

RECEIVED

97 MAY -3 PM 1:37

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

*COMMITTEE SUBSTITUTE FOR*  
SENATE BILL NO. 458

(By Senators *TOUBLIN, MR. PRESIDENT, AND BUCKALEW,*  
*By REQUEST OF THE EXECUTIVE*)



PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

RECEIVED  
97 MAY -10 PM 11 07  
HOUSE OF REPRESENTATIVES  
SENATE

## ENROLLED

COMMITTEE SUBSTITUTE  
FOR

### Senate Bill No. 458

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND BUCKALEW,  
By Request of the Executive)

---

[Passed April 12, 1997; in effect ninety days from passage.]

---

AN ACT to repeal section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, five, eight, nine, eleven, seventeen, eighteen, nineteen, nineteen-a, twenty, twenty-three, twenty-five, twenty-six, twenty-seven and twenty-eight of said article; and to further amend said article by adding thereto a new section, designated section six, all relating to the West Virginia health care authority; including additional legislative findings and purpose; changing the agency's title; amending and adding certain definitions; amending conflicting employment prohibition

for board members and former board members to comply with the governmental ethics act; deleting the review council; authorizing information gathering and coordination; creating a data advisory group and expanding the board's powers generally; changing annual reporting requirements; related programs and priorities; including utilization reporting with uniform system of accounts and financing; defining entities subject to annual reporting requirements; requiring review and reporting for alternatives to present rate-setting; legislative directives, studies, findings and recommendations; explaining discount and risk-bearing contract review and authorizing promulgation of rules; creating a quality assurance advisory group; modifying public disclosure, exemptions from state antitrust laws and penalties for violations to include health care providers; and extending termination date.

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

That section sixteen, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, five, eight, nine, eleven, seventeen, eighteen, nineteen, nineteen-a, twenty, twenty-three, twenty-five, twenty-six, twenty-seven and twenty-eight of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section six, all to read as follows:

**ARTICLE 29B. HEALTH CARE AUTHORITY.**

**§16-29B-1. Legislative findings; purpose.**

1 The Legislature hereby finds and declares that the  
2 health and welfare of the citizens of this state is being  
3 threatened by unreasonable increases in the cost of health  
4 care services, a fragmented system of health care, lack of  
5 integration and coordination of health care services,  
6 unequal access to primary and preventative care, lack of  
7 a comprehensive and coordinated health information  
8 system to gather and disseminate data to promote the  
9 availability of cost-effective, high-quality services and to  
10 permit effective health planning and analysis of utilization,  
11 clinical outcomes and cost and risk factors. In order  
12 to alleviate these threats: (1) Information on health care

13 costs must be gathered; (2) a system of cost control must  
14 be developed; and (3) an entity of state government must  
15 be given authority to ensure the containment of health  
16 care costs, to gather and disseminate health care informa-  
17 tion; to analyze and report on changes in the health care  
18 delivery system as a result of evolving market forces,  
19 including the implementation of managed care; and to  
20 assure that the state health plan, certificate of need  
21 program, rate regulation program and information  
22 systems serve to promote cost containment, access to care,  
23 quality of services and prevention. Therefore, the purpose  
24 of this article is to protect the health and well-being of the  
25 citizens of this state by guarding against unreasonable loss  
26 of economic resources as well as to ensure the continua-  
27 tion of appropriate access to cost-effective, high-quality  
28 health care services.

**§16-29B-2. Short title.**

1 This article may be cited as the “West Virginia Health  
2 Care Authority”.

**§16-29B-3. Definitions.**

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

4 As used in this article, unless a different meaning clearly  
5 appears from the context:

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

9 (b) “Class of purchaser” means a group of potential  
10 hospital patients with common characteristics affecting  
11 the way in which their hospital care is financed. Exam-  
12 ples of classes of purchasers are medicare beneficiaries,  
13 welfare recipients, subscribers of corporations established  
14 and operated pursuant to article twenty-four, chapter  
15 thirty-three of this code, members of health maintenance  
16 organizations and other groups as defined by the board;

17 (c) “Board” means the three-member board of directors

18 of the West Virginia health care authority, an autonomous  
19 division within the state department of health and human  
20 resources;

21 (d) "Health care provider" means a person, partnership,  
22 corporation, facility, hospital or institution licensed,  
23 certified or authorized by law to provide professional  
24 health care service in this state to an individual during  
25 this individual's medical, remedial, or behavioral health  
26 care, treatment or confinement. For purposes of this  
27 article, "health care provider" shall not include the  
28 private office practice of one or more health care profes-  
29 sionals licensed to practice in this state pursuant to the  
30 provisions of chapter thirty of this code.

31 (e) "Hospital" means a facility subject to licensure as  
32 such under the provisions of article five-b of this chapter,  
33 and any acute care facility operated by the state govern-  
34 ment which is primarily engaged in providing to inpa-  
35 tients, by or under the supervision of physicians, diagnos-  
36 tic and therapeutic services for medical diagnosis, treat-  
37 ment and care of injured, disabled or sick persons, and  
38 does not include state mental health facilities or state  
39 long-term care facilities;

40 (f) "Person" means an individual, trust, estate, partner-  
41 ship, committee, corporation, association or other organi-  
42 zation such as a joint stock company, a state or political  
43 subdivision or instrumentality thereof or any legal entity  
44 recognized by the state;

45 (g) "Purchaser" means a consumer of patient care  
46 services, a natural person who is directly or indirectly  
47 responsible for payment for such patient care services  
48 rendered by a health care provider, but does not include  
49 third-party payers;

50 (h) "Rates" means all value given or money payable to  
51 health care providers for health care services, including  
52 fees, charges and cost reimbursements;

53 (i) "Records" means accounts, books and other data  
54 related to health care costs at health care facilities subject  
55 to the provisions of this article which do not include

56 privileged medical information, individual personal data,  
57 confidential information, the disclosure of which is  
58 prohibited by other provisions of this code and the laws  
59 enacted by the federal government, and information, the  
60 disclosure of which would be an invasion of privacy;

61 (j) "Third-party payor" means any natural person,  
62 person, corporation or government entity responsible for  
63 payment for patient care services rendered by health care  
64 providers; and

65 (k) "Related organization" means an organization,  
66 whether publicly owned, nonprofit, tax-exempt or for  
67 profit, related to a health care provider through common  
68 membership, governing bodies, trustees, officers, stock  
69 ownership, family members, partners or limited partners  
70 including, but not limited to, subsidiaries, foundations,  
71 related corporations and joint ventures. For the purposes  
72 of this subsection family members shall mean brothers  
73 and sisters, whether by the whole or half blood, spouse,  
74 ancestors and lineal descendants.

**§16-29B-5. West Virginia health care authority; composition of  
the board; qualifications; terms; oath; compensa-  
tion and expenses of members; vacancies; ap-  
pointment of chairman, and meetings of the  
board.**

1 The "West Virginia Health Care Cost Review Author-  
2 ity", heretofore created as an autonomous division of the  
3 department of health, is hereby continued as an autono-  
4 mous division of the department of health and human  
5 resources and shall be known as the "West Virginia Health  
6 Care Authority", hereinafter referred to as the board. Any  
7 references in this code to the West Virginia health care  
8 cost review authority shall mean the West Virginia health  
9 care authority.

10 (a) The board shall consist of three members, appointed  
11 by the governor, with the advice and consent of the  
12 Senate. The board members shall be citizens and residents  
13 of this state. No more than two of said board members  
14 may be members of the same political party. One board  
15 member shall have a background in health care finance or

16 economics, one board member shall have previous employ-  
17 ment experience in human services, business administra-  
18 tion or substantially related fields and one board member  
19 shall be a consumer of health services with a demon-  
20 strated interest in health care issues.

21 (b) Each board member shall, before entering upon the  
22 duties of his or her office, take and subscribe to the oath  
23 provided by section five, article IV of the constitution of  
24 the state of West Virginia, which oath shall be filed in the  
25 office of the secretary of state. The governor shall desig-  
26 nate one of the board members to serve as chairman at the  
27 governor's will and pleasure. The chairman shall be the  
28 chief administrative officer of the board. The governor  
29 may remove any board member only for incompetency,  
30 neglect of duty, gross immorality, malfeasance in office or  
31 violation of the provisions of this article. The governor  
32 shall appoint three board members, one for a term of two  
33 years, one for a term of four years and one for a term of  
34 six years, with all the terms beginning on the twelfth day  
35 of March, one thousand nine hundred eighty-three. All  
36 future appointments shall be for terms of six years, except  
37 that an appointment to fill a vacancy shall be for the  
38 unexpired term only.

39 (c) No person while in the employ of, or holding any  
40 official relation to, any hospital or health care provider  
41 subject to the provisions of this article, or who has any  
42 pecuniary interest therein, may serve as a member of the  
43 board or as an employee thereof. Nor may any such board  
44 member be a candidate for or hold public office or be a  
45 member of any political committee while acting as such  
46 board member; nor may any board member or employee of  
47 said board receive anything of value, either directly or  
48 indirectly, from any third-party payor or health care  
49 provider. Should any of the board members become a  
50 candidate for any public office or for membership on any  
51 political committee, the governor shall remove said board  
52 member from the board and shall appoint a new board  
53 member to fill the vacancy created. No board member or  
54 former board member may accept employment with any  
55 hospital or health care provider subject to the jurisdiction

56 of the board in violation of the West Virginia governmen-  
57 tal ethics act, chapter six-b of this code: *Provided*, That  
58 such act shall not apply to employment accepted after  
59 termination of the board.

60 (d) The concurrent judgment of two of the board mem-  
61 bers when in session as the board shall be deemed the  
62 action of the board. A vacancy in the board shall not  
63 affect the right or duty of the remaining board members  
64 to function as a board.

65 (e) In order to adequately compensate the chairman of  
66 the board and other members of the board for additional  
67 duties newly imposed by law and not heretofore required  
68 by law, the annual salary of the chairman of the board  
69 shall be sixty-five thousand dollars and the annual salary  
70 of the other board members shall be sixty thousand  
71 dollars.

**§16-29B-6. Information gathering and coordination; data  
advisory group.**

1 (a) The board shall: Coordinate and oversee the health  
2 data collection of state agencies; lead state agencies'  
3 efforts to make the best use of emerging technology to  
4 effect the expedient and appropriate exchange of health  
5 care information and data, including patient records and  
6 reports; and coordinate data base development, analysis  
7 and reporting to facilitate cost management, utilization  
8 review and quality assurance efforts by state payor and  
9 regulatory agencies, insurers, consumers, providers and  
10 other interested parties. Agencies of the state collecting  
11 health data shall work together through the board to  
12 develop an integrated system for the efficient collection,  
13 responsible use and dissemination of such data and to  
14 facilitate and support the development of statewide health  
15 information systems that will allow for the electronic  
16 transmittal of all health information and claims process-  
17 ing activities of state agencies within the state and that  
18 will coordinate the development and use of electronic  
19 health information systems within state government. The  
20 board shall establish minimum requirements and issue  
21 reports relating to information systems of all state health



22 programs, including simplifying and standardizing forms,  
23 establishing information standards and reports for  
24 capitated managed care programs to be managed by the  
25 insurance commission, and shall develop a comprehensive  
26 system to collect ambulatory health care data. The board  
27 is authorized to gain access to any health-related data  
28 base in state government for the purposes of fulfilling its  
29 duties: *Provided, That*, for any data base to which the  
30 board gains access, the use and dissemination of informa-  
31 tion from the data base shall be subject to the confidenti-  
32 ality provisions applicable to such data base.

33 (b) To advise the board in its efforts under this section,  
34 the board shall create a data advisory group and appoint  
35 one of the board's members as chair of the group. The  
36 group shall be composed of representatives of consumers,  
37 businesses, providers, payors and state agencies. The data  
38 advisory group shall assist the board in developing  
39 priorities and protocols for data collection and the devel-  
40 opment and reform of health information systems pro-  
41 vided under this section.

42 (c) The board's staff shall gather information on cost  
43 containment efforts, including, but not limited to, the  
44 provision of alternative delivery systems, prospective  
45 payment systems, alternative rate-making methods, and  
46 programs of consumer education. The board shall pay  
47 particular attention to the economic, quality of care and  
48 health status impact of such efforts on purchasers or  
49 classes of purchasers, particularly the elderly and those on  
50 low or fixed incomes.

51 (d) The board staff shall further gather information on  
52 state-of-the-art advances in medical technology, the cost  
53 effectiveness of such advances and their impact on  
54 advances in health care services and management prac-  
55 tices, and any other state-of-the-art concepts relating to  
56 health care cost containment, health care improvement or  
57 other issues the board finds relevant and directs staff to  
58 investigate. The board staff shall prepare and keep a  
59 register of such information and update it on an annual  
60 basis.

61 (e) The data advisory group members shall be reim-  
62 bursed from the board funds for sums necessary to carry  
63 out its responsibilities and for reasonable travel expenses  
64 to attend meetings.

**§16-29B-8. Powers generally; budget expenses of the board.**

1 (a) In addition to the powers granted to the board  
2 elsewhere in this article, the board may:

3 (1) Adopt, amend and repeal necessary, appropriate and  
4 lawful policy guidelines, rules in accordance with article  
5 three, chapter twenty-nine-a of this code: *Provided*, That  
6 subsequent amendments and modifications to any rule  
7 promulgated pursuant to this article and not exempt from  
8 the provisions of article three, chapter twenty-nine-a of  
9 this code may be implemented by emergency rule;

10 (2) Hold public hearings, conduct investigations and  
11 require the filing of information relating to matters  
12 affecting the costs of health care services subject to the  
13 provisions of this article and may subpoena witnesses,  
14 papers, records, documents and all other data in connec-  
15 tion therewith. The board may administer oaths or  
16 affirmations in any hearing or investigation;

17 (3) Apply for, receive and accept gifts, payments and  
18 other funds and advances from the United States, the state  
19 or any other governmental body, agency or agencies or  
20 from any other private or public corporation or person  
21 (with the exception of hospitals subject to the provisions  
22 of this article, or associations representing them, doing  
23 business in the state of West Virginia, except in accor-  
24 dance with subsection (c) of this section), and enter into  
25 agreements with respect thereto, including the undertak-  
26 ing of studies, plans, demonstrations or projects. Any such  
27 gifts or payments that may be received or any such  
28 agreements that may be entered into shall be used or  
29 formulated only so as to pursue legitimate, lawful pur-  
30 poses of the board, and shall in no respect inure to the  
31 private benefit of a board member, staff member, donor or  
32 contracting party;

33 (4) Lease, rent, acquire, purchase, own, hold, construct,

34 equip, maintain, operate, sell, encumber and assign rights  
35 or dispose of any property, real or personal, consistent  
36 with the objectives of the board as set forth in this article:  
37 *Provided*, That such acquisition or purchase of real  
38 property or construction of facilities shall be consistent  
39 with planning by the state building commissioner and  
40 subject to the approval of the Legislature;

41 (5) Contract and be contracted with and execute all  
42 instruments necessary or convenient in carrying out the  
43 board's functions and duties; and

44 (6) Exercise, subject to limitations or restrictions herein  
45 imposed, all other powers which are reasonably necessary  
46 or essential to effect the express objectives and purposes  
47 of this article.

48 (b) The board shall annually prepare a budget for the  
49 next fiscal year for submission to the governor and the  
50 Legislature which shall include all sums necessary to  
51 support the activities of the board and its staff.

52 (c) Each hospital subject to the provisions of this article  
53 shall be assessed by the board on a pro rata basis using the  
54 gross revenues of each hospital as reported under the  
55 authority of section eighteen of this article as the measure  
56 of the hospital's obligation. The amount of such fee shall  
57 be determined by the board except that in no case shall  
58 the hospital's obligation exceed one tenth of one percent  
59 of its gross revenue. Such fees shall be paid on or before  
60 the first day of July in each year and shall be paid into the  
61 state treasury and kept as a special revolving fund desig-  
62 nated "health care cost review fund", with the moneys in  
63 such fund being expendable after appropriation by the  
64 Legislature for purposes consistent with this article. Any  
65 balance remaining in said fund at the end of any fiscal  
66 year shall not revert to the treasury, but shall remain in  
67 said fund and such moneys shall be expendable after  
68 appropriation by the Legislature in ensuing fiscal years.

69 (d) Each hospital's assessment shall be treated as an  
70 allowable expense by the board.

71 (e) The board is empowered to withhold rate approvals,

72 certificates of need and rural health system loans and  
73 grants if any such fees remain unpaid, unless exempted  
74 under subsection (g), section four, article two-d of this  
75 chapter.

**§16-29B-9. Annual report.**

1 The board shall, within thirty days of the close of the  
2 fiscal year, or from time to time as requested by the  
3 Legislature, prepare and transmit to the governor and the  
4 legislative oversight commission on health and human  
5 resources accountability a report of its operations and  
6 activities for the preceding fiscal year. This report shall  
7 include summaries of all reports made by the hospitals  
8 subject to this article, together with facts, suggestions and  
9 policy recommendations the board considers necessary.  
10 The board shall, after rate review and determination in  
11 accordance with the provisions of this article, include such  
12 rate schedules in its annual report or other reports as may  
13 be requested by the Legislature.

**§16-29B-11. Related programs.**

1 In addition to carrying out its duties under this article,  
2 the board shall carry out its information disclosure  
3 functions set forth in article five-f of this chapter and its  
4 functions set forth in article two-d of this chapter, includ-  
5 ing health planning, issuing grants and loans to finan-  
6 cially vulnerable health care entities located in  
7 underserved areas, and the review and approval or  
8 disapproval of capital expenditures for health care  
9 facilities or services. In making decisions in the certificate  
10 of need review process, the board shall be guided by the  
11 state health plan approved by the governor.

**§16-29B-17. Uniform system of financial reporting.**

1 (a) The board shall develop and specify a uniform system  
2 of reporting utilization, accounting and financial report-  
3 ing, including cost allocation methods by which hospitals  
4 shall record their revenues, income, expenses, capital  
5 outlays, assets, liabilities and units of service. The devel-  
6 opment and specification process aforementioned shall be  
7 conducted in a manner determined by the board to be

8 most efficient for that purpose notwithstanding the  
9 provisions of chapter twenty-nine-a of this code. Each  
10 hospital shall adopt this uniform system for the purpose of  
11 reporting utilization, costs and revenues to the board  
12 effective for the fiscal year beginning on or after twelve  
13 months from the effective date of this article.

14 (b) The board may provide for modification in the  
15 accounting and reporting system in order to correctly  
16 reflect differences in the scope or type of services and  
17 financial structures of the various categories, sizes and  
18 types of hospitals and in a manner consistent with the  
19 purposes of this article.

20 (c) The board may provide technical assistance to those  
21 hospitals which request it and which evidence sufficient  
22 need for assistance in the establishment of a data collec-  
23 tion system to the extent that funds are available to the  
24 board for this purpose.

25 (d) The board shall, after consultation with health care  
26 providers, purchasers, classes of purchasers and third-  
27 party payors, adopt a mandatory form for reporting to the  
28 board, at its request, medical diagnosis, treatment and  
29 other services rendered to each purchaser by health care  
30 providers subject to the provisions of this article.

31 (e) Following a public hearing, the board shall establish  
32 a program to minimize the administrative burden on  
33 hospitals by eliminating unnecessary duplication of  
34 financial and operational reports; and to the extent  
35 possible, notwithstanding any other law, coordinate  
36 reviews, reports and inspections performed by federal,  
37 state, local and private agencies.

**§16-29B-18. Annual reporting.**

1 (a) It shall be the duty of every health care provider  
2 which comes under the jurisdiction of this article and  
3 article five-f of this chapter to file with the board the  
4 reports required by such article five-f and the following  
5 financial statements or reports in a form and at intervals  
6 specified by the board, but at least annually:

7 (1) A balance sheet detailing the assets, liabilities and

8 net worth of the hospital for its preceding fiscal year;

9 (2) A statement of income and expenses for the preced-  
10 ing fiscal year;

11 (3) A statement of services rendered and services avail-  
12 able; and

13 (4) Such other reports as the board may prescribe.

14 Where more than one licensed hospital is operated by  
15 the reporting organization, the information required by  
16 this section shall be reported for each hospital separately.

17 (b) It shall be the duty of every related organization to  
18 file with the board, within thirty days from the effective  
19 date of this section, the following financial statements or  
20 reports for each of its three prior fiscal years:

21 (1) A balance sheet detailing the assets, liabilities and  
22 net worth of the related organization;

23 (2) A statement of income and expenses;

24 (3) A statement of cash flows; and

25 (4) Such other information as the board may prescribe.

26 After the initial filing of the financial information  
27 required by this subsection, every related organization  
28 shall thereafter file annual financial reports with the  
29 board in a form specified by the board.

30 (c) The annual financial statements filed pursuant to this  
31 section shall be prepared in accordance with the system of  
32 accounting and reporting adopted under section seventeen  
33 of this article. The board may require attestations from  
34 responsible officials of the hospitals or related organiza-  
35 tions that such reports have to the best of their knowledge  
36 been prepared truthfully and in accordance with the  
37 prescribed system of accounting and reporting.

38 (d) All reports filed under any provisions of this article,  
39 except personal medical information personally identifi-  
40 able to a purchaser and any tax return, shall be open to  
41 public inspection and shall be available for examination  
42 at the offices of the board during regular business hours.

43 (e) Whenever a further investigation is deemed necessary  
44 or desirable to verify the accuracy of any information set  
45 forth in any statement, schedule or report filed by a health  
46 care provider or related organization under the provisions  
47 of this section, the board may require a full or partial  
48 audit of the records of the health care provider or related  
49 organization.

**§16-29B-19. Rate-setting powers generally.**

1 (a) The board shall have power: (1) To initiate reviews  
2 and investigations of hospital rates and establish and  
3 approve such rates; (2) to initiate reviews and investiga-  
4 tions of hospital rates for specific services and the compo-  
5 nent factors which determine such rates; (3) to initiate  
6 reviews and investigations of hospital budgets and the  
7 specific components of such budgets; and (4) to approve or  
8 disapprove hospital rates and budgets taking into consid-  
9 eration the criteria set forth in section twenty of this  
10 article.

11 (b) In the interest of promoting the most efficient and  
12 effective use of hospital service, the board may adopt and  
13 approve alternative methods of rate determination. The  
14 board may also adopt methods of charges and payments of  
15 an experimental nature which are in the public interest  
16 and consistent with the purpose of this article.

17 (c) The board shall examine the need for an alternative  
18 to the current rate-setting method as a means of control-  
19 ling hospital costs and submit the findings, recommenda-  
20 tions and any proposed drafts of legislation, if necessary,  
21 in a report to the legislative oversight commission on  
22 health and human resources accountability and the  
23 governor on or before the first day of August, one thou-  
24 sand nine hundred ninety-eight.

**§16-29B-19a. Additional legislative directives; studies, findings and recommendations.**

1 (a) The Legislature finds and declares that changing  
2 market forces require periodic changes in the regulatory  
3 structure for health care providers and hereby directs the  
4 board to study the following:

5 (1) The certificate of need program, including the effect  
6 of any changes on managed care and access for uninsured  
7 and rural consumers; determining which services or  
8 capital expenditures should be exempt and why; and the  
9 status of similar programs in other states;

10 (2) The hospital rate-setting methodology, including the  
11 need for hospital rate-setting and the development of  
12 alternatives to the cost-based reimbursement methodol-  
13 ogy;

14 (3) Managed care markets, including the need for  
15 regulatory programs in managed care markets; and

16 (4) Barriers or obstacles, if any, presented by the certifi-  
17 cate of need program or standards in the state health plan  
18 to health care providers' need to reduce excess capacity,  
19 restructure services and integrate the delivery of services.

20 (b) The board may form task forces to assist it in ad-  
21 dressing these issues and it shall prepare a report on its  
22 findings and recommendations, which is to be filed with  
23 the governor, the president of the Senate and the speaker  
24 of the House of Delegates on or before the first day of  
25 October, one thousand nine hundred ninety-eight, identi-  
26 fying each problem and recommendation with specificity  
27 and the effect of each recommendation on cost, access and  
28 quality of care. The task forces, if formed, shall be  
29 composed of representatives of consumers, businesses,  
30 providers, payors and state agencies.

31 (c) The board shall report quarterly to the legislative  
32 oversight commission on health and human resources  
33 accountability regarding the appointment, direction and  
34 progress of the studies.

**§16-29B-20. Rate determination.**

1 (a) Upon commencement of review activities, no rates  
2 may be approved by the board nor payment be made for  
3 services provided by hospitals under the jurisdiction of the  
4 board by any purchaser or third-party payor to or on  
5 behalf of any purchaser or class of purchasers unless:

6 (1) The costs of the hospital's services are reasonably



7 related to the services provided and the rates are reason-  
8 ably related to the costs;

9 (2) The rates are equitably established among all pur-  
10 chasers or classes of purchasers within a hospital without  
11 discrimination unless federal or state statutes or rules and  
12 regulations conflict with this requirement. On and after  
13 the effective date of this section, a summary of every  
14 proposed contract, or amendment to any existing contract,  
15 for the payment of patient care services between a pur-  
16 chaser or third-party payor and a hospital shall be filed by  
17 the hospital for review by the board, which reviews shall  
18 occur no less frequently than each calendar quarter: (A)  
19 If the contract establishes a discount to the purchaser or  
20 third-party payor, it shall not take effect until approved  
21 by the board. For purposes of this article, a risk-bearing  
22 contract is reviewable as a discount contract and the  
23 amount computed as the discount percentage by the  
24 provider on the board shall be the approved amount of the  
25 discount. The difference, if any, between the actual  
26 discount percentage and amount and the approved  
27 amount, shall not be considered for rate-setting purposes;  
28 (B) the board may promulgate rules, in accordance with  
29 the provisions of section eight of this article, that establish  
30 the criteria for review of discount contracts, which shall  
31 include that: (i) No discount shall be approved by the  
32 board which constitutes an amount below the cost to the  
33 hospital; (ii) the cost of any discount contained in the  
34 contract will not be shifted to any other purchaser or  
35 third-party payor; (iii) the discount will not result in a  
36 decrease in the hospital's average number of medicare,  
37 medicaid or uncompensated care patients served during  
38 the previous three fiscal years; and (iv) the discount is  
39 based upon criteria which constitutes a quantifiable  
40 economic benefit to the hospital. The board may define by  
41 rule what constitutes "cost" in subparagraphs (i) and (ii)  
42 of this paragraph; "purchaser" in subparagraph (iii) of  
43 this paragraph; and "economic benefit" in subparagraph  
44 (iv) of this paragraph. Any rules promulgated pursuant to  
45 this subsection may be filed as emergency rules. All  
46 information submitted to the board shall be certified by  
47 the hospital's chief executive officer and chief financial

48 officer as to its accuracy and truthfulness;

49 (3) The rates of payment for medicaid are reasonable  
50 and adequate to meet the costs which must be incurred by  
51 efficiently and economically operated hospitals subject to  
52 the provisions of this article. The rates shall take into  
53 account the situation of hospitals which serve dispropor-  
54 tionate numbers of low income patients and assure that  
55 individuals eligible for medicaid have reasonable access,  
56 taking into account geographic location and reasonable  
57 travel time, to inpatient hospital services of adequate  
58 quality;

59 (4) The rates are equitable in comparison to prevailing  
60 rates for similar services in similar hospitals as deter-  
61 mined by the board; and

62 (5) In no event shall a hospital's receipt of emergency  
63 disaster funds from the federal government be included in  
64 the hospital's gross revenues for either rate-setting or  
65 assessment purposes.

66 (b) In the interest of promoting efficient and appropriate  
67 utilization of hospital services, the board shall review and  
68 make findings on the appropriateness of projected gross  
69 revenues for a hospital as the revenues relate to charges  
70 for services and anticipated incidence of service.

71 (c) When applying the criteria set forth in subsections (a)  
72 and (b) of this section, the board shall consider all relevant  
73 factors, including, but not limited to, the following: The  
74 economic factors in the hospital's area; the hospital's  
75 efforts to share services; the hospital's efforts to employ  
76 less costly alternatives for delivering substantially similar  
77 services or producing substantially similar or better  
78 results in terms of the health status of those served; the  
79 efficiency of the hospital as to cost and delivery of health  
80 care; the quality of care; occupancy level; a fair return on  
81 invested capital, not otherwise compensated for; whether  
82 the hospital is operated for profit or not for profit; costs of  
83 education; and income from any investments and assets  
84 not associated with patient care, including, but not limited  
85 to, parking garages, residences, office buildings, and  
86 income from related organizations and restricted funds

87 whether or not associated with patient care.

88 (d) Wages, salaries and benefits paid to or on behalf of  
89 nonsupervisory employees of hospitals subject to this  
90 article are not subject to review unless the board first  
91 determines that the wages, salaries and benefits may be  
92 unreasonably or uncustomarily high or low. This exemp-  
93 tion does not apply to accounting and reporting require-  
94 ments contained in this article, nor to any that may be  
95 established by the board. The term "nonsupervisory  
96 personnel", for the purposes of this section, means, but is  
97 not limited to, employees of hospitals subject to the  
98 provisions of this article who are paid on an hourly basis.

99 (e) Reimbursement of capital and operating costs for  
100 new services and capital projects subject to article two-d  
101 of this chapter shall not be allowed by the board if the  
102 costs were incurred subsequent to the eighth day of July,  
103 one thousand nine hundred seventy-seven, unless they  
104 were exempt from review or approved: (i) By the state  
105 health planning and development agency prior to the first  
106 day of July, one thousand nine hundred eighty-four; or (ii)  
107 thereafter, pursuant to the provisions of article two-d of  
108 this chapter.

109 (f) The board shall consult with relevant licensing  
110 agencies and may require them to provide written findings  
111 with regard to their statutory functions and information  
112 obtained by them in the pursuit of those functions. Any  
113 licensing agency empowered to suggest or mandate  
114 changes in buildings or operations of hospitals shall give  
115 notice to the board together with any findings.

116 (g) A hospital shall file a complete rate application with  
117 the board on an annual basis a minimum of seventy-five  
118 days prior to the beginning of its fiscal year. If the  
119 application is filed and determined to be complete by the  
120 board sixty days prior to the beginning of the hospital's  
121 fiscal year, and no hearing is requested on the application,  
122 the board shall set the rates in advance of the year during  
123 which they apply and shall not adjust the rates for costs  
124 actually incurred: *Provided*, That if the board does not  
125 establish rates by the beginning of the hospital's fiscal

126 year, and a hearing has not been requested, the board shall  
127 establish rates retroactively to the beginning of the hospi-  
128 tal's fiscal year: *Provided, however,* That if the board  
129 does not establish rates by the beginning of the hospital's  
130 fiscal year, and a hearing has been requested, the board  
131 may establish rates retroactively to the beginning of the  
132 fiscal year. This subsection shall not apply to the proce-  
133 dure set forth in subsection (c), section twenty-one of this  
134 article.

135 (h) No hospital may charge for services at rates in excess  
136 of those established in accordance with the requirements  
137 of and procedures set forth in this article.

138 (i) Notwithstanding any other provision of this article,  
139 the board shall approve all requests for rate increases by  
140 hospitals which are licensed for one hundred beds or less  
141 and which are not located in a standard metropolitan  
142 statistical area where the rate of increase is equal to or  
143 less than the lowest rate of inflation as established by a  
144 recognized inflation index for either the national or  
145 regional hospital industry. The board may, by rule,  
146 impose reporting requirements to ensure that a hospital  
147 does not exceed the rate of increases permitted in this  
148 section.

149 (j) Notwithstanding any other provision of this article,  
150 the board shall develop an expedited review process  
151 applicable to all hospitals licensed for more than one  
152 hundred beds or that are located in a standard metropoli-  
153 tan statistical area for rate increase requests which may  
154 be based upon a recognized inflation index for the na-  
155 tional or regional hospital industry.

156 (k) The board may require hospitals to file such addi-  
157 tional information as it deems necessary to evaluate a  
158 market-driven system of rate setting.

**§16-29B-23. Utilization review and quality assurance; quality  
assurance advisory group.**

1 (a) In order to avoid unnecessary or inappropriate  
2 utilization of health care services and to ensure high  
3 quality health care, the board shall establish a utilization

4 review and quality assurance program. The board shall  
5 coordinate this program with utilization review and peer  
6 review programs presently established in state agencies,  
7 hospital services and health service corporations, hospitals  
8 or other organizations.

9 (b) With the assistance of the above-mentioned entities,  
10 and after public hearings, the board shall develop a plan  
11 for the review, on a sampling basis, of the necessity of  
12 admissions, length of stay and quality of care rendered at  
13 said hospitals.

14 (c) The board shall monitor identified problem areas and  
15 shall impose such sanctions and provide such incentives as  
16 necessary to ensure high quality and appropriate services  
17 and utilization in hospitals under the jurisdiction of this  
18 article.

19 (d) To assist the board in its efforts under this section,  
20 the board shall create a quality assurance advisory group  
21 and appoint one of the board's members as chairman of  
22 the group. The group shall be composed of representatives  
23 of consumers, providers, payors and regulating agencies.

**§16-29B-25. Public disclosure.**

1 From time to time, the board shall engage in or carry out  
2 analyses and studies relating to health care costs, the  
3 financial status of any health care provider subject to the  
4 provisions of this article or any other appropriate related  
5 matters, and it shall be empowered to publish and dissem-  
6 inate any information which would be useful to members  
7 of the general public in making informed choices about  
8 health care providers.

**§16-29B-26. Exemptions from state antitrust laws.**

1 . Actions of the board shall be exempt from antitrust  
2 action as provided in section five, article eighteen, chapter  
3 forty-seven of this code. Any actions of health care  
4 providers under the board's jurisdiction, when made in  
5 compliance with orders, directives, rules or regulations  
6 issued or promulgated by the board, shall likewise be  
7 exempt. Health care providers shall be subject to the  
8 antitrust guidelines of the federal trade commission and

9 the department of justice.

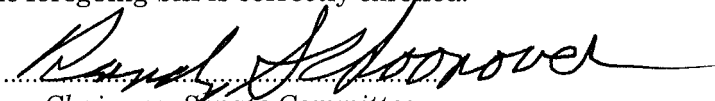
**§16-29B-27. Penalties for violations.**

1 In addition to civil remedies set forth, any person or  
2 health care provider violating any provision of this article  
3 or any valid order or rule lawfully established hereunder  
4 shall be guilty of a misdemeanor and, upon conviction  
5 thereof, shall be punished by a fine of not more than one  
6 thousand dollars. Each day of a continuing violation after  
7 conviction shall be considered a separate offense. No fines  
8 assessed may be considered part of the hospital's costs in  
9 the regulation of its rates.

**§16-29B-28. Termination date.**

1 Pursuant to the provisions of section four, article ten,  
2 chapter four of this code, the health care authority shall  
3 continue to exist until the first day of July, one thousand  
4 nine hundred ninety-nine, to allow for a completion of an  
5 audit by the joint committee on government operations.

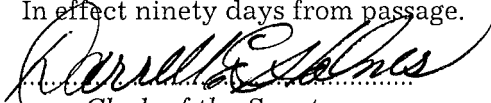
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

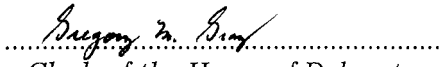
  
.....  
Chairman, Senate Committee

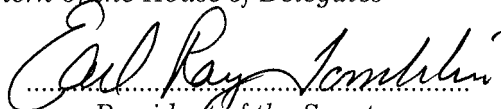
  
.....  
Chairman House Committee

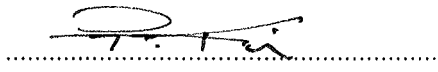
Originated in the Senate.

In effect ninety days from passage.

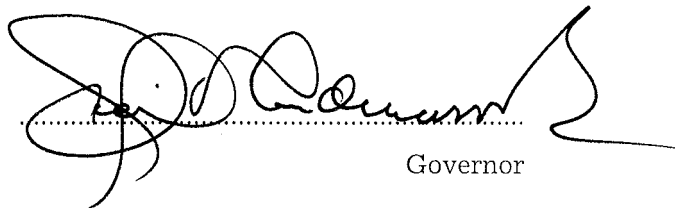
  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 5th  
day of May ....., 1997.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/28/97

Time 2:40pm