursuant to this article does not of itself relieve the patient of legal capacity.

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

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

13 (1) Treatment by trained personnel;

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

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

16 and

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

19 (d) The chief medical officer shall cause to be developed within the clinical record of each patient  
20 a written treatment plan based on initial medical and psychiatric examination not later than seven days  
21 after he or she is admitted for treatment. The treatment plan shall be updated periodically, consistent with  
22 reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment  
23 plan and reevaluations entitles the patient to release.

24 (e) A clinical record shall be maintained at a behavioral health facility for each patient treated by  
25 the facility. The record shall contain information on all matters relating to the admission, legal status, care  
26 and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically,  
27 the record shall contain results of periodic examinations, individualized treatment programs, evaluations  
28 and reevaluations, orders for treatment, orders for application for mechanical restraint and accident  
29 reports, all signed by the personnel involved.

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

32 (g) The Secretary shall propose rules for legislative approval in accordance with the provisions of  
33 article three, chapter twenty-nine-a of this code to protect the personal rights of patients not inconsistent  
34 with \_\_\_\_\_ this \_\_\_\_\_ section.

**§27-14-9. Transportation for the mentally ill or substance user.**

1 (a)(1) Whenever transportation of an individual is required pursuant to the provisions of this  
2 chapter, it shall be the duty of the sheriff to provide immediate transportation to or from the appropriate  
3 behavioral health facility or state hospital.

4 (2) Where hospitalization occurs pursuant to article thirteen of this chapter, the sheriff may permit,  
5 upon the written request of a person having proper interest in the individual's hospitalization, for the  
6 interested person to arrange for the individual's transportation to the behavioral health facility or state

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7 hospital if the sheriff determines that such means are suitable given the individual's condition.

8 (b) Upon written agreement between the county commission on behalf of the sheriff and the  
9 directors of the local community mental health center and emergency medical services, an alternative  
10 transportation program may be arranged. The agreement shall clearly define the responsibilities of each  
11 of the parties, the requirements for program participation and the persons bearing ultimate responsibility  
12 for the individual's safety and well-being.

13 (c)(1) Sheriffs and municipal governments are hereby authorized to enter into written agreements  
14 whereby certified municipal law-enforcement officers may perform the duties of the sheriff as described in  
15 this article. The agreement shall determine jurisdiction, responsibility of costs, training related to the  
16 performance of these duties and all other necessary requirements. The agreement shall be approved by  
17 the county commission and circuit court of the county in which the agreement is made.

18 (2) For purposes of this subsection, "certified municipal law-enforcement officer" means any duly  
19 authorized member of a municipal law-enforcement agency who is empowered to maintain public peace  
20 and order, make arrests and enforce the laws of this state or any political subdivision thereof, other than  
21 parking ordinances, and who is currently certified as a law-enforcement officer pursuant to article twenty-  
22 nine, chapter thirty of this code.

23 (d) Nothing in this section is intended to alter security responsibilities for the patient by the sheriff  
24 unless mutually agreed upon as provided in subsection (c) of this section.

**ARTICLE 15. OFFENSES.**

**§27-15-1. Malicious making of medical certificate or complaint as to mental condition.**

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

**§27-15-2. Trespass on grounds of state hospitals.**

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1           The enclosed premises and the lands adjoining the same belonging to any one of the state  
2 hospitals are declared private grounds. If any person be found on the premises or grounds without  
3 authority, permission or good excuse, he or she shall be deemed a trespasser, and, on conviction thereof,  
4 shall be fined not exceeding \$25; and if it shall appear that he or she was thereon for any unlawful or  
5 immoral purpose, in addition to being fined, he or she shall be imprisoned not exceeding sixty days.

**§27-15-3. Miscellaneous offenses.**

1           If any person shall:

2           (1) Entice, or attempt to entice, any patient from any state hospital who has been legally  
3 committed thereto; or

4           (2) Shall counsel, cause, influence or assist, or attempt to do so, any such patient to escape; or

5           (3) Attempt to escape therefrom; or

6           (4) Harbor or conceal any such patient who has escaped therefrom; or

7           (5) Shall, without the permission of the Chief Executive Officer of any such hospital, give or sell to  
8 any such patient, whether on the premises thereof or elsewhere, any money, firearms, drugs, cigarettes,  
9 tobacco, or any other article whatsoever; or

10           (6) Shall receive from the hands of any such patient anything of value, whether belonging to the  
11 state or not; or

12           (7) Shall cause or influence, or attempt to cause or influence, any such patient to violate any rule  
13 or to rebel against the government or discipline of such hospital; or

14           (8) Shall tease, pester, annoy, or molest any such patient,

15           He or she shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less  
16 than ten nor more than \$100, or imprisoned not exceeding six months, or, in the discretion of the court,  
17 both fined and imprisoned.

18           (b) If any person shall aid or abet the commission of any of the foregoing offenses or aid or abet  
19 an attempt to commit the same, he or she shall be guilty of the same as if he or she were the principal,  
20 and be punished as above provided.

21           (c) In the trial of an indictment for committing any of the offenses set forth in this section, the  
22 accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in

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23 committing or in an attempt to commit the same.

24 (d) If any person, not her spouse, shall have sexual intercourse with any female patient who is a  
25 patient of any of said state hospitals, he shall be guilty of a felony, and, on conviction thereof, shall be  
26 confined in the penitentiary not less than ten nor more than fifteen years. If such female patient be under  
27 sixteen years of age, he shall be imprisoned not less than ten nor more than twenty years.

**CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

**ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

**§30-3-4. Definitions.**

1 As used in this article:

2 (1) "Board" means the West Virginia Board of Medicine established in section five of this  
3 article.

4 (2) "Commissioner" means the Commissioner for the Bureau for Public Health or his or  
5 her designee, which officer or designee shall be a physician and shall act as secretary of the  
6 board and shall carry out any and all responsibilities assigned in this article to the secretary of  
7 the \_\_\_\_\_ board.

1 ~~(2)~~ (3) "Medical peer review committee" means a committee of, or appointed by, a state  
2 or local professional medical society, or a committee of, or appointed by, a medical staff of a  
3 licensed hospital, long-term care facility or other health care facility, or any health care peer  
4 review organization as defined in section one, article three-c of this chapter, or any other  
5 organization of professionals in this state formed pursuant to state or federal law and authorized  
6 to evaluate medical and health care services.

7 ~~(3)~~ (4) "Practice of medicine and surgery" means the diagnosis or treatment of, or  
8 operation or prescription for, any human disease, pain, injury, deformity or other physical or  
9 mental condition. "Surgery" includes the use on humans of lasers, ionizing radiation, pulsed light  
10 and radiofrequency devices. The provisions of this section do not apply to any person who is a  
11 duly licensed health care provider under other pertinent provisions of this code and who is



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12 acting within the scope of his or her license.

13 ~~(4)~~ (5) "Practice of podiatry" means the examination, diagnosis, treatment, prevention  
14 and care of conditions and functions of the human foot and ankle by medical, surgical and other  
15 scientific knowledge and methods; with surgical treatment of the ankle authorized only when a  
16 podiatrist has been granted privileges to perform ankle surgery by a hospital's medical staff  
17 credentialing committee based on the training and experience of the podiatrist; and medical and  
18 surgical treatment of warts and other dermatological lesions of the hand which similarly occur in  
19 the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, the  
20 anesthesia must be administered by, or under the direction of, an anesthesiologist or certified  
21 registered nurse anesthetist authorized under the State of West Virginia to administer  
22 anesthesia. A medical evaluation shall be made by a physician of every patient prior to the  
23 administration of other than local anesthesia.

24 ~~(5) "State health officer" means the commissioner for the Bureau for Public Health or his~~  
25 ~~or her designee, which officer or designee shall be a physician and shall act as secretary of the~~  
26 ~~board and shall carry out any and all responsibilities assigned in this article to the secretary of~~  
27 ~~the \_\_\_\_\_ board.~~

**§30-3-5. West Virginia Board of Medicine powers and duties continued; appointment and  
terms of members; vacancies; removal.**

1 The West Virginia Board of Medicine has assumed, carried on and succeeded to all the  
2 duties, rights, powers, obligations and liabilities heretofore belonging to or exercised by the  
3 Medical Licensing Board of West Virginia. All the rules, orders, rulings, licenses, certificates,  
4 permits and other acts and undertakings of the medical licensing board of West Virginia as  
5 heretofore constituted have continued as those of the West Virginia Board of Medicine until they

6 expired or were amended, altered or revoked. The board remains the sole authority for the  
7 issuance of licenses to practice medicine and surgery and to practice podiatry and to practice as  
8 physician assistants in this state under the supervision of physicians licensed under this article.  
9 The board shall continue to be a regulatory and disciplinary body for the practice of medicine  
10 and surgery and the practice of podiatry and for physician assistants in this state.

11 The board shall consist of sixteen members. One member shall be the ~~state health~~  
12 ~~officer~~ Commissioner ex officio, with the right to vote as a member of the board. The other  
13 fifteen members shall be appointed by the Governor, with the advice and consent of the Senate.  
14 Eight of the members shall be appointed from among individuals holding the degree of doctor of  
15 medicine and two shall hold the degree of doctor of podiatric medicine. Two members shall be  
16 physician assistants licensed by the board. Each of these members must be duly licensed to  
17 practice his or her profession in this state on the date of appointment and must have been  
18 licensed and actively practicing that profession for at least five years immediately preceding the  
19 date of appointment. Three lay members shall be appointed to represent health care  
20 consumers. Neither the lay members nor any person of the lay members' immediate families  
21 shall be a provider of or be employed by a provider of health care services. The ~~state health~~  
22 ~~officer's~~ Commissioner's term shall continue for the period that he or she holds office as ~~state~~  
23 ~~health officer~~ Commissioner. Each other member of the board shall be appointed to serve a  
24 term of five years: *Provided*, That the members of the Board of Medicine holding appointments  
25 on the effective date of this section shall continue to serve as members of the Board of Medicine  
26 until the expiration of their term unless sooner removed. Each term shall begin on October 1 of  
27 the applicable year and a member may not be appointed to more than two consecutive full  
28 terms on the board.

29 A person is not eligible for membership on the board who is a member of any political  
30 party executive committee or, with the exception of the ~~state health officer~~ Commissioner, who

31 holds any public office or public employment under the federal government or under the  
32 government of this state or any political subdivision thereof.

33 In making appointments to the board, the Governor shall, so far as practicable, select  
34 the members from different geographical sections of the state. When a vacancy on the board  
35 occurs and less than one year remains in the unexpired term, the appointee shall be eligible to  
36 serve the remainder of the unexpired term and two consecutive full terms on the board.

**§30-3-8. ~~State health officer~~ Commissioner to act as secretary of the board.**

37 The ~~state health officer~~ Commissioner, in addition to being a member of the board, shall  
38 act as its secretary. He or she shall, together with the president of the board, sign all licenses,  
39 reports, orders and other documents that may be required by the board in the performance of its  
40 duties.

**ARTICLE**

**16.**

**CHIROPRACTOR.**

**§30-16-19. Duty of chiropractor to observe health rules; reports of ~~health officer~~ commissioner  
and local registrar of vital statistics.**

1 Doctors of chiropractic shall observe and are subject to all state and municipal rules in regard to  
2 the control of infectious diseases, and to any and all other matters pertaining to public health. They shall  
3 report to the ~~public health officer~~ commissioner in the manner required by law. It is the duty of each doctor  
4 of chiropractic in this state to report to the registrar of vital statistics of his or her magisterial district, within  
5 ten days of its occurrence, any death which may come under his or her supervision, with a certificate of  
6 the cause of death and correlative facts as may be at that time required by the ~~division of health~~  
7 Department of Health and Compliance.

**CHAPTER 31. CORPORATIONS.**

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

**§31-15A-2. Definitions.**

1 For purposes of this article:

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

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

7 (c) "Cost" means, as applied to any project to be financed, in whole or in part, with infrastructure  
8 revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition,  
9 improvement and construction of the project; the cost of preliminary design and analysis, surveys,  
10 borings; the cost of environmental, financial, market and engineering feasibility studies, assessments,  
11 applications, approvals, submissions or clearances; the cost of preparation of plans and specifications  
12 and other engineering services; the cost of acquisition of all land, rights-of-way, property rights,  
13 easements, franchise rights and any other interests required for the acquisition, repair, improvement or  
14 construction of the project; the cost of demolishing or removing any buildings or structures on land so  
15 acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the  
16 cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or  
17 structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks,  
18 vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all  
19 finance charges and interest incurred prior to and during the construction and for no more than six  
20 months after completion of construction; the cost of all legal services and expenses; the cost of all plans,  
21 specifications, surveys and estimates of cost; all working capital and other expenses necessary or  
22 incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any  
23 project; the cost of placing any project in operation; and all other costs and expenses of any kind or  
24 nature incurred or to be incurred by the project sponsor developing the project that are reasonable and  
25 necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any  
26 project: *Provided*, That costs shall not include any amounts related to the ongoing operations of the  
27 owner or operator, depreciation thereof or any other cost which the council or the water development

28 authority has not determined to be consistent with the purposes and objectives of this article;

29 (d) "Council" means the West Virginia infrastructure and jobs development council created in  
30 section three of this article;

31 (e) "Department of Health and Compliance" means the department created in chapters nine of  
32 this code, or any successor to all or any substantial part of its powers and duties;

33 ~~(e)~~ (f) "Division of environmental protection" means the Division of Environmental Protection  
34 established under article one, chapter twenty-two of this code, or any successor to all or any substantial  
35 part of its powers and duties;

36 ~~(f) "Division of health" means the division of health created in article one, chapter sixteen of this~~  
37 ~~code, or any successor to all or any substantial part of its powers and duties;~~

38 (g) "Economic development authority" means the economic development authority established  
39 under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its  
40 powers and duties;

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

44 (i) "Governmental agency" means any county; municipality; watershed improvement district;  
45 assessment district; soil conservation district; sanitary district; public service district; drainage district;  
46 regional governmental authority and any other state governmental agency, entity, political subdivision or  
47 public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or  
48 infrastructure projects;

49 (j) "Housing development fund" means the West Virginia Housing Development Fund established  
50 under article eighteen of this chapter, or any successor to all or any substantial part of its powers and  
51 duties;

52 (k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in  
53 section nine of this article;

54 (l) "Infrastructure project" means a project in the state which the council determines is likely to

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

67 (m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts  
68 deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the  
69 use of all or any part of any project completed pursuant to this article; and any other amounts received by  
70 the State Treasurer, council or the water development authority for the purposes of this article;

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

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

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

79 (q) "Public service commission" means the Public Service Commission of West Virginia created  
80 and established under section three, article one, chapter twenty-four of this code, or any successor to all  
81 or any substantial part of its powers and duties;

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

84 (s) "Public utility" means any person or persons, or association of persons, however associated,  
85 whether incorporated or not, including, without limitation, any governmental agency, operating a  
86 wastewater facility or water facility as a public service, which is regulated by the Public Service  
87 Commission as a public utility under chapter twenty-four of this code or which is required to file its tariff  
88 with the Public Service Commission;

89 (t) "State Development Office" means the West Virginia Development Office established under  
90 article two, chapter five-b of this code, or any successor to all or any substantial part of its powers and  
91 duties;

92 (u) "State infrastructure agency" means the ~~division of health~~ Department of Health and  
93 Compliance, Division of Environmental Protection, Housing Development Fund, Public Service  
94 Commission, state Development Office, water development authority, economic development authority  
95 and any other state agency, division, body, authority, commission, instrumentality or entity which now or  
96 in the future receives applications for the funding of, and provides funding or technical assistance to, the  
97 planning, acquisition, construction or improvement of a project;

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

106 (w) "Water development authority" means the West Virginia water development authority  
107 continued pursuant to the provisions of article one, chapter twenty-two-c of this code, or any successor to  
108 all or any substantial part of its powers and duties; and

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

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

1 (a) The West Virginia Infrastructure and Jobs Development Council is continued. The council is a  
2 governmental instrumentality of the state. The exercise by the council of the powers conferred by this  
3 article and the carrying out of its purpose and duties shall be considered and held to be, and are  
4 determined to be, essential governmental functions and for a public purpose.

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

6 (1) The Governor or designee;

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

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

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

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

11 (6) ~~The Director of the Division of Health~~ Secretary of the Department of Health and Compliance  
12 or his or her designee;

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

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

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

19 (d) The Commissioner of the Division of Highways, the Executive Director of the State Rail  
20 Authority, two members of the West Virginia Senate, two members of the West Virginia House of  
21 Delegates, the Chancellor of the Higher Education Policy Commission and the Chancellor of the West



22 Virginia Council for Community and Technical College Education serve as advisory members of the  
23 council. The advisory members shall be ex officio, nonvoting members of the council.

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

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

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

36 (h) The council meets at least monthly to review projects and infrastructure projects requesting  
37 funding assistance and otherwise to conduct its business and may meet more frequently if necessary.  
38 Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is  
39 not subject to council review with regard to any action taken pursuant to the authority established in  
40 article fifteen, chapter thirty-one of this code. The Governor's Civil Contingent Fund is not subject to  
41 council review with regard to projects or infrastructure projects funded through the Governor's Civil  
42 Contingent Fund.

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

## **CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**§48-1-236. Secretary defined.**

1 "Secretary" means the secretary of the Department of Health and Human Resources.  
2 Effective July 1, 2019, unless the context indicates otherwise, any reference in this chapter to  
3 the Secretary of the Department of Health and Human Resources shall refer to the Secretary of  
4 the Department of Health and Compliance. Likewise, effective July 1, 2019, any reference to  
5 the Department of Health and Human Resources shall refer to the Department of Health and  
6 Compliance unless the context indicates otherwise.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.**

**PART 4. WITHHOLDING FROM INCOME OF AMOUNTS PAYABLE AS SUPPORT.**

**§48-14-401. Support orders to provide for withholding from income.**

1 (a) Every order entered or modified under the provisions of this article that requires the payment  
2 of child support or spousal support must include a provision for automatic withholding from income of the  
3 obligor in order to facilitate income withholding as a means of collecting support.

4 (b) Every support order heretofore or hereafter entered by a court of competent jurisdiction is  
5 considered to provide for an order of income withholding, notwithstanding the fact that the support order  
6 does not in fact provide for an order of withholding. Income withholding may be instituted under this part  
7 for any arrearage without the necessity of additional judicial or legal action.

8 (c) Every such order as described in subsection (a) of this section shall contain language  
9 authorizing income withholding for both current support and for any arrearages to commence without  
10 further court action as follows:

11 The order shall provide that income withholding shall begin immediately, without regard to  
12 whether there is an arrearage;

13 (A) When a child for whom support is ordered is included or becomes included in a grant of  
14 assistance from the ~~division of human services~~ Department of Health and Compliance or a similar agency  
15 of a sister state for temporary assistance for needy families benefits, medical assistance only benefits or  
16 foster care benefits and is referred to the Bureau for Child Support enforcement; or

17 (B) When the support obligee has applied for services from the Bureau for Child Support  
18 enforcement created pursuant to section 18-101, *et seq.*, of this chapter, or the support enforcement  
19 agency of another state or is otherwise receiving services from the Bureau for Child Support enforcement  
20 as provided for in this chapter. In any case where one of the parties demonstrates, and the court finds,  
21 that there is good cause not to require immediate income withholding, or in any case where there is filed  
22 with the court a written agreement between the parties which provides for an alternative arrangement,  
23 such order shall not provide for income withholding to begin immediately, pursuant to section four  
24 hundred three, article fourteen of this chapter.

**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~~ Department of Health and Compliance.**

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

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

10 (1) Notify the Bureau for Child Support enforcement when the ~~division of human services~~  
11 Department of Health and Compliance proposes to terminate or provide public assistance payable to any  
12 obligee;

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

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

**§48-18-108. Fees.**

17 (a) When the Bureau for Child Support Enforcement provides child support collection  
18 services either to a public assistance recipient or to a party who does not receive public  
19 assistance, the Bureau for Child Support Enforcement shall, upon written notice to the obligor,  
20 charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to  
21 the amount of child support which was ordered by the court. The fee shall be deposited in the  
22 Child Support Enforcement Fund. The service fee assessed may not exceed ten percent of the  
23 monthly court-ordered child support and may not be assessed against any obligor who is  
24 current in payment of the monthly court-ordered child support payments: *Provided*, That this fee  
25 may not be assessed when the obligor is also a recipient of public assistance.

26 (b) Except for those persons applying for services provided by the Bureau for Child  
27 Support Enforcement who are applying for or receiving public assistance from the ~~Division of~~  
28 ~~Human Services~~ Department of Health and Compliance or persons for whom fees are waived  
29 pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an  
30 application fee of \$25.

31 (c) Fees imposed by state and federal tax agencies for collection of overdue support  
32 shall be imposed on the person for whom these services are provided. Upon written notice to  
33 the obligee, the Bureau for Child Support Enforcement shall assess a fee of \$25 to any person  
34 not receiving public assistance for each successful federal tax interception. The fee shall be  
35 withheld prior to the assistance for each successful federal tax interception. The fee shall be  
36 withheld prior to the release of the funds received from each interception and deposited in the  
37 Child Support Enforcement Fund established pursuant to section 18-107.

38 (d) In any action brought by the Bureau for Child Support Enforcement, the court shall  
39 order that the obligor shall pay attorney fees for the services of the attorney representing the  
40 Bureau for Child Support Enforcement in an amount calculated at a rate similar to the rate paid

41 to court-appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter  
42 twenty-nine of this code and all court costs associated with the action: *Provided*, That no such  
43 award shall be made when the court finds that the award of attorney's fees would create a  
44 substantial financial hardship on the obligor or when the obligor is a recipient of public  
45 assistance. Further, the Bureau for Child Support Enforcement may not collect such fees until  
46 the obligor is current in the payment of child support. No court may order the Bureau for Child  
47 Support Enforcement to pay attorney's fees to any party in any action brought pursuant to this  
48 chapter.

49 (e) This section shall not apply to the extent it is inconsistent with the requirements of  
50 federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social  
51 Security Act, United States Code, article three, Title 42, Sections 601 to 613 and United States  
52 Code, Title 42, Sections 651 to 662.

**§48-18-126. Review and adjustment of child support orders.**

1 (a) Either parent or, if there has been an assignment of support to the Department of  
2 Health and ~~Human Resources~~ Compliance, the Bureau for Child Support enforcement shall  
3 have the right to request an administrative review of the child support award in the following  
4 circumstances:

5 (1) Where the request for review is received thirty-six months or more after the date of  
6 the entry of the order or from the completion of the previous administrative review, whichever is  
7 later, the Bureau for Child Support enforcement shall conduct a review to determine whether the  
8 amount of the child support award in such order varies from the amount of child support that  
9 would be awarded at the time of the review pursuant to the guidelines for child support awards  
10 contained in article 13-101, *et seq.* If the amount of the child support award under the existing  
11 order differs by ten percent or more from the amount that would be awarded in accordance with  
12 the child support guidelines, the Bureau for Child Support enforcement shall file with the family

13 court a motion for modification of the child support order. If the amount of the child support  
14 award under the existing order differs by less than ten percent from the amount that would be  
15 awarded in accordance with the child support guidelines, the Bureau for Child Support  
16 enforcement may, if it determines that such action is in the best interest of the child or otherwise  
17 appropriate, file with the family court a motion for modification of the child support order.

18 (2) Where the request for review of a child support award is received less than thirty-six  
19 months after the date of the entry of the order or from the completion of the previous  
20 administrative review, the Bureau for Child Support enforcement shall undertake a review of the  
21 case only where it is alleged that there has been a substantial change in circumstances. If the  
22 Bureau for Child Support enforcement determines that there has been a substantial change in  
23 circumstances and if it is in the best interests of the child, the bureau shall file with the family  
24 court a motion for modification of the child support order in accordance with the guidelines for  
25 child support awards contained in article 13-101, *et seq.*, of this chapter.

26 (b) The Bureau for Child Support enforcement shall notify both parents at least once  
27 every three years of their right to request a review of a child support order. The notice may be  
28 included in any order granting or modifying a child support award. The Bureau for Child Support  
29 enforcement shall give each parent at least thirty days' notice before commencing any review  
30 and shall further notify each parent, upon completion of a review, of the results of the review,  
31 whether of a proposal to move for modification or of a proposal that there should be no change.

32 (c) When the result of the review is a proposal to move for modification of the child  
33 support order, each parent shall be given thirty days' notice of the hearing on the motion, the  
34 notice to be directed to the last known address of each party by first-class mail. When the result  
35 of the review is a proposal that there be no change, any parent disagreeing with that proposal  
36 may, within thirty days of the notice of the results of the review, file with the court a motion for  
37 modification setting forth in full the grounds therefor.

38 (d) For the purposes of this section, a "substantial change in circumstances" includes,  
39 but is not limited to, a changed financial condition, a temporary or permanent change in physical  
40 custody of the child which the court has not ordered, increased need of the child or other  
41 financial conditions. "Changed financial conditions" means increases or decreases in the  
42 resources available to either party from any source. Changed financial conditions includes, but  
43 is not limited to, the application for or receipt of any form of public assistance payments,  
44 unemployment compensation and workers' compensation or a fifteen percent or more variance  
45 from the amount of the existing order and the amount of child support that would be awarded  
46 according to the child support guidelines.

## **ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.**

### **§48-19-103. Duties of the bureau for support enforcement attorneys.**

1 Subject to the control and supervision of the commissioner:

2 ~~(a)~~ (1) The Bureau for Child Support enforcement attorney shall supervise and direct the  
3 secretarial, clerical and other employees in his or her office in the performance of their duties as such  
4 performance affects the delivery of legal services. The Bureau for Child Support enforcement attorney will  
5 provide appropriate instruction and supervision to employees of his or her office who are nonlawyers,  
6 concerning matters of legal ethics and matters of law, in accordance with applicable state and federal  
7 statutes, rules and regulations.

8 ~~(b)~~ (2) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as  
9 promulgated and adopted by the Supreme Court of Appeals, the Bureau for Child Support enforcement  
10 attorney shall not permit a nonlawyer who is employed by the Department of Health and Human  
11 Resources Compliance in a supervisory position over the Bureau for Child Support enforcement attorney  
12 to direct or regulate the attorney's professional judgment in rendering legal services to recipients of  
13 services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the  
14 department attempt to direct or regulate the attorney's professional judgment.

15 ~~(c)~~ (3) The Bureau for Child Support enforcement attorney shall make available to the public an

16 informational pamphlet, designed in consultation with the commissioner. The informational pamphlet shall  
17 explain the procedures of the court and the Bureau for Child Support enforcement attorney; the duties of  
18 the Bureau for Child Support enforcement attorney; the rights and responsibilities of the parties; and the  
19 availability of human services in the community. The informational pamphlet shall be provided as soon as  
20 possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic  
21 relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the  
22 Bureau for Child Support enforcement attorney.

23 ~~(d)~~ (4) The Bureau for Child Support enforcement shall act to establish the paternity of every child  
24 born out of wedlock for whom paternity has not been established, when the child's caretaker is an  
25 applicant for or recipient of temporary assistance for needy families, and when the caretaker has  
26 assigned to the ~~division of human services~~ Department of Health and Compliance any rights to support  
27 for the child which might be forthcoming from the putative father: *Provided*, That if the Bureau for Child  
28 Support enforcement attorney is informed by the secretary of the Department of Health and ~~Human~~  
29 ~~Resources~~ Compliance or his or her authorized employee that it has been determined that it is against  
30 the best interest of the child to establish paternity, the Bureau for Child Support enforcement attorney  
31 shall decline to so act. The Bureau for Child Support enforcement attorney, upon the request of the  
32 mother, alleged father or the caretaker of a child born out of wedlock, regardless of whether the mother,  
33 alleged father or the caretaker is an applicant or recipient of temporary assistance for needy families,  
34 shall undertake to establish the paternity of such child.

35 ~~(e)~~ (5) The Bureau for Child Support enforcement attorney shall undertake to secure support for  
36 any individual who is receiving temporary assistance for needy families when such individual has  
37 assigned to the ~~division of human services~~ Department of Health and Compliance any rights to support  
38 from any other person such individual may have: *Provided*, That if the Bureau for Child Support  
39 enforcement attorney is informed by the secretary of the Department of Health and ~~Human Resources~~  
40 Compliance or his or her authorized employee that it has been determined that it is against the best  
41 interests of a child to secure support on the child's behalf, the Bureau for Child Support enforcement  
42 attorney shall decline to so act. The Bureau for Child Support enforcement attorney, upon the request of



43 any individual, regardless of whether such individual is an applicant or recipient of temporary assistance  
44 for needy families, shall undertake to secure support for the individual. If circumstances require, the  
45 Bureau for Child Support enforcement attorney shall utilize the provisions of article 16-101, et seq., of this  
46 code and any other reciprocal arrangements which may be adopted with other states for the  
47 establishment and enforcement of support obligations, and if such arrangements and other means have  
48 proven ineffective, the Bureau for Child Support enforcement attorney may utilize the federal courts to  
49 obtain and enforce court orders for support.

50 (f) (6) The Bureau for Child Support enforcement attorney shall pursue the enforcement of  
51 support orders through the withholding from income of amounts payable as support:

52 (1) (A) Without the necessity of an application from the obligee in the case of a support obligation  
53 owed to an obligee to whom services are already being provided under the provisions of this chapter; and

54 (2) (B) On the basis of an application for services in the case of any other support obligation  
55 arising from a support order entered by a court of competent jurisdiction.

56 (g) (7) The Bureau for Child Support enforcement attorney may decline to commence an action to  
57 obtain an order of support under the provisions of article 14-101, et seq., if an action for divorce,  
58 annulment or separate maintenance is pending, or the filing of such action is imminent, and such action  
59 will determine the issue of support for the child: *Provided*, That such action shall be deemed to be  
60 imminent if it is proposed by the obligee to be commenced within the twenty-eight days next following a  
61 decision by the Bureau for Child Support enforcement attorney that an action should properly be brought  
62 to obtain an order for support.

63 (h) (8) If the Bureau for Child Support enforcement office, through the Bureau for Child Support  
64 enforcement attorney, shall undertake paternity determination services, child support collection or support  
65 collection services upon the written request of an individual who is not an applicant or recipient of  
66 assistance from the ~~division of human services~~ Department of Health and Compliance, the office may  
67 impose an application fee for furnishing such services. Such application fee shall be in a reasonable  
68 amount, not to exceed \$25, as determined by the commissioner: *Provided*, That the commissioner may fix  
69 such amount at a higher or lower rate which is uniform for this state and all other states if the secretary of

70 the federal ~~department of health and human services~~ Department of Health and Human Services  
71 determines that a uniform rate is appropriate for any fiscal year to reflect increases or decreases in  
72 administrative costs. Any cost in excess of the application fee so imposed may be collected from the  
73 obligor who owes the child or spousal support obligation involved.

**ARTICLE 22. ADOPTION.**

**§48-22-104. Agency defined.**

1 "Agency" means a public or private entity, including the Department of ~~Health and~~  
2 Human ~~Resources~~ Services, that is authorized by law to place children for adoption.

**ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.**

**PART 3. ESTABLISHMENT AND MAINTENANCE**

**OF VOLUNTARY ADOPTION REGISTRY.**

**§48-23-301. ~~Division of human services~~ Department of Human Services to establish and maintain  
mutual consent voluntary adoption registry; rulemaking.**

(a) ~~The division of human services~~ Department of Human Services, as provided for in ~~§9-2-1, et~~  
~~seq. chapter nine~~ of this code, shall establish and maintain the mutual consent voluntary adoption  
registry, except that the division may contract out the function of establishing and maintaining the registry  
to a licensed voluntary agency with expertise in providing post-legal adoption services, in which case the  
agency shall establish and maintain the registry that would otherwise be operated by the ~~division~~  
Department of Human Services.

(b) The secretary of the Department of ~~Health and Human Resources~~ Services shall promulgate  
and adopt such rules as are necessary for implementing this article.

**ARTICLE 26. DOMESTIC VIOLENCE ACT.**

**PART 5. DUTIES OF THE BUREAU FOR PUBLIC HEALTH.**

**§48-26-501. Development of state public health plan for reducing domestic violence.**

1 (a) The Bureau for Public Health of the Department of ~~Health and Human Resources~~ Health and  
2 Compliance, in consultation with the family protection services board, shall:

3 (1) Assess the impact of domestic violence on public health; and

4 (2) Develop a state public health plan for reducing the incidence of domestic violence in this state.

5 (b) The state public health plan shall:

6 (1) Include, but not be limited to, public education, including the use of the various communication  
7 media to set forth the public health perspective on domestic violence;

8 (2) Be developed in consultation with public and private agencies that provide programs for  
9 victims of domestic violence, advocates for victims, organizations representing the interests of shelters,  
10 and persons who have demonstrated expertise and experience in providing health care to victims of  
11 domestic violence and their children; and

12 (3) Be completed on or before January 1, 2000.

13 (c) The Bureau for Public Health ~~of the Department of Health and Human Resources~~ shall:

14 (1) Transmit a copy of the state public health plan to the Governor and the Legislature; and

15 (2) Review and update the state public health plan annually.

**§48-26-502. Notice of victims' rights, remedies and available services; required information.**

1 (a) The Bureau for Public Health ~~of the Department of Health and Human Resources~~ shall make  
2 available to health care facilities and practitioners a written form notice of the rights of victims and the  
3 remedies and services available to victims of domestic violence.

4 (b) A health care practitioner whose patient has injuries or conditions consistent with domestic  
5 violence shall provide to the patient, and every health care facility shall make available to all patients, a  
6 written form notice of the rights of victims and the remedies and services available to victims of domestic  
7 violence.

**§48-26-503. Standards, procedures and curricula.**

1 (a) The Bureau for Public Health ~~of the Department of Health and Human Resources~~ shall publish  
2 model standards, including specialized procedures and curricula, concerning domestic violence for health  
3 care facilities, practitioners and personnel.

4 (b) The procedures and curricula shall be developed in consultation with public and private  
5 agencies that provide programs for victims of domestic violence, advocates for victims, organizations

6 representing the interests of shelters and personnel who have demonstrated expertise and experience in  
7 providing health care to victims of domestic violence and their children.

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

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

#### **§49-1-206. Definitions related, but not limited, to child advocacy, care, residential and treatment programs.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to  
2 them that relate to, but are not limited to, child advocacy, care, residential and treatment  
3 programs, except in those instances where a different meaning is provided or the context in  
4 which the word is used clearly indicates that a different meaning is intended.

5 "Child advocacy center (CAC)" means a community-based organization that is a  
6 member in good standing with the West Virginia Child Abuse Network, Inc., as set forth in  
7 section one hundred one, article three of this chapter.

8 "Child care" means responsibilities assumed and services performed in relation to a  
9 child's physical, emotional, psychological, social and personal needs and the consideration of  
10 the child's rights and entitlements, but does not include secure detention or incarceration under  
11 the jurisdiction of the Division of Juvenile Services pursuant to part nine, article two of this  
12 chapter. It includes the provision of child care services or residential services.

13 "Child care center" means a facility maintained by the state or any county or municipality  
14 thereof, or any agency or facility maintained by an individual, firm, corporation, association or  
15 organization, public or private for the care of thirteen or more children for child care services in  
16 any setting, if the facility is open for more than thirty days per year per child.

17 "Child care services" means direct care and protection of children during a portion of a  
18 twenty-four hour day outside of the child's own home which provides experiences to children  
19 that foster their healthy development and education.

20 "Child placing agency" means a child welfare agency organized for the purpose of  
21 placing children in private family homes for foster care or for adoption. The function of a child-  
22 placing agency may include the investigation and certification of foster family homes and foster  
23 family group homes as provided in this chapter. The function of a child placing agency may also  
24 include the supervision of children who are sixteen or seventeen years old and living in  
25 unlicensed residences.

26 "Child welfare agency" means any agency or facility maintained by the state or any  
27 county or municipality thereof, or any agency or facility maintained by an individual, firm,  
28 corporation, association or organization, public or private, to receive children for care and  
29 maintenance or for placement in residential care facilities, including, without limitation, private  
30 homes or any facility that provides care for unmarried mothers and their children. A child welfare  
31 agency does not include juvenile detention facilities or juvenile correctional facilities operated by  
32 or under contract with the Division of Juvenile Services, pursuant to part nine, article two of this  
33 chapter, nor any other facility operated by that division for the secure housing or holding of  
34 juveniles committed to its custody.

35 "Community based" means a facility, program or service located near the child's home or  
36 family and involving community participation in planning, operation and evaluation and which  
37 may include, but is not limited to, medical, educational, vocational, social and psychological  
38 guidance, training, special education, counseling, substance abuse and any other treatment or  
39 rehabilitation services.

40 "Community-based juvenile probation sanctions" means any of a continuum of  
41 nonresidential accountability measures, programs and sanctions in response to a technical  
42 violation of probation, as part of a system of community-based juvenile probation sanctions and  
43 incentives, that may include, but are not limited to:

44 (A) Electronic monitoring;

- 45 (B) Drug and alcohol screening, testing or monitoring;  
46 (C) Youth reporting centers;  
47 (D) Reporting and supervision requirements;  
48 (E) Community service; and  
49 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,  
50 restorative justice programs and behavioral or mental health treatment.

51 "Community services" means nonresidential prevention or intervention services or  
52 programs that are intended to reduce delinquency and future court involvement.

53 "Evidence-based practices" means policies, procedures, programs and practices  
54 demonstrated by research to reliably produce reductions in the likelihood of reoffending.

55 "Facility" means a place or residence, including personnel, structures, grounds and  
56 equipment used for the care of a child or children on a residential or other basis for any number  
57 of hours a day in any shelter or structure maintained for that purpose. Facility does not include  
58 any juvenile detention facility or juvenile correctional facility operated by or under contract with  
59 the Division of Juvenile Services for the secure housing or holding of juveniles committed to its  
60 custody."Family child care facility" means any facility which is used to provide nonresidential  
61 child care services for compensation for seven to twelve children, including children who are  
62 living in the household, who are under six years of age. No more than four of the total number of  
63 children may be under twenty-four months of age. A facility may be in a provider's residence or  
64 a separate building.

65 "Family child care home" means a facility which is used to provide nonresidential child  
66 care services for compensation in a provider's residence. The provider may care for four to six  
67 children, at one time including children who are living in the household, who are under six years  
68 of age. No more than two of the total number of children may be under twenty-four months of  
69 age."Family resource network" means:

70 (A) A local community organization charged with service coordination, needs and  
71 resource assessment, planning, community mobilization and evaluation, and which has met the  
72 following criteria:

73 (i) Agreeing to a single governing entity;

74 (ii) Agreeing to engage in activities to improve service systems for children and families  
75 within the community;

76 (iii) Addressing a geographic area of a county or two or more contiguous counties;

77 (iv) Having nonproviders, which include family representatives and other members who  
78 are not employees of publicly funded agencies, as the majority of the members of the governing  
79 body, and having family representatives as the majority of the nonproviders;

80 (v) Having representatives of local service agencies, including, but not limited to, the  
81 public health department, the behavioral health center, the local health and human resources  
82 agency and the county school district, on the governing body; and

83 (vi) Accepting principles consistent with the cabinet's mission as part of its philosophy.

84 (B) A family resource network may not provide direct services, which means to provide  
85 programs or services directly to children and families.

86 "Family support", for the purposes of part six, article two of this chapter, means goods  
87 and services needed by families to care for their family members with developmental disabilities  
88 and to enjoy a quality of life comparable to other community members.

89 "Family support program" means a coordinated system of family support services  
90 administered by the Department of ~~Health and Human Resources~~ Human Services through  
91 contracts with behavioral health agencies throughout the state.

92 "Foster family home" means a private residence which is used for the care on a  
93 residential basis of no more than five children who are unrelated by blood, marriage or adoption  
94 to any adult member of the household.

95 "Health care and treatment" means:

96 (A) Developmental screening;

97 (B) Mental health screening;

98 (C) Mental health treatment;

99 (D) Ordinary and necessary medical and dental examination and treatment;

100 (E) Preventive care including ordinary immunizations, tuberculin testing and well-child  
101 care; and

102 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and  
103 treatment does not include an abortion."Home-based family preservation services" means  
104 services dispensed by the ~~Division of Human Services~~ Department of Human Services or by  
105 another person, association or group who has contracted with that division to dispense services  
106 when those services are intended to stabilize and maintain the natural or surrogate family in  
107 order to prevent the placement of children in substitute care. There are two types of home-  
108 based family preservation services and they are as follows:

109 (A) Intensive, short-term intervention of four to six weeks; and

110 (B) Home-based, longer-term after care following intensive intervention.

111 "Informal family child care" means a home that is used to provide nonresidential child  
112 care services for compensation for three or fewer children, including children who are living in  
113 the household, who are under six years of age. Care is given in the provider's own home to at  
114 least one child who is not related to the caregiver.

115 "Nonsecure facility" means any public or private residential facility not characterized by  
116 construction fixtures designed to physically restrict the movements and activities of individuals  
117 held in lawful custody in that facility and which provides its residents access to the surrounding  
118 community with supervision.

119 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include



120 any of the following:

121 (A) An act resulting in bodily injury or death;

122 (B) The use of a weapon in the commission of the offense;

123 (C) A domestic abuse offense involving a significant or likely risk of harm to a family  
124 member or household member;

125 (D) A criminal sexual conduct offense; or

126 (E) Any offense for driving under the influence of alcohol or drugs.

127 "Out-of-home placement" means a post-adjudication placement in a foster family home,  
128 group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment  
129 facility, staff-secure facility, hardware secure facility, detention facility or other residential  
130 placement other than placement in the home of a parent, custodian or guardian.

131 "Out-of-school time" means a child care service which offers activities to children before  
132 and after school, on school holidays, when school is closed due to emergencies and on school  
133 calendar days set aside for teacher activities.

134 "Placement" means any temporary or permanent placement of a child who is in the  
135 custody of the state in any foster home, group home or other facility or residence.

136 "Pre-adjudicatory community supervision" means supervision provided to a youth prior to  
137 adjudication, a period of supervision up to one year for an alleged status or delinquency offense.

138 "Regional family support council" means the council established by the regional family  
139 support agency to carry out the responsibilities specified in part six, article two of this chapter.

140 "Relative family child care" means a home that provides nonresidential child care  
141 services only to children related to the caregiver. The caregiver is a grandparent, great  
142 grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling of the child or children  
143 receiving care. Care is given in the provider's home.

144 "Residential services" means child care which includes the provision of nighttime shelter

145 and the personal discipline and supervision of a child by guardians, custodians or other persons  
146 or entities on a continuing or temporary basis. It may include care and/or treatment for  
147 transitioning adults. Residential services does not include or apply to any juvenile detention  
148 facility or juvenile correctional facility operated by the Division of Juvenile Services, created  
149 pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

150 "Risk and needs assessment" means a validated, standardized actuarial tool which  
151 identifies specific risk factors that increase the likelihood of reoffending and the factors that,  
152 when properly addressed, can reduce the likelihood of reoffending.

153 "Secure facility" means any public or private residential facility which includes  
154 construction fixtures designed to physically restrict the movements and activities of juveniles or  
155 other individuals held in lawful custody in such facility.

156 "Staff-secure facility" means any public or private residential facility characterized by  
157 staff restrictions of the movements and activities of individuals held in lawful custody in such  
158 facility and which limits its residents' access to the surrounding community, but is not  
159 characterized by construction fixtures designed to physically restrict the movements and  
160 activities of residents.

161 "Standardized screener" means a brief, validated nondiagnostic inventory or  
162 questionnaire designed to identify juveniles in need of further assessment for medical,  
163 substance abuse, emotional, psychological, behavioral, or educational issues, or other  
164 conditions.

165 "State family support council" means the council established by the Department of  
166 ~~Health and Human Resources~~ Human Services pursuant to part six, article two of this chapter to  
167 carry out the responsibilities specified in article two of this chapter.

168 "Time-limited reunification services" means individual, group and family counseling,  
169 inpatient, residential or outpatient substance abuse treatment services, mental health services,

170 assistance to address domestic violence, services designed to provide temporary child care and  
171 therapeutic services for families, including crisis nurseries and transportation to or from those  
172 services, provided during fifteen of the most recent twenty-two months a child or juvenile has  
173 been in foster care, as determined by the earlier date of the first judicial finding that the child is  
174 subjected to abuse or neglect, or the date which is sixty days after the child or juvenile is  
175 removed from home.

176 "Technical violation" means an act that violates the terms or conditions of probation or a  
177 court order that does not constitute a new delinquent offense.

178 "Truancy diversion specialist" means a school-based probation officer or truancy social  
179 worker within a school or schools who, among other responsibilities, identifies truants and the  
180 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior  
181 prior to court involvement.

**§49-1-208. Definitions related, but not limited, to state and local agencies.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to them that  
2 relate to, but are not limited to, state and local agencies, except in those instances where a different  
3 meaning is provided or the context in which the word is used clearly indicates that a different meaning is  
4 intended.

5 "Department" or "state department" means the West Virginia Department of Health and Human  
6 Resources. Effective July 1, 2019, unless the context indicates otherwise, any reference in this chapter  
7 to the Department of Health and Human Resources shall refer to the Department of Human Services.

8 "Division of Juvenile Services" means the division within the West Virginia Department of ~~Military~~  
9 ~~Affairs and Public Safety~~ Human Services.

10 "Law-enforcement officer" means a law-enforcement officer of the State Police, a municipality or  
11 county sheriff's department.

12 "Secretary" means the Secretary of the West Virginia Department of Health and Human  
13 Resources. Effective July 1, 2019, unless the context indicates otherwise, any reference in this chapter to

14 the Secretary of the Department of Health and Human Resources shall refer to the Secretary of the  
15 Department of Human Services.

## **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

### **§49-2-901. Policy; ~~cooperation.~~**

1 ~~(a)~~ It is the policy of the state to:

2 (1) Provide a coordinated continuum of care for its children who have been charged with  
3 an offense which would be a crime if committed by an adult, whether they are taken into custody  
4 and securely detained or released pending adjudication by the court; and

5 (2) Ensure the safe and efficient custody of a securely detained child through the entire  
6 juvenile justice process, and this can best be accomplished by the state by providing for  
7 cooperation and coordination between the agencies of government which are charged with  
8 responsibilities for the children of the state.

9 ~~(b) When any juvenile is ordered by the court to be transferred from the custody of one~~  
10 ~~of these agencies into the custody of the other, the Department of Health and Human~~  
11 ~~Resources and the Division of Juvenile Services shall cooperate with each other to the~~  
12 ~~maximum extent necessary in order to ease the child's transition and to reduce unnecessary~~  
13 ~~cost, duplication and delay.~~

### **§49-2-902. Division of Juvenile Services; transfer of functions; juvenile placement.**

1 ~~(a) The Division of Juvenile Services is created within the Department of Military Affairs~~  
2 ~~and Public Safety. Effective July 1, 2019, all powers, duties, entities operated by the Division of~~  
3 ~~Juvenile Services, employees and functions of the Division of Juvenile Services created~~  
4 ~~pursuant to the provisions of this article shall be transferred to the Department of Human~~  
5 ~~Services created pursuant to the provisions of chapter nine of this code. Any reference in this~~  
6 ~~code to the Division of Juvenile Services or the placement of the Division of Juvenile Services~~  
7 ~~within the Department of Military Affairs and Public Safety shall mean the Bureau for Children~~

8 and Families within the Department of Human Services with the changes made to this article  
9 during the 2018 Regular Session of the Legislature.

10 (b) The administrative head of the Division of Juvenile Services shall be the director. The  
11 director shall be appointed by the ~~Governor with the advice and consent of the Senate~~  
12 Secretary of the Department of Human Services and shall be responsible for the control and  
13 supervision of each of its offices. The director may appoint deputy directors and assign them  
14 duties as may be necessary for the efficient management and operation of the division.

15 ~~(b)~~(c) The Division of Juvenile Services within the Bureau for Children and Families  
16 consists, at a minimum, of three subdivisions:

17 (1) The Office of Juvenile Detention, which is responsible for operating and maintaining  
18 centers for the predispositional detention of juveniles, including juveniles who have been  
19 transferred to adult criminal jurisdiction pursuant to part eight, article four of this chapter and  
20 juveniles who are awaiting transfer to a juvenile corrections facility;

21 (2) The Office of Juvenile Corrections, which is also responsible for operating and  
22 maintaining juvenile corrections facilities; and

23 (3) The Office of Community-Based Services, shall provide at a minimum, masters level  
24 therapy services; family, individual and group counseling; community service activities;  
25 transportation; and aftercare programs.

26 ~~(e)~~(d) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is  
27 ordered into the custody of the Division of Juvenile Services, the director may place the juvenile  
28 while he or she is in the division's custody at whichever facility operated by the division is  
29 deemed by the director to be most appropriate considering the juvenile's well-being and any  
30 recommendations of the court placing the juvenile in the division's custody.

**§49-2-903. Powers and duties; comprehensive strategy; cooperation.**

1 (a)The Division of Juvenile Services has the following duties as to juveniles in detention

2 facilities or juvenile corrections facilities:

3 (1) Cooperating with the United States Department of Justice in operating, maintaining  
4 and improving juvenile correction facilities and predispositional detention centers, complying  
5 with regulations thereof, and receiving and expending federal funds for the services;

6 (2) Providing care for children needing secure detention pending disposition by a court  
7 having juvenile jurisdiction or temporary care following a court action;

8 (3) Assigning the necessary personnel and providing adequate space for the support  
9 and operation of any facility providing for the secure detention of children committed to the care  
10 of the Division of Juvenile Services;

11 (4) Proposing rules which outline policies and procedures governing the operation of  
12 correctional, detention and other facilities in its division wherein juveniles may be securely  
13 housed;

14 (5) Assigning the necessary personnel and providing adequate space for the support  
15 and operation of its facilities;

16 (6) Developing a comprehensive plan to maintain and improve a unified state system of  
17 regional predispositional detention centers for juveniles;

18 (7) Working in cooperation with other entities within the Department of ~~Health and~~  
19 ~~Human Resources~~ Human Services in establishing, maintaining, and continuously refining and  
20 developing a balanced and comprehensive state program for children who have been  
21 adjudicated delinquent;

22 (8) In cooperation with other entities within the Department of ~~Health and Human~~  
23 ~~Resources~~ Human Services establishing programs and services within available funds,  
24 designed to:

25 (A) Prevent juvenile delinquency;

26 (B) To divert juveniles from the juvenile justice system:

27 (C) To provide community-based alternatives to juvenile detention and correctional  
28 facilities; and

29 (D) To encourage a diversity of alternatives within the juvenile justice system;

30 ~~(b) Working in collaboration with the Department of Health and Human Resources, The~~  
31 Department of Human Services and the Division of Juvenile Services shall employ a  
32 comprehensive strategy for the social and rehabilitative programming and treatment of  
33 juveniles, consistent with the principles adopted by the Office of Juvenile Justice and  
34 Delinquency Prevention of the Office of Justice Programs of the United States Department of  
35 Justice.

**§49-2-905. Juvenile detention and corrections facility personnel.**

1 (a) All persons employed at a juvenile detention or corrections facility shall be employed  
2 at a salary and with benefits consistent with the approved plan of compensation of the Division  
3 of Personnel, created under section five, article six, chapter twenty-nine of this code; all  
4 employees will also be covered by the policies and procedures of the West Virginia Public  
5 Employees Grievance Board, created under article two, chapter six-c of this code and the  
6 classified service protection policies of the Division of Personnel.

7 (b) The Division of Juvenile Services ~~of the Department of Military Affairs and Public~~  
8 ~~Safety~~ is authorized to assign the necessary personnel and provide adequate space for the  
9 support and operation of any facility operated by the Division of Juvenile Services ~~of the~~  
10 ~~Department of Military Affairs and Public Safety~~ providing for the detention of children as  
11 provided in this article, subject to and not inconsistent with the appropriation and availability of  
12 funds.

**§49-2-906. Medical and other treatment of juveniles in custody of the division; consent;  
service providers; medical care; pregnant inmates; claims processing and  
administration by the department; authorization of cooperative agreements.**

1 (a) Notwithstanding any other provision of law to the contrary, the director, or his or her  
2 designee, is hereby authorized to consent to the medical or other treatment of any juvenile in  
3 the legal or physical custody of the director or the division.

4 (b) In providing or arranging for the necessary medical and other care and treatment of  
5 juveniles committed to the division's custody, the director shall use service providers who  
6 provide the same or similar services to juveniles under existing contracts with the Department of  
7 Health and Compliance and the Department of Human Resources Services. In order to obtain  
8 the most advantageous reimbursement rates, to capitalize on an economy of scale and to avoid  
9 duplicative systems and procedures, the department shall administer and process all claims for  
10 medical or other treatment of juveniles committed to the division's custody.

11 (c) In providing or arranging for the necessary medical and other care and treatment of  
12 juveniles committed to the division's custody, the director shall assure that pregnant inmates will  
13 not be restrained after reaching the second trimester of pregnancy until the end of the  
14 pregnancy. However, if the inmate, based upon her classification, discipline history or other  
15 factors deemed relevant by the director poses a threat of escape, or to the safety of herself, the  
16 public, staff, or the unborn child, the inmate may be restrained in a manner reasonably  
17 necessary. Additionally, that prior to directing the application of restraints and where there is no  
18 threat to the safety of the inmate, the public, staff or the fetus, the director or designee shall  
19 consult with an appropriate health care professional to assure that the manner of restraint will  
20 not pose an unreasonable risk of harm to the inmate or the fetus.

21 (d) For purposes of implementing the mandates of this section, the director is hereby  
22 authorized and directed to enter into any necessary agreements with the Department of ~~Health~~  
23 Health and Compliance and ~~Human Resources~~. An agreement will include, at a minimum, for  
24 the direct and incidental costs associated with that care and treatment to be paid by the Division  
25 of Juvenile Services.



**§49-2-913. Juvenile Justice Reform Oversight Committee.**

1 (a) The Juvenile Justice Reform Oversight Committee is hereby created to oversee the  
2 implementation of reform measures intended to improve the state's juvenile justice system.

3 (b) The committee shall be comprised of seventeen members, including the following  
4 individuals:

5 (1) The Governor, or his or her designee, who shall preside as chair of the committee;

6 (2) Two members from the House of Delegates, appointed by the Speaker of the House  
7 of Delegates, who shall serve as nonvoting, ex officio members;

8 (3) Two members from the Senate, appointed by the President of the Senate, who shall  
9 serve as nonvoting, ex officio members;

10 (4) The Secretary of the Department of ~~Health and Human Resources~~ Services, or his or  
11 her designee;

12 (5) The Director of the Division of Juvenile Services, or his or her designee;

13 (6) The Superintendent of the State Board of Education, or his or her designee;

14 (7) The Administrative Director of the Supreme Court of Appeals, or his or her designee,  
15 who shall serve as nonvoting, ex officio member;

16 (8) The Director of the Division of Probation Services, or his or her designee;

17 (9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of  
18 Appeals, who shall serve as nonvoting, ex officio members;

19 (10) One community member juvenile justice stakeholder, appointed by the Governor;

20 (11) One juvenile crime victim advocate, appointed by the Governor;

21 (12) One member from the law-enforcement agency, appointed by the Governor;

22 (13) One member from a county prosecuting attorney's office, appointed by the  
23 Governor; and

24 (14) The Director of the Juvenile Justice Commission.

25 (c) The committee shall perform the following duties:

26 (1) Guide and evaluate the implementation of the provisions adopted in the year 2015  
27 relating to juvenile justice reform;

28 (2) Obtain and review the juvenile recidivism and program outcome data collected  
29 pursuant to section one hundred six, article five of this chapter;

30 (3) Calculate any state expenditures that have been avoided by reductions in the  
31 number of youth placed in out-of-home placements by the Division of Juvenile Services or the  
32 Department of ~~Health and Human Resources~~ Services as reported under section one hundred  
33 six, article five of this chapter; and

34 (4) Institute a uniform process for developing and reviewing performance measurement  
35 and outcome measures through data analysis. The uniform process shall include:

36 (A) The performance and outcome measures for the court, the Department of ~~Health and~~  
37 ~~Human Resources~~ Services and the Division of Juvenile Services; and

38 (B) The deadlines and format for the submission of the performance and outcome  
39 measures; and

40 (5) Ensure system accountability and monitor the fidelity of implementation efforts or  
41 programs;

42 (6) Study any additional topics relating to the continued improvement of the juvenile  
43 justice system; and

44 (7) Issue an annual report to the Governor, the President of the Senate, the Speaker of  
45 the House of Delegates and the Chief Justice of the Supreme Court of Appeals of West Virginia  
46 on or before November 30th of each year, starting in 2016, which shall include:

47 (A) An assessment of the progress made in implementation of juvenile justice reform  
48 efforts;

49 (B) A summary of the committee's efforts in fulfilling its duties as set forth in this section;

50 and

51 (C) An analysis of the recidivism data obtained by the committee under this section;

52 (D) A summary of the averted costs calculated by the committee under this section and  
53 a recommendation for any reinvestment of the averted costs to fund services or programs to  
54 expand West Virginia's continuum of alternatives for youth who would otherwise be placed in  
55 out-of-home placement;

56 (E) Recommendations for continued improvements to the juvenile justice system.

57 (d) The Division of Justice and Community Services shall provide staff support for the  
58 committee. The committee may request and receive copies of all data, reports, performance  
59 measures and other evaluative material regarding juvenile justice submitted from any agency,  
60 branch of government or political subdivision to carry out its duties.

61 (e) The committee shall meet within ninety days after appointment and shall thereafter  
62 meet at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

63 (f) After initial appointment, members appointed to the committee by the Governor, the  
64 President of the Senate, the Speaker of the House of Delegates or the Chief Justice of the  
65 Supreme Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of  
66 two years from his or her appointment and shall be eligible for reappointment to that position. All  
67 members appointed to the committee shall serve until his or her successor has been duly  
68 appointed.

69 (g) The committee shall sunset on December 31, 2020, unless reauthorized by the  
70 Legislature.

**ARTICLE 7. INTERSTATE COOPERATION.**

**§49-7-204. Medical assistance for children with special needs; rulemaking; penalties.**

1 (a) A child with special needs resident in this state who is the subject of an adoption assistance  
2 agreement with another state shall be entitled to receive a medical assistance identification from this state

3 upon the filing in the ~~Division of Human Services~~ Department of Human Services of a certified copy of the  
4 adoption assistance agreement obtained from the adoption assistance state. In accordance with  
5 regulations of the ~~Department of Health and Human Resources~~ Bureau for Medical Services the adoptive  
6 parents shall be required at least annually to show that the agreement is still in force or has been  
7 renewed.

8 (b) The ~~Department of Health and Human Resources~~ Bureau for Medical Services shall consider  
9 the holder of a medical assistance identification pursuant to this section as any other holder of a medical  
10 assistance identification under the laws of this state and shall process and make payment on claims on  
11 account of the holder in the same manner and pursuant to the same conditions and procedures as for  
12 other recipients of medical assistance.

13 (c) The ~~Department of Health and Human Resources~~ Bureau for Medical Services shall provide  
14 coverage and benefits for a child who is in another state and who is covered by an adoption assistance  
15 agreement made by the Department of ~~Health and Human Resources~~ Services for the coverage or  
16 benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child  
17 may submit evidence of payment for services or benefit amounts not payable in the residence state and  
18 shall be reimbursed therefor. However, there may be no reimbursement for services or benefit amounts  
19 covered under any insurance or other third party medical contract or arrangement held by the child or the  
20 adoptive parents.

21 (d) The Department of ~~Health and Human Resources~~ Services shall propose rules in accordance  
22 with article three, chapter twenty-nine-a of this code that are necessary to effectuate the requirements  
23 and purposes of this section. The additional coverages and benefit amounts provided pursuant to this  
24 section shall be for services to the cost of which there is no federal contribution, or which, if federally  
25 aided, are not provided by the residence state. Among other things, the regulations shall include  
26 procedures to be followed in obtaining prior approvals for services in those instances where required for  
27 the assistance.

28 ~~(d)~~ (e) Any person who submits a claim for payment or reimbursement for services or benefits  
29 pursuant to this section or the making of any statement in connection therewith, which claim or statement

30 the maker knows or should know to be false, misleading or fraudulent is guilty of a felony and, upon  
31 conviction, shall be fined not more than \$10,000, or incarcerated in a correctional facility not more than  
32 two years, or both fined and incarcerated.

33 (e) (f) This section applies only to medical assistance for children under adoption assistance  
34 agreements from states that have entered into a compact with this state under which the other state  
35 provides medical assistance to children with special needs under adoption assistance agreements made  
36 by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements  
37 entered into by this state shall be eligible to receive it in accordance with the laws and procedures  
38 applicable thereto.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 12. POSTMORTEM EXAMINATIONS.

#### **§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.**

1 (a) The office of chief medical examiner is hereby established within ~~the division of health in the~~  
2 Department of Health and ~~Human Resources~~ Compliance. The office shall be directed by a chief medical  
3 examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians,  
4 and other staff members, as needed to fulfill the responsibilities set forth in this article.

5 (b) All persons employed by the chief medical examiner shall be responsible to him or her and  
6 may be discharged for any reasonable cause. The chief medical examiner shall specify the qualifications  
7 required for each position in the office of chief medical examiner, and each position shall be subject to  
8 rules prescribed by the secretary of the Department of Health and ~~Human Resources~~ Compliance.

9 (c) The chief medical examiner shall be a physician licensed to practice medicine or osteopathic  
10 medicine in the State of West Virginia, who is a diplomat of the American board of pathology in forensic  
11 pathology, and who has experience in forensic medicine. The chief medical examiner shall be appointed  
12 by the ~~director of the division of health~~ Secretary of the Department of Health and Compliance to serve a  
13 five-year term unless sooner removed, but only for cause, by the Governor or by the ~~director~~ Secretary.

14 (d) The chief medical examiner shall be responsible to the ~~director of the division of health~~  
15 Secretary of the Department of Health and Compliance in all matters except that the chief medical  
16 examiner shall operate with independent authority for the purposes of:

- 17 (1) The performance of death investigations conducted pursuant to section eight of this article;  
18 (2) The establishment of cause and manner of death; and  
19 (3) The formulation of conclusions, opinions or testimony in judicial proceedings.

20 (e) The chief medical examiner, or his or her designee, shall be available at all times for  
21 consultation as necessary for carrying out the functions of the office of the chief medical examiner.

22 (f) The secretary of the Department of Health and ~~Human Resources~~ Compliance is hereby  
23 directed to propose legislative rules in accordance with the provisions of article three, chapter twenty-  
24 nine-a of this code concerning:

- 25 (1) The proper conduct of medical examinations into the cause of death;  
26 (2) The proper methods and procedures for postmortem inquiries conducted by county medical  
27 examiners and coroners;  
28 (3) The examination of substances taken from human remains in order to determine the cause  
29 and manner of death; and  
30 (4) The training and certification of county medical examiners and coroners.

31 (g) The chief medical examiner is authorized to prescribe specific forms for record books and  
32 official papers which are necessary to the functions and responsibilities of the office of the chief medical  
33 examiner.

34 (h) The chief medical examiner, or his or her designee, is authorized to order and conduct an  
35 autopsy in accordance with the provisions of this article and this code. The chief medical examiner, or his  
36 or her designee, shall perform an autopsy upon the lawful request of any person authorized by the  
37 provisions of this code to request the performance of the autopsy.

38 (i) The salary of the chief medical examiner and the salaries of all assistants and employees of  
39 the office of the chief medical examiner shall be fixed by the Legislature from funds appropriated for that  
40 purpose. The chief medical examiner shall take an oath and provide a bond as required by law. Within the

41 discretion of the ~~director of the division of health~~ Secretary of the Department of Health and Compliance,  
42 the chief medical examiner and his or her assistants shall lecture or instruct in the field of legal medicine  
43 and other related subjects to the West Virginia University or Marshall university school of medicine, the  
44 West Virginia school of osteopathic medicine, the West Virginia state police, other law-enforcement  
45 agencies and other interested groups.

**§61-12-4. Central office and laboratory.**

1 The office of the chief medical examiner shall establish and maintain a central office and a  
2 laboratory having adequate professional and technical personnel and medical and scientific facilities for  
3 the performance of the duties imposed by this article. In order to secure facilities sufficient to meet the  
4 duties imposed by the provisions of this code, the chief medical examiner is authorized to enter into  
5 agreements, subject to the approval of the ~~director of the division of health~~ Secretary of the Department of  
6 Health and Compliance, with other state agencies or departments, with public or private colleges or  
7 universities, schools of medicine or hospitals for the use of laboratories, personnel, equipment and other  
8 fixtures, facilities or services.

**§61-12-6. Chief medical examiner may obtain additional services and facilities.**

1 Subject to the approval of the ~~director of the division of health~~ Secretary of the Department of  
2 Health and Compliance, the chief medical examiner may, in order to provide for the investigation of the  
3 cause of death as authorized in this article, employ and pay qualified pathologists and toxicologists to  
4 make autopsies and such pathological and chemical studies and investigations as he or she considers  
5 necessary, in the several counties or regions of the state and he or she may arrange for the use of  
6 existing laboratory facilities for such purposes. Qualified pathologists shall hold board certification or  
7 board eligibility in forensic pathology or have completed an American board of pathology fellowship in  
8 forensic pathology.

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 13. CORRECTIONS MANAGEMENT.**

**§62-13-5. Commitments; transfers.**

1           (a) All adult persons sentenced by a court to serve a sentence of incarceration in a penitentiary,  
2 prison or a correctional institution under the jurisdiction of the commissioner of corrections shall be  
3 deemed to be sentenced to the custody of the commissioner of the Division of Corrections. The  
4 commissioner, or his or her designee, has the authority to and may order the transfer of any such adult to  
5 any appropriate institution within the Division of Corrections or within the Department of Military Affairs  
6 and Public Safety. The commissioner has full discretionary authority to contract with any county jail,  
7 regional jail or other appropriate facility or institution for the incarceration and care of adult inmates.

8           (b) The commissioner, or his or her designee, may transfer any adult prisoner or inmate who is  
9 mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of  
10 ~~the division of health~~ Department of Health and Compliance, to the division, subject to the approval of the  
11 ~~director of health~~ Secretary of the Department of Health and Compliance; and may transfer any adult  
12 prisoner or inmate to an appropriate mental facility for specialized medical treatment.