

**Senate Bill No. 386**

(By Senators Stollings, Laird, Prezioso, Unger, Boley, M. Hall  
and Barnes)

[Introduced January 20, 2014; referred to the Committee on Health  
and Human Resources; and then to the Committee on Government  
Organization.]

**Interim  
Bill**

A BILL to repeal §9-2-1a, §9-2-6a, §9-2-9b, §9-2-9c and §9-2-12a of  
the Code of West Virginia, 1931, as amended; to repeal §9-4C-  
2, §9-4C-2a, §9-4C-2b, §9-4C-3, §9-4C-4, §9-4C-5, §9-4C-6, §9-  
4C-7, §9-4C-8, §9-4C-9, §9-4C-10 and §9-4C-11 of said code; to  
repeal §9-5-8a, §9-5-11a, §9-5-11b, §9-5-11c and §9-5-16a of  
said code; to repeal §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11,  
§9-6-12, §9-6-13, §9-6-14 and §9-6-15 of said code; to repeal  
§9-7-3a, §9-7-5a and §9-7-6a of said code; to amend and  
reenact §9-1-1 and §9-1-2 of said code; to amend said code by  
adding thereto two new sections, designated §9-1-3 and §9-1-4;  
to amend and reenact §9-2-1, §9-2-4, §9-2-5, §9-2-7, §9-2-8,  
§9-2-9, §9-2-10, §9-2-11 and §9-2-12 of said code; to amend  
said code by adding thereto three new sections, designated §9-

1 2-13, §9-2-14 and §9-2-15; to amend and reenact §9-3-1, §9-3-  
2 2, §9-3-3, §9-3-4 and §9-3-5 of said code; to amend and  
3 reenact §9-4-1, §9-4-2, §9-4-3 and §9-4-4 of said code; to  
4 amend said code by adding thereto nine new sections,  
5 designated §9-4-5, §9-4-6, §9-4-7, §9-4-8, §9-4-9, §9-4-10,  
6 §9-4-11, §9-4-12 and §9-4-13; to amend and reenact §9-4A-1,  
7 §9-4A-2, §9-4A-3 and §9-4A-4 of said code; to amend said code  
8 by adding thereto a new section, designated §9-4A-5; to amend  
9 and reenact §9-4B-1, §9-4B-2, §9-4B-3, §9-4B-4, §9-4B-5, §9-  
10 4B-6, §9-4B-7 and §9-4B-8 of said code; to amend and reenact  
11 §9-4C-1 of said code; to amend and reenact §9-4D-1, §9-4D-2,  
12 §9-4D-3, §9-4D-4, §9-4D-5, §9-4D-6, §9-4D-7, §9-4D-8 and §9-  
13 4D-9 of said code; to amend said code by adding thereto a new  
14 section, designated §9-4D-10; to amend and reenact §9-4E-1,  
15 §9-4E-2 and §9-4E-3 of said code; to amend said code by adding  
16 thereto nine new sections, designated §9-4E-4, §9-4E-5, §9-4E-  
17 6, §9-4E-7, §9-4E-8, §9-4E-9, §9-4E-10, §9-4E-11 and §9-4E-12;  
18 to amend and reenact §9-5-1, §9-5-2, §9-5-3, §9-5-4, §9-5-5,  
19 §9-5-6, §9-5-7, §9-5-8, §9-5-9, §9-5-10, §9-5-11, §9-5-12, §9-  
20 5-13, §9-5-14, §9-5-15, §9-5-16, §9-5-17, §9-5-18, §9-5-19,  
21 §9-5-20 and §9-5-21 of said code; to amend said code by adding  
22 thereto a new section, designated §9-5-22; to amend and  
23 reenact §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5 and §9-6-6 of

1       said code; to amend and reenact §9-7-1, §9-7-2, §9-7-3, §9-7-  
2       4, §9-7-5, §9-7-6, §9-7-7, §9-7-8 and §9-7-9 of said code; and  
3       to amend said code by adding thereto seven new sections,  
4       designated §9-7-10, §9-7-11, §9-7-12, §9-7-13, §9-7-14, §9-7-  
5       15 and §9-7-16, all relating to the Department of Health and  
6       Human Resources.

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

8       That §9-2-1a, §9-2-6a, §9-2-9b, §9-2-9c and §9-2-12a of the  
9 Code of West Virginia, 1931, as amended, be repealed; that §9-4C-2,  
10 §9-4C-2a, §9-4C-2b, §9-4C-3, §9-4C-4, §9-4C-5, §9-4C-6, §9-4C-7,  
11 §9-4C-8, §9-4C-9, §9-4C-10 and §9-4C-11 of said code be repealed;  
12 that §9-5-8a, §9-5-11a, §9-5-11b, §9-5-11c and §9-5-16a of said  
13 code be repealed; that §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11,  
14 §9-6-12, §9-6-13, §9-6-14 and §9-6-15 of said code be repealed;  
15 that §9-7-3a, §9-7-5a and §9-7-6a of said code be repealed; that  
16 §9-1-1 and §9-1-2 of said code be amended and reenacted; that said  
17 code be amended by adding thereto two new sections, designated §9-  
18 1-3 and §9-1-4; that §9-2-1, §9-2-4, §9-2-5, §9-2-7, §9-2-8, §9-2-  
19 9, §9-2-10, §9-2-11 and §9-2-12 of said code be amended and  
20 reenacted; that said code be amended by adding thereto three new  
21 sections, designated §9-2-13, §9-2-14 and §9-2-15; that §9-3-1, §9-  
22 3-2, §9-3-3, §9-3-4 and §9-3-5 of said code be amended and  
23 reenacted; that §9-4-1, §9-4-2, §9-4-3 and §9-4-4 of said code be

1 amended and reenacted; that said code be amended by adding thereto  
2 nine new sections, designated §9-4-5, §9-4-6, §9-4-7, §9-4-8, §9-4-  
3 9, §9-4-10, §9-4-11, §9-4-12 and §9-4-13; that §9-4A-1, §9-4A-2,  
4 §9-4A-3 and §9-4A-4 of said code be amended and reenacted; that  
5 said code be amended by adding thereto a new section, designated  
6 §9-4A-5; that §9-4B-1, §9-4B-2, §9-4B-3, §9-4B-4, §9-4B-5, §9-4B-6,  
7 §9-4B-7 and §9-4B-8 of said code be amended and reenacted; that §9-  
8 4C-1 of said code be amended and reenacted; that §9-4D-1, §9-4D-2,  
9 §9-4D-3, §9-4D-4, §9-4D-5, §9-4D-6, §9-4D-7, §9-4D-8 and §9-4D-9 of  
10 said code be amended and reenacted; that said code be amended by  
11 adding thereto a new section, designated §9-4D-10; that §9-4E-1,  
12 §9-4E-2 and §9-4E-3 of said code be amended and reenacted; that  
13 said code be amended by adding thereto nine new sections,  
14 designated §9-4E-4, §9-4E-5, §9-4E-6, §9-4E-7, §9-4E-8, §9-4E-9,  
15 §9-4E-10, §9-4E-11 and §9-4E-12; that §9-5-1, §9-5-2, §9-5-3, §9-5-  
16 4, §9-5-5, §9-5-6, §9-5-7, §9-5-8, §9-5-9, §9-5-10, §9-5-11, §9-5-  
17 12, §9-5-13, §9-5-14, §9-5-15, §9-5-16, §9-5-17, §9-5-18, §9-5-19,  
18 §9-5-20 and §9-5-21 of said code be amended and reenacted; that  
19 said code be amended by adding thereto a new section, designated  
20 §9-5-22; that §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5 and §9-6-6 of  
21 said code be amended and reenacted; that §9-7-1, §9-7-2, §9-7-3,  
22 §9-7-4, §9-7-5, §9-7-6, §9-7-7, §9-7-8 and §9-7-9 of said code be  
23 amended and reenacted; and that said code be amended by adding

1 thereto seven new sections, designated §9-7-10, §9-7-11, §9-7-12,  
2 §9-7-13, §9-7-14, §9-7-15 and §9-7-16, all to read as follows:

3 **ARTICLE 1. Department of Health and Human Resources.**

4 **§9-1-1. Continuation of Department of Health and Human Resources.**

5       The Department of Health and Human Resources is continued.  
6 The department was first created as the state department of public  
7 assistance by chapter one, Acts of the Legislature, first  
8 extraordinary session, 1936, and later reconstituted as the state  
9 department of welfare by chapter one hundred ten, Acts of the  
10 Legislature, regular session, 1961, shall be continued and  
11 organized as provided and authorized by this chapter.

12 **§9-1-2. Definitions.**

13       The words and terms when used in this chapter have the  
14 following meanings:

15       (1) "Approved accounts" means any retirement account that the  
16 secretary has determined is not to be included as an asset in  
17 determining the eligibility of an individual for participation in  
18 the buy-in program. Approved accounts may include, but not be  
19 limited to, private retirement accounts such as individual  
20 retirement accounts; other individual accounts; and employer-  
21 sponsored retirement plans such as 401(k) plans, Keogh plans and  
22 employer pension plans.

23       (2) "Asset disregard" means, with regard to the state's

1 medical assistance program, disregarding any assets or resources in  
2 an amount equal to the insurance benefit payments that are made to  
3 or on behalf of an individual who is a beneficiary under a  
4 qualified long-term care insurance partnership policy.

5 (3) "Assistance" means money payments, medical care,  
6 transportation and other goods and services necessary for the  
7 health or welfare of individuals, including guidance, counseling  
8 and other welfare services and shall include Federal-state  
9 assistance, federal assistance and state assistance.

10 (4) "At-risk family" means a group of persons living in the  
11 same household, living below the federally designated poverty  
12 level, lacking the resources to become self-supporting and  
13 consisting of a dependent minor child or children living with a  
14 parent, stepparent or caretaker-relative; an "at-risk family" may  
15 include an unmarried minor parent and his or her dependent child or  
16 children who live in an adult-supervised setting;

17 (5) "Autism spectrum disorder" means any pervasive  
18 developmental disorder, including autistic disorder, Asperger's  
19 Syndrome, Rett syndrome, childhood disintegrative disorder, or  
20 Pervasive Development Disorder as defined in the most recent  
21 edition of the Diagnostic and Statistical Manual of Mental  
22 Disorders of the American Psychiatric Association.

23 (6) "Basic coverage group" means an optional coverage group as

1 defined by the Ticket to Work and Work Incentives Improvement Act  
2 of 1999.

3 (7) "Benefits" means money payments, goods, services, or any  
4 other thing of value.

5 (8) "Beneficiary" or "participant" means any parent, work  
6 eligible individuals or caretaker-relative in an at-risk family who  
7 receives cash assistance for himself or herself and family members;

8 (9) "Board and Care Facility" means a residential setting  
9 where two or more unrelated adults receive nursing services or  
10 personal care services.

11 (10) "Bureau" means the Bureau of Medical Services.

12 (11) "Caretaker-relative" means grandparents or other  
13 nonparental caretakers not included in the assistance group or  
14 receiving cash assistance directly;

15 (12) "Cash assistance" means temporary assistance for needy  
16 families;

17 (13) "Challenge" means any fact, circumstance or situation  
18 that prevents a person from becoming self-sufficient or from  
19 seeking, obtaining or maintaining employment of any kind, including  
20 physical or mental disabilities, lack of education, testing,  
21 training, counseling, child care arrangements, transportation,  
22 medical treatment or substance abuse treatment;

23 (14) "Claim" means an application for payment for goods or

1 services provided under the medical programs of the Department of  
2 Health and Human Resources.

3 (15) "Clinical trial" means a study that determines whether  
4 new drugs, treatments or medical procedures are safe and effective  
5 on humans. To determine the efficacy of experimental drugs,  
6 treatments or procedures, a study is conducted in four phases  
7 including the following:

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

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

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

19 (16) "Community or personal development" means activities  
20 designed or intended to eliminate challenges to participation in  
21 self-sufficiency activities. These activities are to provide  
22 community benefit and enhance personal responsibility, including,  
23 but not limited to, classes or counseling for learning life skills



1 or parenting, dependent care, job readiness, volunteer work,  
2 participation in sheltered workshops or substance abuse treatment;

3 (17) "Cooperative group" means a formal network of facilities  
4 that collaborate on research projects and have an established NIH-  
5 approved peer review program operating within the group. This  
6 includes:

7 (A) The national cancer institute clinical cooperative group;

8 (B) The national cancer institute community clinical oncology  
9 program;

10 (C) The AIDS clinical trial group; and

11 (D) The community programs for clinical research in AIDS.

12 (18) "Copayment" means a fixed fee to be paid by the patient  
13 at the time of each office visit, outpatient service or filling of  
14 prescriptions.

15 (19) "Cost-sharing" means the eligible participant will  
16 participate in the cost of the program by paying the enrollment  
17 fee, monthly premiums and copayments if established by the  
18 department.

19 (20) "Countable income" means income that does not exceed two  
20 hundred fifty percent of the federal poverty level: *Provided*, That  
21 for purposes of this article, countable income does not include:

22 (A) The income of the individual's spouse, parent or guardian  
23 with whom he or she resides; and

1 (B) Income disregarded under the state Medicaid plan's  
2 financial methodology, including income disregarded under the  
3 federal supplemental security income program (42 U.S.C. §1382) as  
4 impairment-related work expenses.

5 (21) "Countable resources" means earned and unearned income:  
6 *Provided*, That countable resources do not include:

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

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

9 (C) Retirement accounts; and

10 (D) Independence accounts.

11 (22) "Department" means the Department of Health and Human  
12 Resources.

13 (23) "Disability" means a medically determinable physical or  
14 mental condition that:

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

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

20 (C) Is a disability defined by social security administration  
21 criteria and has been determined by either the social security  
22 administration or the department.

23 (24) "Domiciled in this state" means being physically present

1 in West Virginia accompanied by an intention to remain in West  
2 Virginia for an indefinite period of time, and to make West  
3 Virginia his or her permanent home.

4 (25) "Education and training" means hours spent regularly  
5 attending and preparing for classes in any approved course of  
6 schooling or training;

7 (26) "Eligible buy-in participant" means an individual who:

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

9 (B) Has a disability as defined herein;

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

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

15 (E) Has countable resources that do not exceed the resource  
16 limits as defined in this article; and

17 (F) Has countable income that does not exceed the income  
18 limits as defined in this article.

19 (27) "Enrollment fee" means a one-time fee to participate in  
20 the Medicaid buy-in program.

21 (28) "Entity" means any corporation, association, partnership,  
22 limited liability company, or other legal entity.

23 (29) "Estate" means all real and personal property and other

1 assets included within the individual's estate as defined in the  
2 state's probate law.

3 (30) "Family assessments" means evaluation of the following:  
4 Work skills, prior work experience, employability, education and  
5 challenges to becoming self-sufficient such as mental health and  
6 physical health issues along with lack of transportation and child  
7 care.

8 (31) "FDA" means the federal food and drug administration.

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

12 (33) "Federal poverty level" means the level of personal or  
13 family income below which one is classified as poor according to  
14 federal governmental standards, commonly referred to as the federal  
15 poverty guidelines which are issued and printed each year in the  
16 federal register.

17 (34) "Federal-state assistance" means and includes:

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

23 (B) All forms of aid, care, assistance and services to

1 persons, which are authorized by, and who are authorized to receive  
2 the same under and by virtue of, any act of Congress, other than  
3 the federal social security act, as amended, for distribution  
4 through the department to recipients of any form of aid, care,  
5 assistance and services to persons designated or referred to in  
6 paragraph (A) and to recipients of state assistance.

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

12 (36) "Financial Exploitation" means the intentional  
13 misappropriation or misuse of funds or assets of another.

14 (37) "General relief" means cash or its equivalent in services  
15 or commodities expended for care and assistance to an indigent  
16 person other than for care in a county infirmary, child shelter or  
17 similar institution.

18 (38) "Income" means money earned from employment wages or  
19 self-employment earnings and unearned money received from any other  
20 source.

21 (39) "Independence accounts" mean department-approved accounts  
22 established with the department solely by funds paid from the  
23 earned income of an eligible buy-in participant to cover expenses

1 necessary to enhance or maintain his or her independence or  
2 increase employment opportunities. Approved expenditures from the  
3 funds may include: Educational expenses; work-related expenses;  
4 home purchase or modification; transportation; medical expenses;  
5 assistive technology and related services; or for short-term living  
6 expenses in times of qualified emergencies as determined by the  
7 department.

8 (40) "Indigent person" means any person who is domiciled in  
9 this state and who is actually in need as defined by department  
10 rules and has not sufficient income or other resources to provide  
11 for such need as determined by the department.

12 (41) "Life-threatening condition" means that the member has a  
13 terminal condition or illness that according to current diagnosis  
14 has a high probability of death within two years, even with  
15 treatment with an existing generally accepted treatment protocol.

16 (42) "Liquid assets" means cash or assets payable in cash on  
17 demand, including financial instruments that can be converted to  
18 cash within twenty working days. National, state and local  
19 holidays are not working days.

20 (43) "Long-term care insurance" means a policy described in  
21 section four, article fifteen-a, chapter thirty-three of this code.

22 (44) "Long-term care partnership program" means a qualified  
23 state long-term care insurance partnership as defined in 42 U.S.C.

1 1396, Section 1917(b) of the Social Security Act.

2 (45) "Medicaid" means that assistance provided under a state  
3 plan implemented pursuant to the provisions of subchapter nineteen,  
4 chapter seven, Title 42, United States Code, as that chapter has  
5 been and may hereafter be amended.

6 (46) "Medical services" means medical, surgical, dental and  
7 nursing services, and other remedial services recognized by law, in  
8 the home, office, hospital, clinic and any other suitable place,  
9 provided or prescribed by persons permitted or authorized by law to  
10 give such services; the services to include drugs and medical  
11 supplies, appliances, laboratory, diagnostic and therapeutic  
12 services, nursing home and convalescent care and such other medical  
13 services and supplies as may be prescribed by the persons.

14 (47) "Member" means a policyholder, subscriber, insured,  
15 certificate holder or a covered dependent of a policyholder,  
16 subscriber, insured or certificate holder.

17 (48) "Minor child head of household" means an emancipated  
18 minor under the age of eighteen years;

19 (49) "Multiple project assurance contract" means a contract  
20 between an institution and the federal department of health and  
21 human services that defines the relationship of the institution to  
22 the federal department of health and human services and sets out  
23 the responsibilities of the institution and the procedures that

1 will be used by the institution to protect human subjects.

2 (50) "NIH" means the National Institutes of Health.

3 (51) "Nonrecipient parent" means an adult or adults excluded  
4 or disqualified by federal or state law from receiving cash  
5 assistance;

6 (52) "Patient cost" means the routine costs of a medically  
7 necessary health care service that is incurred by a member as a  
8 result of the treatment being provided pursuant to the protocols of  
9 the clinical trial. Routine costs of a clinical trial include all  
10 items or services that are otherwise generally available to  
11 beneficiaries of the insurance policies. "Patient cost" does not  
12 include:

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

14 (B) The cost of nonhealth care services that a patient may be  
15 required to receive as a result of the treatment being provided to  
16 the member for purposes of the clinical trial;

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

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

23 (E) Costs that would not be covered under the participant's



1 policy, plan, or contract for noninvestigational treatments;

2 (F) Adverse events during treatment are divided into those  
3 that reflect the natural history of the disease, or its  
4 progression, and those that are unique in the experimental  
5 treatment. Costs for the former are the responsibility of the  
6 payor as provided in article four, and costs for the later are the  
7 responsibility of the sponsor. The sponsor shall hold harmless any  
8 payor for any losses and injuries sustained by any member as a  
9 result of his or her participation in the clinical trial.

10 (53) "Person" means any individual, corporation, association,  
11 partnership, proprietor, agent, assignee or entity.

12 (54) "Personal responsibility contract" means a written  
13 agreement entered into by the department and a beneficiary for  
14 purposes of participation in the West Virginia Works Program;

15 (55) "Premium" means a monthly fee paid by an eligible buy-in  
16 participant to continue participation in the program.

17 (56) "Provider" means any individual or entity furnishing  
18 goods or services under the medical programs of the Department of  
19 Health and Human Resources.

20 (57) "Reasonable funeral service expenses" means expenses for  
21 services provided by a funeral director for the disposition of  
22 human remains.

23 (58) "Recipient" means a person who applies for and receives

1 assistance under the Medicaid Program.

2       (59) "Secretary" means the Secretary of the Department of  
3 Health and Human Resources.

4       (60) "Services" means nursing facility services, home and  
5 community-based services, and related hospital and prescription  
6 drug services for which an individual received Medicaid medical  
7 assistance.

8       (61) "State assistance" means all forms of aid, care,  
9 assistance, services and general relief made possible solely out of  
10 state, county and private appropriations to or on behalf of  
11 indigent persons.

12       (62) "State Medicaid agency" means the Bureau of Medical  
13 Services within the department that is the federally designated  
14 single state agency charged with administration and supervision of  
15 the state Medicaid program.

16       (63) "Subsidized employment" means employment with earnings  
17 provided by an employer who receives a subsidy from the department  
18 for the creation and maintenance of the employment position.

19       (64) "Support services" includes, but is not limited to, the  
20 following services:     Child care; Medicaid; transportation  
21 assistance; information and referral; resource development services  
22 which includes assisting families to receive child support and  
23 supplemental security income; family support services which

1 includes parenting, budgeting and family planning; relocation  
2 assistance; and mentoring services.

3 (65) "Temporary assistance to needy families" means the  
4 federal program funded under Part A, Title IV of the Social  
5 Security Act, codified at 42 U.S.C. §601, *et. seq.*

6 (66) "Third-party" means an individual or entity that is  
7 alleged to be liable to pay all or part of the costs of a  
8 recipient's medical treatment and medical-related services for  
9 personal injury, disease, illness or disability, as well as any  
10 entity including, but not limited to, a business organization,  
11 health service organization, insurer, or public or private agency  
12 acting by or on behalf of the allegedly liable third-party.

13 (67) "Transitional assistance" means medical assistance, food  
14 stamp assistance, child care and supportive services as defined by  
15 the secretary and as funding permits.

16 (68) "Two-parent family" means two parents with a common child  
17 residing in the same household and included in a common West  
18 Virginia Works grant payment or, two parents with a common child  
19 residing in the same home and one or both of the parents are work  
20 eligible individuals, but are excluded from the West Virginia Works  
21 payments unless the exclusion is due to an exemption as provided in  
22 article five.

23 (69) "Unit" means the Medicaid Fraud Control Unit established

1 under article.

2 (70) "Unsubsidized employment" means employment with earnings  
3 provided by an employer who does not receive a subsidy from the  
4 department for the creation and maintenance of the employment  
5 position.

6 (71) "Vocational educational training" means organized  
7 educational programs, not to exceed twelve months for any  
8 individual, that are directly related to the preparation of  
9 individuals for employment in current or emerging occupations  
10 requiring training other than a baccalaureate or advance degree.

11 (72) "Work" means unsubsidized employment, subsidized  
12 employment, work experience, community or personal development and  
13 education and training.

14 (73) "Work eligible individual" means an adult or minor child  
15 head-of-household receiving assistance under the West Virginia  
16 Works Program or a nonrecipient parent living with a child  
17 receiving the assistance; and

18 (74) "Work experience" means a publicly assisted work  
19 activity, including work associated with the refurbishing of  
20 publicly assisted housing, performed in return for program benefits  
21 that provide general skills, training, knowledge and work habits  
22 necessary to obtain employment. This activity must be supervised  
23 daily and on an ongoing basis by an employer, work site sponsor or

1 other responsible party.

2 **§9-1-3. Departmental agencies.**

3 The department consists of those agencies as prescribed in  
4 section one, article two, chapter five-f.

5 **§9-1-4. Responsibility and powers of department; information and  
6 data to be supplied by other agencies.**

7 (a) The department is charged with administering the state  
8 assistance programs, for which responsibility it shall have:

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

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

19 (b) Notwithstanding any other provision of this code to the  
20 contrary, each department, agency, commission or board of state  
21 government shall make available to the department such information  
22 and data as each department, agency, commission or board may  
23 collect about any applicant for or recipient of any type of federal

1 or state assistance upon such terms as may be prescribed by the  
2 Governor, if the information and data would be relevant in  
3 determining whether the applicant or recipient is qualified or  
4 eligible for any assistance, and after the information and data  
5 have been obtained by the department, the same shall be used only  
6 by the department in carrying out and discharging its powers,  
7 duties and responsibilities.

8 **ARTICLE 2. Secretary of Department of Health and Human Resources.**

9 **§9-2-1. Secretary of the department qualifications.**

10 (a) The administrative head of the department is the  
11 secretary, who shall be appointed and compensated, as provided by  
12 section two-a, article seven, chapter six of this code.

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

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

23 **§9-2-4. Organization of department.**

1 Consistent with the provisions of section one, article two,  
2 chapter five-f of this code, the secretary shall organize the  
3 department into such offices, divisions, agencies and other  
4 administrative units.

5 **§9-2-5. Powers of secretary.**

6 The secretary may:

7 (1) Promulgate, amend, revise and rescind department rules  
8 respecting the organization of the department and the execution and  
9 administration of those powers, duties and responsibilities granted  
10 and assigned by law to the department and the secretary.

11 (2) Promulgate, amend, revise and rescind department rules and  
12 regulations respecting qualifications for receiving the different  
13 classes of assistance consistent with or permitted by federal laws,  
14 rules and policies, but not inconsistent with state law: *Provided,*  
15 That the rules and policies respecting qualifications shall permit  
16 the expenditure of state funds to pay for care rendered in any  
17 birthing center licensed under the provisions of article two-e,  
18 chapter sixteen of this code by a licensed nurse midwife or midwife  
19 as this occupation is defined in section one, article fifteen,  
20 chapter thirty of this code and which care is within the scope of  
21 duties for a licensed nurse midwife or midwife.

22 (3) Sign and execute in the name of the state by the  
23 department any contract or agreement: *Provided,* That the

1 provisions of article three, chapter five-a of this code are  
2 followed.

3       (4) Sign and execute a contract to implement professional  
4 health care, managed care, actuarial and health care related  
5 monitoring, quality review/utilization, claims processing and  
6 independent professional consultant contracts for the Medicaid  
7 program: *Provided*, That the provisions of article three, chapter  
8 five-a are followed: *Provided, however*, That a contract awarded  
9 under the agency purchasing process from April 1, 2009, to January  
10 2, 2013, remains in full force and effect and the secretary retains  
11 sole authority to review, approve and issue changes to contracts  
12 issued under the former purchasing process, and is responsible for  
13 challenges, disputes, protests, and legal actions related to such  
14 contracts.

15       (5) Establish special funds as may be required by the federal  
16 Social Security Act, as amended, or by any other Act of Congress,  
17 in order for this state to take full advantage of the benefits and  
18 provisions thereof relating to the federal-state assistance and  
19 federal assistance programs administered by the department and to  
20 make payments into and disbursements out of any such special fund  
21 or funds in accordance with the requirements of the federal Social  
22 Security Act, as amended, or any other Act or Acts of Congress, and  
23 in accordance with applicable state law and the objects and



1 purposes of this chapter.

2       (6) Accept gifts or grants, whether in money, land, services  
3 or materials, which gift or gifts, if in the form of moneys, shall  
4 be placed in a separate fund and expended solely for the purpose of  
5 public assistance programs. No part of this special fund shall  
6 revert to the General Revenue Funds of this state. No expenses  
7 incurred pursuant to this special fund shall be a charge against  
8 the General Funds of this state.

9       (7) Establish within the department an Office of Inspector  
10 General for the purpose of conducting and supervising  
11 investigations and for the purpose of providing quality control for  
12 the programs of the department. The Office of Inspector General  
13 shall be headed by the Inspector General who shall report directly  
14 to the secretary. Neither the secretary nor any employee of the  
15 department may prevent, inhibit or prohibit the Inspector General  
16 or his or her employees from initiating, carrying out or completing  
17 any investigation, quality control review or other activity  
18 oversight of public integrity by the Office of the Inspector  
19 General. The secretary shall place within the Office of Inspector  
20 General any function he or she deems necessary. Qualification,  
21 compensation and personnel practice relating to the employees of  
22 the Office of the Inspector General, including that of the position  
23 of Inspector General, shall be governed by the classified service

1 provisions of article six, chapter twenty-nine of this code and  
2 rules promulgated thereunder. The Inspector General shall  
3 supervise all personnel of the Office of Inspector General.

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

7 (9) Establish a reimbursement program to provide a maximum  
8 amount of \$250 per claim to employees of the department whose items  
9 of personal property, as defined by legislative rule, are damaged  
10 during the course of employment or other work-related activity as  
11 a result of aggressive behavior by a client or patient receiving  
12 services from the department.

13 (10) Establish and maintain such institutions as are necessary  
14 for the temporary care, maintenance and training of children and  
15 other persons.

16 (11) Prepare and submit state plans which will meet the  
17 requirements of federal laws, rules governing federal-state  
18 assistance and federal assistance and which are not inconsistent  
19 with state law.

20 (12) Provide by rules such review and appeal procedures within  
21 the department as may be required by applicable federal laws and  
22 rules respecting state assistance, federal-state assistance and  
23 federal assistance and as will provide applicants for, and

1 recipients of all, classes of assistance an opportunity to be heard  
2 by the board of Review, a member thereof, or individuals designated  
3 by the board, upon claims involving denial, reduction, closure,  
4 delay or other action or inaction pertaining to public assistance.

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

9 (14) Provide locations for making applications for the various  
10 classes of public assistance.

11 (15) Provide a citizen an opportunity to file objections and  
12 to be heard upon objections to the grant of any class of public  
13 assistance.

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

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

20 (18) Invoke any legal, equitable or special remedies for the  
21 enforcement of the provisions of this chapter.

22 **§9-2-7. State's participation in federal work incentive program.**

23 (a) West Virginia acknowledges that the Congress of the United

1 States has enacted legislation amending the Social Security Act to  
2 permit states to establish work incentive programs. The secretary  
3 may transfer moneys from any appropriate public assistance grant  
4 account under his or her control to the special fund, administered  
5 by the United States Secretary of Labor. Any moneys transferred by  
6 the secretary to the special fund shall be considered as money  
7 expended for grants. The secretary may promulgate rules, establish  
8 plans and perform any other acts necessary to implement this  
9 state's participation in the aforesaid work incentive program.

10 (b) The secretary shall cooperate and coordinate his or her  
11 activities with the Commissioner of the Bureau of Employment  
12 Programs.

13 **§9-2-8. Information and referral services.**

14 (a) Each local office shall compile, maintain and post a  
15 current list of donated food banks and other emergency food  
16 providers in the area served by the local SNAP office and refer  
17 individuals who need food to local programs that may be able to  
18 provide assistance.

19 (b) The department shall use its existing statewide toll free  
20 telephone number to provide emergency food information and to refer  
21 needy individuals to local programs that may be able to provide  
22 assistance. The department shall publish the telephone number for  
23 referrals in the emergency telephone numbers section of local

1 telephone books. The department shall display this telephone  
2 number in all its offices that issue food stamps.

3 **§9-2-9. Secretary to develop Medicaid monitoring and case**  
4 **management.**

5 (a) The secretary shall:

6 (1) Develop a managed care system to monitor the services  
7 provided by the Medicaid program to individual clients;

8 (2) Develop an independent referral service, including the  
9 review of individual cases for abuses of the program; and

10 (3) Develop a schedule for implementation of the managed care  
11 and independent referral system. The managed care system shall  
12 focus on, but not be limited to, the behavioral health and mental  
13 health services.

14 (b) In addition thereto, and in accordance with applicable  
15 federal Medicaid laws, the secretary shall prepare recommendations,  
16 to be submitted to the Joint Committee on Government and Finance.

17 (c) In developing recommendations the secretary shall consider  
18 as options the following:

19 (1) Review of Medicaid services which are optional under  
20 federal Medicaid law and identification of services to be retained,  
21 reduced or eliminated;

22 (2) The elimination, reduction or phase-out of:

23 (A) Services which are not generally available to West

1 Virginia citizens not covered under the state's Medicaid program;  
2 or

3 (B) Services which are not generally covered under group  
4 policies of insurance made available to employees of employers  
5 within the state;

6 (3) The elimination or reduction of services, or reduction of  
7 provider reimbursement rates, for identified services of marginal  
8 utility;

9 (4) Higher reimbursement rates for primary and preventive  
10 care;

11 (5) Changes in fee structure, which may include a system of  
12 prospective payments, and may include establishment of global fees  
13 for identified services or diagnoses including maternity care;

14 (6) Utilization caps for certain health care procedures;

15 (7) Restriction of coverage for cosmetic procedures;

16 (8) Identification of excessive use of certain health care  
17 procedures by individuals and a policy to restrict excessive use;

18 (9) Identification of services which reduce the need for more  
19 costly options for necessary care and retention or expansion of  
20 those programs;

21 (10) Identification of services for which preauthorization is  
22 a requirement for Medicaid reimbursement;

23 (11) Recommendations relating to the development of a

1 demonstration project on long-term care, which demonstration  
2 project may be limited to patients with Alzheimer's disease;

3 (12) A policy concerning the department's procedures for  
4 compliance, monitoring and inspection; and

5 (13) Such other options as may be developed.

6 (c) The secretary shall utilize in-state health care  
7 facilities for inpatient treatment when such facilities are  
8 available. Prior authorization, consistent with applicable  
9 federal law, shall be required for out-of-state inpatient  
10 treatment.

11 (d) The secretary shall report to the Joint Committee on  
12 Government and Finance on the development and implementation of  
13 Medicaid programs that provide incentives to working persons. The  
14 secretary shall consider: Subsidies for low income working  
15 persons; individual or small employer buy-ins to the state Medicaid  
16 Fund; prospective payment systems for primary care physicians in  
17 underserved areas; and a system to improve monitoring of  
18 collections, expenditures, service delivery and utilization.

19 (e) The secretary shall report quarterly to the Joint  
20 Committee on Government and Finance regarding provider and facility  
21 compliance with federal and state Medicaid laws, including, but not  
22 limited to, the following: The number of inspections conducted  
23 during the previous quarter; description of programs, services and

1 facilities reviewed; findings; and recommendations for corrections.

2 (f) The secretary shall, upon federal certification of the  
3 claims management system, ensure that the claims management system  
4 processing Medicaid claims provides detailed quarterly financial  
5 reports to the Legislative Oversight Commission on Health and Human  
6 Resources Accountability.

7 **§9-2-10. Recipients of cash grants.**

8 (a) Within such limitations as may be imposed by applicable  
9 federal laws, rules and regulations, the department shall make  
10 available for public inspection by the thirtieth day of each month  
11 a separate alphabetical list of the names, addresses and amounts of  
12 all persons receiving assistance in the form of cash grants during  
13 the preceding month. This information shall be delivered to the  
14 clerk of each county commission who shall immediately file the same  
15 in his or her office with respect to persons receiving the cash  
16 grants as residents of that county. The information shall be  
17 retained in the files of the clerks of the county commission for a  
18 period of two years from the date of receipt. All information  
19 other than names, addresses and amounts of cash grants shall be  
20 considered as confidential.

21 (b) It is unlawful, for commercial or political purposes of  
22 any nature, for any person or persons, body, association, firm,  
23 corporation or other agency to solicit, disclose, receive, make use



1 of, or to authorize, knowingly permit, participate in, or acquiesce  
2 in the use of, any lists of names of, or any information  
3 concerning, persons applying for or receiving any assistance,  
4 directly or indirectly derived from the records, papers, files, or  
5 communications of the department or acquired in the course of  
6 performance of official duties. The violation of this provision is  
7 a misdemeanor, punishable upon conviction, by a fine of not more  
8 than \$1,000 or imprisonment of not more than six months, or both.

9 (c) For the protection of applicants and recipients of  
10 assistance, the department shall be required to establish  
11 legislative rules governing the custody, use and preservation of  
12 the records, papers, files and communications of the department.

13 **§9-2-11. Attorney General and prosecuting attorneys to render**  
14 **legal services to commissioner.**

15 The Attorney General, the Attorney General's assistants, and  
16 the prosecuting attorneys of the various counties shall render to  
17 the commissioner, without additional compensation, the legal  
18 services as the commissioner shall require of them in the discharge  
19 of the commissioner's duties. This section does not prohibit the  
20 department from developing plans for cooperation with courts,  
21 prosecuting attorneys, and other law-enforcement officials in a  
22 manner as to permit the state and its citizens to obtain maximum  
23 fiscal benefits under federal laws, rules and regulations.

1 **§9-2-12. Visitation by county employees.**

2 Health officers, physicians, and nurses employed by a county  
3 shall, at the request of the commissioner, make home visits to  
4 indigent persons.

5 **§9-2-13. Authority to examine witnesses, administer oaths and take**  
6 **affidavits.**

7 The commissioner and employees of the department may  
8 administer oaths, examine witnesses and take and certify affidavits  
9 in any matter or thing pertaining to the business of the  
10 department.

11 **§9-2-14. Authority to subpoena witnesses and documents when**  
12 **investigating the provision of medical assistance**  
13 **programs.**

14 The commissioner and every duly appointed hearing examiner may  
15 apply, on behalf of any party, to the circuit court of the county  
16 in which the hearing is to be held, or the circuit court in which  
17 the subpoena or subpoena duces tecum is to be served, or the judge  
18 of either such court in vacation, for the issuance of a subpoena or  
19 subpoena duces tecum to compel the attendance of witnesses or the  
20 production of documents, before any hearing or administrative  
21 tribunal convened to consider suspension or termination of any  
22 person or corporation from providing services under the medical

1 assistance programs administered by the department. The  
2 application for a subpoena duces tecum shall state with  
3 particularity any papers or documents requested and upon hearing,  
4 the applicant or party shall notify the court or judge, as the case  
5 may be, of the necessity therefor in such hearing. The court or  
6 judge thereof, prior to issuing the requested subpoena or subpoena  
7 duces tecum, may make any order which justice requires to protect  
8 a party or person from annoyance, embarrassment, oppression or  
9 undue burden or expense. The party who applies for the subpoena or  
10 subpoena duces tecum shall pay the sheriff's fees required for  
11 service of these documents.

12 **§9-2-15. Continuation of present aid; contributions by counties.**

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

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

20 **ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.**

21 **§9-3-1. Application for and granting of federal-state or federal**  
22 **assistance.**

23 Any person domiciled in this state, who shall make, or have

1 made in his or her behalf, an application and who is otherwise  
2 qualified to receive shall be granted federal-state assistance or  
3 federal assistance in such form and amount, to such extent, and for  
4 such period, as authorized by applicable federal and state laws,  
5 rules and regulations and as determined by the department in  
6 accordance with such laws, rules and regulations and within limits  
7 of available funds.

8 **§9-3-2. Application for and granting of state assistance.**

9 Any indigent person domiciled in this state, who shall make,  
10 or have made in his or her behalf, an application and is qualified  
11 to receive the same, shall be granted state assistance in such form  
12 and amount, to such extent, and for such period, as authorized by  
13 applicable state laws, rules and regulations of the department and  
14 as determined by the department in accordance with such laws, rules  
15 and regulations and within limits of available funds.

16 **§9-3-3. Making application, investigation and grant.**

17 (a) All persons may make application for any class of  
18 assistance. Upon receipt of an application for any class of  
19 assistance, the department shall make an investigation as may be  
20 necessary and as the exigency of the case will permit to determine  
21 the eligibility of the applicant for, and the form, amount, extent,  
22 and period of, such assistance.

23 (b) When the department approves an application for any class

1 of assistance, it shall fix the amount, form, extent and period of  
2 the assistance in accordance with applicable federal and state  
3 laws, rules and regulations and within the limits of available  
4 funds.

5 **§9-3-4. Assignment of support obligations.**

6 (a) A recipient of financial assistance under the program of  
7 state and federal assistance established by Title IV of the federal  
8 Social Security Act of 1965, as amended, or any successor act  
9 thereto, shall, as a condition of receiving assistance funded under  
10 this part, assign to the department any right the family member may  
11 have (on behalf of the family member or of any other person for  
12 whom the family member has applied for or is receiving such  
13 assistance) to support from any other person, not exceeding the  
14 total amount of assistance so paid to the family, which accrues  
15 during the period that the family receives assistance under the  
16 program.

17 (b) An applicant for assistance subject to the assignment  
18 established in this section shall, during the application process,  
19 be informed in writing of the nature of the assignment.

20 (c) Any payment of federal and state assistance made to or for  
21 the benefit of any child or children or the caretaker of a child or  
22 children creates a debt due and owing to the department by the  
23 person or persons responsible for the support and maintenance of

1 the child, children or caretaker in an amount equal to the amount  
2 of assistance money paid: *Provided*, That the debt is limited by  
3 the amount established in any court order or final decree of  
4 divorce if the amount in the order or decree is less than the  
5 amount of assistance paid.

6 (d) The assignment under this section shall subrogate the  
7 department to the rights of the child, children or caretaker to the  
8 prosecution or maintenance of any action or procedure existing  
9 under law providing a remedy whereby the department may be  
10 reimbursed for moneys expended on behalf of the child, children or  
11 caretaker. The department shall further be subrogated to the debt  
12 created by any order or decree awarding support and maintenance to  
13 or for the benefit of any child, children or caretaker included  
14 within the assignment under this section and shall be empowered to  
15 receive money judgments and endorse any check, draft, note or other  
16 negotiable document in payment thereof.

17 (e) The assignment created under this section shall be  
18 released upon closure of the assistance case and the termination of  
19 assistance payments except for support and maintenance obligations  
20 accrued and owing at the time of closure which are necessary to  
21 reimburse the department for any balance of assistance payments  
22 made.

23 (f) The department may, at the election of the recipient,

1 continue to receive support and maintenance moneys on behalf of the  
2 recipient following closure of the assistance case and shall  
3 distribute the moneys to the caretaker, child or children.

4 **§9-3-5. Services to persons not otherwise eligible.**

5 (a) The department may make available the services under the  
6 provisions of section four of this article, to any person not  
7 eligible for receipt of public assistance upon application:  
8 *Provided*, That the department may not require such person to use  
9 its services. These services may include, but need not be limited  
10 to, the following: Location of the responsible parent whose  
11 whereabouts are unknown, collection of child support and  
12 maintenance moneys owed, and distribution of support and  
13 maintenance moneys paid.

14 (b) The department may charge a reasonable fee to nonpublic  
15 assistance persons for the provision of services and, when the  
16 department has provided services for the collection of support and  
17 maintenance, may charge a reasonable fee to the person responsible  
18 for the support and maintenance. The commissioner shall establish  
19 by regulations the amount of such fees, not in excess of maximum  
20 amounts permitted by applicable federal law, which regulations may  
21 be amended and supplemented from time to time.

22 **ARTICLE 4. BUREAU OF MEDICAL SERVICES.**

23 **§9-4-1. Continuation of the Bureau of Medical Services.**

1 The Bureau of Medical Services is continued.

2 **§9-4-2. Medical services fund.**

3 (a) The special fund known as the Medical Services Fund is  
4 continued.

5 (b) The fund shall consist of payments made into the fund out  
6 of state appropriations for medical services to recipients of  
7 specified classes of assistance and such federal grants-in-aid as  
8 are made available for specified classes of assistance. Any  
9 balance in the fund at the end of any fiscal year shall remain in  
10 the fund and shall not expire or revert. Payments shall be made  
11 out of the fund upon requisition of the commissioner by means of a  
12 warrant signed by the Auditor and Treasurer.

13 (c) Recipients of those classes of assistance as are specified  
14 by the department, consistent with applicable federal laws, rules  
15 and regulations, shall be entitled to have costs of necessary  
16 medical services paid out of the fund, in the manner and amounts,  
17 to the extent, and for the period determined from time to time to  
18 be feasible by the commissioner pursuant to legislative rules  
19 established by him or her. The legislative rules shall comply with  
20 requirements of applicable federal laws, rules and regulations and  
21 shall be established on the basis of money available for the  
22 purpose, the number of recipients, the experience with respect to  
23 the incidence of illness, disease, accidents, and other causes



1 among the recipients causing them to require medical services and  
2 the costs thereof, the amounts which recipients require otherwise  
3 in order to maintain a subsistence compatible with decency and  
4 health, and any other factor considered relevant and proper by the  
5 commissioner: *Provided*, That the legislative rules respecting  
6 qualifications shall permit the expenditure of state funds to pay  
7 for care rendered in any birthing center licensed under the  
8 provisions of article two-e, chapter sixteen of this code, by a  
9 licensed nurse midwife or midwife as this term is defined in  
10 article fifteen, chapter thirty of this code.

11 **§9-4-3. Advisory council.**

12 (a) The Medicaid Advisory Council is continued and has those  
13 advisory powers and duties as are granted and imposed by this  
14 section and elsewhere by law.

15 (b) The advisory council shall consist of not less than nine  
16 members, nor more than fifty members, all but four of whom shall be  
17 appointed by the Commissioner of the Bureau of Medical Services and  
18 serve until replaced or reappointed on a rotating basis.

19 (c) (1) The Commissioner of the Bureau of Public Health and the  
20 Commissioner of Bureau for Medical Services are members ex officio.

21 (2) The cochairs of the Legislative Oversight Commission on  
22 Health and Human Resources Accountability, or their designees, are  
23 nonvoting ex officio members.

1 (3) The remaining members comprising the council consist of:

2 (A) One member of recognized ability in the field of medicine  
3 and surgery with respect to whose appointment the state Medical  
4 Association shall be afforded the opportunity of making nomination  
5 of three qualified persons;

6 (B) One member of recognized ability in the field of dentistry  
7 with respect to whose appointment the state Dental Association  
8 shall be afforded the opportunity of nominating three qualified  
9 persons;

10 (C) One member chosen from a list of three persons nominated  
11 by the West Virginia Primary Care Association;

12 (D) One member chosen from a list of three persons nominated  
13 by the Behavioral Health Providers Association of West Virginia;  
14 and

15 (E) The remaining members chosen from persons of recognized  
16 ability in the fields of hospital administration, nursing and  
17 allied professions and from consumers groups, including Medicaid  
18 recipients, members of the West Virginia Directors of Senior and  
19 Community Services, labor unions, cooperatives and consumer-  
20 sponsored prepaid group practices plans.

21 (d) The council shall meet on call of the state Medicaid  
22 Agency.

23 (e) Each member of the advisory council shall receive

1 reimbursement for reasonable and necessary travel expenses for each  
2 day actually served in attendance at meetings of the council in  
3 accordance with the state's travel regulations. Requisitions for  
4 the expenses shall be accompanied by an itemized statement, which  
5 shall be filed with the auditor and preserved as a public record.

6 (f) The advisory council shall assist the state Medicaid  
7 Agency in the establishment of rules, standards and bylaws  
8 necessary to carry out the provisions of this section and shall  
9 serve as consultants to the state Medicaid Agency in carrying out  
10 the provisions of this section.

11 **§9-4-4. Collection of copayments by health care providers;**  
12 **penalties.**

13 (a) The secretary shall institute a program which requires the  
14 payment and collection of copayments. The program shall conform  
15 with Section 447.53, Chapter 42 of the Code of Federal Regulations,  
16 and the amount of the copayments shall be determined in accordance  
17 with the provisions of Sections 447.54 and 447.55, Chapter 42 of  
18 the Code of Federal Regulations. The secretary shall complete all  
19 federal requirements necessary to implement this section, including  
20 the submission of any amendment to the state Medicaid plan.

21 (b) Any individual or entity receiving reimbursement from this  
22 state under the medical assistance program of the Social Security  
23 Act is required to collect the copayments: *Provided, That in*

1 accordance with Section 447.15, Chapter 42 of the Code of Federal  
2 Regulations, no individual or entity shall refuse care or services  
3 to any Medicaid-eligible individual because that individual is  
4 unable to pay the copayment. The amount of copayments collected  
5 shall be reported to the secretary.

6 (c) A person, firm, corporation or other entity who willfully,  
7 by means of a false statement or representation, or by concealment  
8 of any material fact, or by other fraudulent scheme, device or  
9 artifice on behalf of himself, itself or others, fails to attempt  
10 to collect copayments as required by this section, shall be liable  
11 for payment to the department of a civil money penalty in the  
12 amount of \$100 for each occurrence of willful failure to collect a  
13 required copayment.

14 (d) If it comes to the attention of the secretary that a  
15 person or other entity is failing to attempt to collect copayments  
16 as mandated, the matter shall be referred to the Medicaid Fraud  
17 Control Unit for investigation and referral for prosecution  
18 pursuant to the provisions of article seven of this chapter.

19 **§9-4-5. Limitation on use of funds.**

20 (a) No funds from the Medicaid program accounts may be used to  
21 pay for the performance of an abortion by surgical or chemical  
22 means unless:

23 (1) On the basis of the physician's best clinical judgment,

1 there is:

2 (A) A medical emergency that so complicates a pregnancy as to  
3 necessitate an immediate abortion to avert the death of the mother  
4 or for which a delay will create grave peril of irreversible loss  
5 of major bodily function or an equivalent injury to the mother:  
6 *Provided*, That an independent physician concurs with the  
7 physician's clinical judgment; or

8 (B) Clear clinical medical evidence that the fetus has severe  
9 congenital defects or terminal disease or is not expected to be  
10 delivered; or

11 (C) The individual is a victim of incest or the individual is  
12 a victim of rape when the rape is reported to a law-enforcement  
13 agency.

14 (b) The Legislature intends that the state's Medicaid program  
15 not provide coverage for abortion on demand and that abortion  
16 services be provided only as expressly provided in this section.

17 **§9-4-6. Coverage for patient cost of clinical trials.**

18 (a) This applies to the health plans regulated by this  
19 article.

20 (b) This section does not apply to a policy, plan or contract  
21 paid for under Title XVIII of the Social Security Act.

22 (c) A policy, plan or contract subject to this section shall  
23 provide coverage for patient cost to a member in a clinical trial,

1 as a result of:

2 (1) Treatment provided for a life-threatening condition; or

3 (2) Prevention of, early detection of or treatment studies on  
4 cancer.

5 (d) The coverage under subsection (c) of this section is  
6 required if:

7 (1) (A) The treatment is being provided or the studies are  
8 being conducted in a Phase II, Phase III or Phase IV clinical trial  
9 for cancer and has therapeutic intent; or

10 (B) The treatment is being provided in a Phase II, Phase III  
11 or Phase IV clinical trial for any other life-threatening condition  
12 and has therapeutic intent;

13 (2) The treatment is being provided in a clinical trial  
14 approved by:

15 (A) One of the national institutes of health;

16 (B) An NIH cooperative group or an NIH center;

17 (C) The FDA in the form of an investigational new drug  
18 application or investigational device exemption;

19 (D) The federal department of Veterans Affairs; or

20 (E) An institutional review board of an institution in the  
21 state which has a multiple project assurance contract approved by  
22 the office of protection from research risks of the national  
23 institutes of health;

1           (3) The facility and personnel providing the treatment are  
2 capable of doing so by virtue of their experience, training and  
3 volume of patients treated to maintain expertise;

4           (4) There is no clearly superior, noninvestigational treatment  
5 alternative;

6           (5) The available clinical or preclinical data provide a  
7 reasonable expectation that the treatment will be more effective  
8 than the noninvestigational treatment alternative;

9           (6) The treatment is provided in this state: *Provided, That,*  
10 if the treatment is provided outside of this state, the treatment  
11 must be approved by the payor designated in subsection (a) of this  
12 section;

13           (7) Reimbursement for treatment is subject to all coinsurance,  
14 copayment and deductibles and is otherwise subject to all  
15 restrictions and obligations of the health plan; and

16           (8) Reimbursement for treatment by an out of network or  
17 noncontracting provider shall be reimbursed at a rate which is no  
18 greater than that provided by an in network or contracting  
19 provider. Coverage shall not be required if the out of network or  
20 noncontracting provider will not accept this level of  
21 reimbursement.

22           (e) Payment for patient costs for a clinical trial is not  
23 required by the provisions of this section, if:

1 (1) The purpose of the clinical trial is designed to extend  
2 the patent of any existing drug, to gain approval or coverage of a  
3 metabolite of an existing drug, or to gain approval or coverage  
4 relating to additional clinical indications for an existing drug;  
5 or

6 (2) The purpose of the clinical trial is designed to keep a  
7 generic version of a drug from becoming available on the market; or

8 (3) The purpose of the clinical trial is to gain approval of  
9 or coverage for a reformulated or repackaged version of an existing  
10 drug.

11 (f) Any provider billing a third party payor for services or  
12 products provided to a patient in a clinical trial shall provide  
13 written notice to the payor that specifically identifies the  
14 services as part of a clinical trial.

15 (g) Notwithstanding any provision in this section to the  
16 contrary, coverage is not required for Phase I of any clinical  
17 trial.

18 **§9-4-7. Medicaid program; maternity and infant care.**

19 (a) The department shall:

20 (1) Extend the Medicaid coverage to pregnant women and their  
21 newborn infants to one hundred fifty percent of the federal poverty  
22 level.

23 (2) As provided under COBRA, SOBRA, and OBRA, infants shall be



1 included under the Medicaid coverage with all children eligible for  
2 Medicaid coverage, whose family incomes are at or below one hundred  
3 percent of the federal poverty level and continuing until such  
4 children reach the age of eight years.

5 (3) Elect the federal options provided under COBRA, SOBRA, and  
6 OBRA, impacting pregnant women and children below the poverty  
7 level: *Provided*, That no provision in this article shall restrict  
8 the department in exercising new options provided by or to be in  
9 compliance with new federal legislation that further expands  
10 eligibility for children and pregnant women.

11 (6) Shall increase to no less than \$600 the reimbursement  
12 rates under the Medicaid program for prenatal care, delivery and  
13 post-partum care.

14 (c) In order to be in compliance with the provisions of OBRA,  
15 through legislative rules, the department shall ensure that  
16 pregnant women and children whose incomes are above the Aid to  
17 Families and Dependent Children (AFDC) payment level are not  
18 required to apply for entitlements under the AFDC program as a  
19 condition of eligibility for Medicaid coverage. Further, the  
20 department shall develop a short, simplified pregnancy/pediatric  
21 application of no more than three pages, paralleling the simplified  
22 OBRA standards.

23 (d) Any woman who establishes eligibility under this section

1 shall continue to be treated as an eligible individual without  
2 regard to any change in income of the family of which she is a  
3 member until the end of the sixty day period beginning on the last  
4 day of her pregnancy.

5 **§9-4-8. Medicaid program; preferred drug list and drug utilization**  
6 **review.**

7 (a) The Legislature finds that it is a public necessity that  
8 trade secrets, rebate amounts, percentage of rebate, manufacturer's  
9 pricing and supplemental rebates that are contained in records, as  
10 well as any meetings at which this information is negotiated or  
11 discussed need confidentiality to insure the most significant  
12 rebates available for the state. Information pertaining to similar  
13 agreements with the federal government and negotiated by  
14 pharmaceutical manufacturers is confidential pursuant to 42 U.S.C.  
15 1396r-8. A rebate as a percentage of average manufacture price is  
16 confidential under federal law and the federal rebate could be made  
17 known if not protected by state law. Because of the protection  
18 afforded by federal law, if this information is not protected by  
19 state law, manufacturers will not be willing to offer a rebate in  
20 West Virginia. Further, the Legislature finds that the number and  
21 value of supplemental rebates obtained by the department will  
22 increase, to the benefit of Medicaid recipients, if information  
23 related to the supplemental rebates is protected in the records of

1 the department and in meetings in which this information is  
2 disclosed because manufacturers will be assured they will not to be  
3 placed at a competitive disadvantage by exposure of this  
4 information.

5 (b) The secretary may develop a preferred drug list, in  
6 accordance with federal law, which shall consist of federally  
7 approved drugs. The department, through administration of the  
8 Medicaid program, may reimburse, where applicable and in accordance  
9 with federal law, entities providing and dispensing prescription  
10 drugs from the preferred drug list.

11 (c) The secretary may negotiate and enter into agreements with  
12 pharmaceutical manufacturers for supplemental rebates for Medicaid  
13 reimbursable drugs.

14 (d) The provisions of article three, chapter five-a of this  
15 code do not apply to any contract or contracts entered into under  
16 this section.

17 (e) Trade secrets, rebate amounts, percentage of rebate,  
18 manufacturer's pricing and supplemental rebates which are contained  
19 in the department's records and those of its agents with respect to  
20 supplemental rebate negotiations and which are prepared pursuant to  
21 a supplemental rebate agreement are confidential and exempt from  
22 all of article one, chapter twenty-nine-b of this code.

23 (f) Those portions of any meetings of the committee at which

1 trade secrets, rebate amounts, percentage of rebate, manufacturer's  
2 pricing and supplemental rebates are disclosed for discussion or  
3 negotiation of a supplemental rebate agreement are exempt from all  
4 of article nine-a, chapter six of this code.

5 (g) The secretary shall monitor and evaluate the effects of  
6 this provision on Medicaid recipients, the Medicaid program,  
7 physicians and pharmacies.

8 (h) The commissioner shall implement a drug utilization review  
9 program to assure that prescribing and dispensing of drug products  
10 result in the most rational cost-effective medication therapy for  
11 Medicaid patients.

12 (I) Any moneys received in supplemental rebates will be  
13 deposited in the medical services fund.

14 **§9-4-9. Medicaid-certified nursing homes; screening of applicants**  
15 **and residents for mental illness; reimbursement of**  
16 **hospitals.**

17 (a) The department shall cause individuals applying for  
18 admission to or residing in a Medicaid-certified nursing home to be  
19 screened as required by the Omnibus Budget Reconciliation Act of  
20 1987.

21 (b) Hospitals shall receive administrative day payment at a  
22 rate set by the Medicaid agency to reimburse the hospitals for days  
23 required for the screening of Medicaid eligible patients required

1 by subsection (a) of this section.

2 (c) The secretary may promulgate rules to implement this  
3 section.

4 **§9-4-10. Nonprofit agency or facility, in receipt of Medicaid**  
5 **moneys, shall provide annual accounting of gross**  
6 **receipts and disbursements including salaries.**

7 Any nonprofit health care agency or facility which receives  
8 Medicaid moneys shall provide an annual accounting of that  
9 facility's or provider's receipts and disbursements, including the  
10 total salaries of all employees and administrators, with one copy  
11 submitted to the Joint Committee on Government and Finance and one  
12 copy submitted to the Health Care Authority on or before the  
13 January 15 for the preceding year.

14 **§9-4-11. Summary review for certain behavioral health facilities**  
15 **and services.**

16 (a) A certificate of need as provided in article two-d,  
17 chapter sixteen of this code is not required by an entity proposing  
18 additional behavioral health care services, but only to the extent  
19 necessary to gain federal approval of the Medicaid MR/DD waiver  
20 program, if a summary review is performed in accordance with the  
21 provisions of this section.

22 (b) Prior to initiating any summary review, the secretary

1 shall direct the revision of the state mental health plan as  
2 required by the provisions of 42 U.S.C. 300x and section four,  
3 article one-a, chapter twenty-seven of this code. In developing  
4 those revisions, the secretary is to appoint an advisory committee  
5 composed of representatives of the associations representing  
6 providers, child care providers, physicians and advocates. The  
7 secretary shall appoint the appropriate department employees  
8 representing regulatory agencies, reimbursement agencies and  
9 oversight agencies of the behavioral health system.

10 (c) If the secretary determines that specific services are  
11 needed but unavailable, he or she shall provide notice of the  
12 department's intent to develop those services. Notice may be  
13 provided through publication in the state register, publication in  
14 newspapers or a modified request for proposal as developed by the  
15 secretary.

16 (d) The secretary may initiate a summary review of additional  
17 behavioral health care services, but only to the extent necessary  
18 to gain federal approval of the Medicaid MR/DD waiver program, by  
19 recommending exemption from the provisions of article two-d,  
20 chapter sixteen of this code to the Health Care Authority. The  
21 recommendation is to include the following findings:

22 (1) That the proposed service is consistent with the state  
23 health plan and the state mental health plan;

1           (2) That the proposed service is consistent with the  
2 department's programmatic and fiscal plan for behavioral health  
3 services;

4           (3) That the proposed service contributes to providing  
5 services that prevent admission to restrictive environments or  
6 enables an individual to remain in a nonrestrictive environment;

7           (4) That the proposed service contributes to reducing the  
8 number of individuals admitted to inpatient or residential  
9 treatment programs or services;

10          (5) If applicable, that the proposed service will be  
11 community-based, locally accessible, provided in an appropriate  
12 setting consistent with the unique needs and potential of each  
13 client and his or her family and located in an area that is  
14 unserved or underserved or does not allow consumers a choice of  
15 providers; and

16          (6) That sufficient funds are available for the proposed  
17 service without decreasing access to or provision of existing  
18 services. The secretary may, from time to time, transfer funds  
19 pursuant to the general provisions of the budget bill.

20          (e) The secretary's findings shall be filed with the  
21 secretary's recommendation and appropriate documentation. If the  
22 secretary's findings are supported by the accompanying  
23 documentation, the proposal does not require a certificate of need.

1 (f) Any entity that does not qualify for summary review is  
2 subject to a certificate of need review.

3 (g) Any provider of the proposed services denied authorization  
4 to provide those services pursuant to the summary review has the  
5 right to appeal that decision to the bureau in accordance with the  
6 provisions of section ten, article two-d, chapter sixteen of this  
7 code.

8 **§9-4-12. Medicaid program; chronic kidney disease; evaluation and**  
9 **classification.**

10 (a) Any enrollee in Medicaid who is eligible for services and  
11 who has a diagnosis of diabetes or hypertension or, who has a  
12 family history of kidney disease, shall receive coverage for an  
13 evaluation for chronic kidney disease through routine clinical  
14 laboratory assessments of kidney function.

15 (b) Any enrollee who has received a diagnosis of kidney  
16 disease shall be classified as a chronic kidney patient.

17 (c) The diagnostic criteria used to define chronic kidney  
18 disease should be those generally recognized through clinical  
19 practice guidelines which identify chronic kidney disease or its  
20 complications based on the presence of kidney damage and level of  
21 kidney function.

22 (d) Medicaid providers shall be educated by the Bureau for  
23 Public Health in an effort to increase the rate of evaluation and



1 treatment for chronic kidney disease. Providers should be made  
2 aware of:

3 (1) Managing risk factors, which prolong kidney function or  
4 delay progression to kidney replacement therapy;

5 (2) Managing risk factors for bone disease and cardiovascular  
6 disease associated with chronic kidney disease;

7 (3) Improving nutritional status of chronic kidney disease  
8 patients; and

9 (4) Correcting anemia associated with chronic kidney disease.

10 **§9-4-13. Annual report to Joint Committee on Government and Finance**  
11 **regarding treatment for autism spectrum disorders**  
12 **provided by the Bureau for Medical Services.**

13 On or before January 1 each year, the bureau shall file an  
14 annual report with the Joint Committee on Government and Finance  
15 describing the number of enrolled individuals with autism spectrum  
16 disorder, including the fiscal and administrative impact of  
17 treatment of autism spectrum disorders, and any recommendations the  
18 agency may have as to changes in law or policy related to such  
19 disorder. In addition, the bureau shall provide such other  
20 information as may be requested by the Joint Committee on  
21 Government and Finance as it may from time to time request.

22 **ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.**

23 **§9-4A-1. Legislative findings.**

1 The Legislature finds and declares the following:

2 (a) Federal Medicaid laws encourage special recognition of  
3 disproportionate share hospitals for Medicaid reimbursement  
4 purposes.

5 (b) These same federal laws permit and encourage the state to  
6 fund the Medicaid program through flexible means, including public  
7 and private contributions to serve as the state share for purposes  
8 of federal financial participation.

9 (c) Because of state budget constraints, moneys paid to  
10 disproportionate share hospitals under the Medicaid program have  
11 not been sufficient to allow the hospitals to recover adequate  
12 reimbursement for the costs associated with providing appropriate  
13 services to Medicaid clients of this state.

14 (d) The policy of this state is to encourage disproportionate  
15 share hospitals to continue providing health care services to the  
16 needy citizens of West Virginia; such encouragement and support are  
17 increasingly important when combined with federal financial  
18 participation.

19 (e) Cost shifting is a serious problem and it is the intent of  
20 the Legislature to reduce cost shifting.

21 **§9-4A-2. Creation of Medicaid uncompensated care fund.**

22 (a) There is continued in the State Treasury a special  
23 revolving fund known as the Medicaid Uncompensated Care Fund. All

1 moneys deposited or accrued in this fund shall be used exclusively:

2 (1) To provide the state's share of the federal Medicaid  
3 program funds in order to improve inpatient payments to  
4 disproportionate share hospitals; and

5 (2) To cover administrative cost incurred by the department  
6 and associated with the Medicaid program and this fund: *Provided,*  
7 That no expenditures may be made to cover said administrative costs  
8 except as appropriated by the Legislature.

9 (b) Moneys from the following sources may be placed into the  
10 fund:

11 (1) All public funds transferred by any public agency to the  
12 Medicaid program for deposit in the fund as contemplated or  
13 permitted by applicable federal Medicaid laws;

14 (2) All private funds contributed, donated or bequeathed by  
15 corporations, individuals or other entities to the fund as  
16 contemplated and permitted by applicable federal Medicaid laws;

17 (3) Interest which accrued on amounts in the fund from sources  
18 identified in subdivisions (1) and (2) of this subsection; and

19 (4) Federal financial participation matching the amounts  
20 referred to in subdivisions (1), (2) and (3) of this subsection, in  
21 accordance with Section 1902 (a) (2) of the Social Security Act.

22 (c) Any balance remaining in the Medicaid Uncompensated Care  
23 Fund at the end of any state fiscal year shall not revert to the

1 State Treasury but shall remain in this fund and shall be used only  
2 in a manner consistent with this article.

3 (d) Moneys received into the fund shall not be counted or  
4 credited as part of the legislative general appropriation to the  
5 state Medicaid program.

6 (e) The fund shall be administered by the department. Moneys  
7 shall be disbursed from the fund on a quarterly basis. The  
8 secretary shall implement the provisions of this article prior to  
9 the receipt of any transfer, contribution, donation or bequest from  
10 any public or private source.

11 (f) All moneys expended from the fund after receipt of federal  
12 financial participation shall be allocated to reimbursement of  
13 inpatient charges and fees of eligible disproportionate share  
14 hospitals. Except for the payment of administrative costs as  
15 provided in this section, appropriation from this fund for any  
16 other purposes is void.

17 **§9-4A-3. Medical services trust fund.**

18 (a) The Legislature finds that certain dedicated revenues  
19 should be preserved in trust for the purpose of stabilizing the  
20 state's Medicaid program and providing services for future  
21 federally mandated population groups in conjunction with federal  
22 reform.

23 (b) There is continued a special account within the

1 department, which shall be an interest-bearing account and may be  
2 invested in the manner permitted by section nine, article six,  
3 chapter twelve of this code, designated the Medical Services Trust  
4 Fund. Funds paid into the account shall be derived from the  
5 following sources:

6 (1) Transfers, by intergovernmental transfer, from the  
7 hospital services revenue account provided in section fifteen-a,  
8 article one, chapter sixteen of this code;

9 (2) All interest or return on investment accruing to the fund;

10 (3) Any gifts, grants, bequests, transfers or donations which  
11 may be received from any governmental entity or unit or any person,  
12 firm, foundation or corporation; and

13 (4) Any appropriations by the Legislature which may be made  
14 for this purpose.

15 (c) Expenditures from the fund are limited to the following:

16 (1) Payment of backlogged billings from providers of Medicaid  
17 services when cash-flow problems within the medical services fund  
18 do not permit payment of providers within federally required time  
19 limits; and

20 (2) Funding for services to future federally mandated  
21 population groups in conjunction with federal health care reform:  
22 *Provided*, That other Medicaid funds have been exhausted for the  
23 federally mandated expansion.

1           (3) Payment of the required state match for Medicaid  
2 disproportionate share payments in order to receive federal  
3 financial participation in the disproportionate share hospital  
4 program.

5           (d) Expenditures from the fund solely for the purposes set  
6 forth in subsection (c) of this section shall be authorized in  
7 writing by the Governor, who shall determine in his or her  
8 discretion whether any expenditure shall be made, based on the best  
9 interests of the state as a whole and its citizens, and shall  
10 designate the purpose of the expenditure. Upon authorization  
11 signed by the Governor, funds may be transferred to the Medical  
12 Services Fund: *Provided*, That all expenditures from the Medical  
13 Services Trust Fund shall be reported forthwith to the Joint  
14 Committee on Government and Finance.

15 **§9-4A-4. Expansion of coverage to children and terminally ill.**

16           (a) the Department of Health and Human Resources shall:

17           (1) Provide a streamlined application form, which shall be no  
18 longer than two pages, for all families applying for medical  
19 coverage for children under any of the programs set forth in this  
20 section; and

21           (2) Provide the option of hospice care to terminally ill West  
22 Virginians who otherwise qualify for Medicaid.

23           (3) Accelerate the Medicaid option for coverage of Medicaid to

1 all West Virginia children whose family income is below one hundred  
2 percent of the federal poverty guideline.

3 **§9-4A-5. Legislative reports.**

4 (a) The secretary shall make an annual report to the  
5 Legislature on the use of the Medicaid Uncompensated Care Fund.

6 (b) The Health Care Authority shall make an annual report to  
7 the Legislature on the impact of improved Medicaid inpatient  
8 payments resulting from the fund on nongovernmental payor health  
9 care costs.

10 **ARTICLE 4B. MEDICAID BUY-IN PROGRAM.**

11 **§9-4B-1. Legislative findings.**

12 (a) The Legislature finds that there are many individuals in  
13 this state who have disabilities that qualify them for state or  
14 federal assistance and who are nonetheless willing and able to  
15 enter the workforce, but do not do so out of fear of losing  
16 essential medical care. As a result, the state realizes increased  
17 costs in fully supporting these disabled individuals who, in turn,  
18 suffer under an additional disability of being deprived of the  
19 additional income, dignity and self-sufficiency derived by being  
20 engaged in competitive employment.

21 (b) The Legislature finds that establishing a Medicaid buy-in  
22 program for certain individuals with disabilities will assist them  
23 in becoming independent of public assistance by enabling them to

1 enter the workforce without fear of losing essential medical care.

2 **§9-4B-2. Medicaid buy-in program; funding.**

3 (a) The Medicaid buy-in program for working individuals with  
4 disabilities is continued to provide Medicaid benefits to  
5 individuals who are disabled and employed, as authorized under  
6 Section 201 of the federal Ticket to Work and Work Incentives  
7 Improvement Act of 1999 (P.L. 106-170, 42 U.S.C. 1396, *et seq.*).

8 (b) Funding for the buy-in program shall be from funds  
9 appropriated by the Legislature, premiums paid, enrollment fees and  
10 any federal matching funding available to the program.

11 **§9-4B-3. Eligibility guidelines.**

12 (a) To be eligible to participate in the buy-in program an  
13 individual shall:

14 (1) Be a resident of the State of West Virginia;

15 (2) Have a disability that is defined and determined by the  
16 social security administration or the department;

17 (3) Be at least sixteen years of age but not more than sixty-  
18 four years of age;

19 (4) Be engaged in competitive employment, including self-  
20 employment or nontraditional work that results in remuneration at  
21 or above minimum wage in an integrated setting;

22 (5) Have countable resources that do not exceed the resource  
23 limit for the supplemental security income program;



1 (6) Have countable income that does not exceed two hundred  
2 fifty percent of the federal poverty level;

3 (7) Have total countable unearned income, using the social  
4 security income program methodology, that does not exceed the  
5 federal benefit rate plus the general income exclusion; and

6 (8) Except as provided in section five of this article, not  
7 have countable resources that exceed the resource limits for the  
8 federal supplemental security income program.

9 (b) The secretary shall establish a method of providing notice  
10 of the availability of participation in the Medicaid buy-in  
11 program. The secretary shall develop all forms and notices  
12 necessary to implement the provisions of this article, including  
13 forms for application to the program, determination of eligibility  
14 and continued participation and notices that advise all eligible  
15 buy-in participants of the rights, benefits, obligations and  
16 participation requirements of the program, including, but not  
17 limited to, notice of fees, premiums, premium adjustments, periodic  
18 review, length of time for which benefits may be paid and  
19 disqualifying factors.

20 **§9-4B-4. Exceptions to qualifying factors.**

21 (a) An individual who is enrolled in the buy-in program and  
22 who no longer meets the eligibility requirements of the basic  
23 coverage group due to an improvement in the individual's medical

1 condition may continue to be eligible for Medicaid coverage under  
2 the buy-in program if the individual meets the following  
3 requirements:

4 (1) The individual continues to have a severe medically  
5 determinable impairment as determined by the department and as  
6 defined and recognized by federal law;

7 (2) The individual is employed and earning a monthly wage that  
8 is not less than the federal minimum hourly wage times forty;

9 (3) The individual does not have income or countable resources  
10 in excess of the limits established for the basic coverage group;

11 (4) The individual is at least sixteen years of age and less  
12 than sixty-five years of age;

13 (5) The individual pays any premiums or other cost sharing  
14 required under this chapter; and

15 (6) The individual meets all other eligibility requirements  
16 under this section.

17 (b) An individual who is enrolled in the buy-in program and  
18 who is unable to maintain employment for involuntary reasons,  
19 including temporary leave due to a health problem or involuntary  
20 termination, may continue to be eligible for Medicaid coverage  
21 under the buy-in program if the individual meets the following  
22 requirements:

23 (1) Within thirty days after the date on which the individual

1 becomes unemployed, the individual, or an authorized representative  
2 of the individual, submits a written request to the office that the  
3 individual's Medicaid coverage be continued;

4 (2) The individual maintains a connection to the workforce  
5 during the individual's continued eligibility period by  
6 participating in at least one of the following activities:

7 (A) Enrollment in a state or federal vocational rehabilitation  
8 program;

9 (B) Enrollment or registration with the office of workforce  
10 development;

11 (C) Participation in a transition from school-to-work program;

12 (D) Participation with an approved provider of employment  
13 services;

14 (E) Provision of documentation from the individual's employer  
15 that the individual is on temporary involuntary leave;

16 (F) The individual does not have income or countable resources  
17 in excess of the limits established under this section;

18 (G) The individual is at least sixteen years of age and less  
19 than sixty-five years of age;

20 (H) The individual pays any premiums or other cost sharing  
21 required under this section; and

22 (I) The individual meets all other eligibility requirements  
23 under this section.

1 (c) The department shall continue Medicaid coverage under the  
2 buy-in program for an individual described in subsection (b) of  
3 this section for up to six months from the date of the individual's  
4 involuntary loss of employment.

5 (d) If an individual is ineligible for continued coverage  
6 under the buy-in program because he or she fails to meet the  
7 requirements of subsection (b) of this section or has already  
8 fulfilled twelve months of continuing eligibility, the individual  
9 shall be required to meet the eligibility requirements of another  
10 available Medicaid program in order to continue to be eligible for  
11 Medicaid benefits.

12 **§9-4B-5. Fees, premiums and periodic reviews.**

13 (a) The department shall charge a \$50 enrollment fee to all  
14 participants in the Medicaid buy-in program. Upon payment of the  
15 enrollment fee, the first month's premium payment is waived.  
16 Medicaid coverage begins on the first day of the month following  
17 payment of the enrollment fee.

18 (b) The department shall develop a sliding scale of premiums  
19 for individuals participating in the buy-in program. The sliding  
20 scale shall:

21 (1) Be based on the annual gross income of the individual; and

22 (2) Provide for a minimum premium of \$15 and a maximum monthly  
23 premium not to exceed three and one-half percent of the

1 individual's gross monthly income.

2 (c) Subject to the minimum and maximum amounts described in  
3 this section, the department may annually adjust the scale of  
4 premiums charged for participation in the Medicaid buy-in program.

5 (d) The department shall biannually review the amount of the  
6 premium that an individual is required to pay under this section.

7 (e) The department may increase the premium required only  
8 after conducting a review.

9 (f) The department shall decrease the premium that an eligible  
10 buy-in participant is required to pay if:

11 (1) The individual notifies the office of a change in income  
12 or family size; and

13 (2) The sliding scale adopted by the department applied to the  
14 individual's changed circumstances prescribes a premium for the  
15 individual that is lower than the premium the individual is paying.

16 (g) The department shall establish administrative procedures  
17 regarding premiums for the buy-in program, including:

18 (1) The effect of nonpayment of a premium; and

19 (2) The collection of premiums.

20 (h) The department shall establish criteria to base the  
21 biannual redetermination of disability required for an individual  
22 participating in the buy-in program on the individual's medical  
23 evidence, including evidence of physical or mental impairment.

1 (I) In conducting the biannual redetermination described in  
2 this section, the department may not determine that an individual  
3 participating in the buy-in program is no longer disabled solely on  
4 the individual's:

5 (1) Participation in employment;

6 (2) Earned income; or

7 (3) Income from self-employment.

8 **§9-4B-6. Benefits of the Medicaid buy-in program.**

9 (a) Except as otherwise provided in this article, an eligible  
10 buy-in participant shall receive the same benefits that he or she  
11 would otherwise receive as a recipient of Medicaid benefits,  
12 including home health care services.

13 (b) Except as otherwise provided in this article, an eligible  
14 buy-in participant is subject to the same obligations and  
15 requirements, including cost sharing, that he or she would  
16 otherwise be subject to as recipient of Medicaid benefits.

17 **§9-4B-7. Analytical criteria and reporting requirements.**

18 (a) The secretary shall establish criteria to determine the  
19 effectiveness of the Medicaid buy-in program and continued Medicaid  
20 coverage through Section 1619 of the federal Social Security Act  
21 (42 U.S.C. §1382h). The criteria shall include an analysis of the  
22 following:

23 (1) The number of individuals with disabilities who are:

1 (A) Enrolled in the buy-in program; or

2 (B) Receiving Medicaid through Section 1619 of the federal  
3 Social Security Act (42 U.S.C. §1382h);

4 (2) The amount of state revenues resulting from premiums paid  
5 by participants in the buy-in program; and

6 (3) The amount of state costs incurred as a result of  
7 implementing the buy-in program, including administrative costs and  
8 costs of providing services.

9 (b) In addition to the criteria required under subsection (b)  
10 of this section, the secretary may establish criteria to determine  
11 the following:

12 (1) Comparative costs of Medicaid funded services for  
13 participants in the buy-in program and work incentives created  
14 through Section 1619 of the federal Social Security Act (42 U.S.C.  
15 §1382h) before and after employment;

16 (2) The number of supplemental security income and social  
17 security disability insurance recipients in West Virginia who are  
18 no longer dependent on, or who have reduced dependence on, public  
19 assistance or health care entitlement services, other than Medicaid  
20 or the Children's Health Insurance Program, due to participation in  
21 the buy-in program or work incentives created through Section 1619  
22 of the federal Social Security Act (42 U.S.C. §1382h);

23 (3) The number of individuals with severe disabilities who are

1 no longer dependent on, or who have reduced dependence on, public  
2 benefits or services, other than Medicaid or the Children's Health  
3 Insurance Program, due to income or support services received  
4 through participation in the buy-in program or work incentives  
5 created through Section 1619 of the federal Social Security Act (42  
6 U.S.C. §1382h); and

7       (4) The change in the number of buy-in program participants or  
8 participants in work incentives created through Section 1619 of the  
9 federal Social Security Act (42 U.S.C. §1382h) who have health care  
10 needs and related services covered through employer based benefit  
11 programs.

12       (c) In evaluating the effectiveness of the state's work  
13 incentives initiatives for individuals with disabilities, the  
14 secretary:

15       (1) Shall collaborate with other state agencies on data  
16 collection; and

17       (2) May consult with an independent contractor to collect data  
18 on the criteria required by this section.

19       (d) The department secretary shall provide an annual report of  
20 its evaluation of the Medicaid buy-in program performed pursuant to  
21 the requirements of this section to the Legislature no later than  
22 December 31 of each year.

23 **§9-4B-8. Advisory council; rules.**



1           (a) The secretary shall establish a Medicaid buy-in program  
2 advisory council, consisting of representatives from the state  
3 Medicaid agency, the state rehabilitation agency, the state office  
4 of family support, the West Virginia statewide independent living  
5 council, the West Virginia state rehabilitation council, the West  
6 Virginia developmental disabilities council, the West Virginia  
7 mental health planning council and the center for excellence in  
8 disabilities at West Virginia University.

9           (b) The secretary shall submit legislative rules for review  
10 and input to the advisory council prior to release for public  
11 comment and shall consider any recommendations of the advisory  
12 council before adopting final rules.

13           (c) The secretary shall propose legislative rules for  
14 legislative approval in accordance with the provisions of article  
15 three, chapter twenty-nine-a of this code as may be needed to  
16 administer and maintain the Medicaid buy-in program.

17 **ARTICLE 4C. Long-Term Care Partnership Program.**

18 **§9-4C-1. Authority.**

19           (a) The Bureau for Medical Services shall establish a long-  
20 term care partnership program in order to provide for the financing  
21 of long-term care through a combination of private insurance and  
22 Medicaid in accordance with federal requirements on qualified state  
23 long-term care insurance partnerships.

1           (b) The bureau shall file a state plan amendment, pursuant to  
2 Title XIX of the United States Social Security Act and any  
3 amendments thereto, to the United States Department of Health and  
4 Human Services to establish that the assets an individual owns and  
5 may retain under Medicaid and still qualify for benefits under  
6 Medicaid at the time the individual applies for benefits is  
7 increased dollar-for-dollar for each dollar paid out under the  
8 individuals' s long-term care insurance policy if the individual is  
9 a beneficiary of a qualified long-term care partnership program  
10 policy.

11           (c) An individual who is a beneficiary of a West Virginia  
12 long-term care partnership program and meets eligibility  
13 requirements is eligible for assistance under the state's medical  
14 assistance program using the asset disregard as provided under  
15 subsection (b).

16           (d) The bureau shall pursue reciprocal agreements with other  
17 states to extend the asset disregard to West Virginia residents who  
18 purchased long-term care partnership policies in other states that  
19 are compliant with Title VI, Section 6021 of the Federal Deficit  
20 Reduction Act of 2005, PL 109-171, and any applicable federal  
21 regulations or guidelines.

22           (e) Upon diminishment of assets below the anticipated  
23 remaining benefits under a long-term care partnership program

1 policy, certain assets of an individual, as provided under  
2 subsection (b), shall not be considered when determining any of the  
3 following:

4 (1) Medicaid eligibility;

5 (2) The amount of any Medicaid payment;

6 (3) Any subsequent recovery by the state of a payment for  
7 medical services or long-term care services.

8 (f) If the long-term care partnership program is discontinued,  
9 an individual who purchased a West Virginia long-term care  
10 partnership program policy before the date the program was  
11 discontinued shall be eligible to receive asset disregard if  
12 allowed as provided by Title VI, Section 6021 of the Federal  
13 Deficit Reduction Act of 2005, PL 109-171.

14 **ARTICLE 4D. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.**

15 **§9-4D-1. Powers and duties of fraud control unit.**

16 (a) The Medicaid Fraud Control Unit shall be continued and  
17 shall have the following powers and duties:

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

22 (2) The investigation of abuse, neglect or financial  
23 exploitation of residents in board and care facilities and patients

1 in health care facilities which receive payments under the medical  
2 programs of the state.

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

6 (4) To employ and train personnel to achieve the purposes of  
7 this article and to employ legal counsel, investigators, Auditors  
8 and clerical support personnel and other personnel as are deemed  
9 necessary from time to time to accomplish the purposes herein.

10 **§9-4D-2. Investigations; procedure.**

11 (a) When the unit has credible information that indicates a  
12 person has engaged in an act or activity which is subject to  
13 prosecution under this article, the unit may make an investigation  
14 to determine if the act has been committed and, to the extent  
15 necessary for that purpose, the secretary, or an employee of the  
16 unit designated by the secretary, may administer oaths or  
17 affirmations and issue subpoenas for witnesses and documents  
18 relevant to the investigation, including information concerning the  
19 existence, description, nature, custody, condition and location of  
20 any book, record, documents or other tangible thing and the  
21 identity and location of persons having knowledge of relevant facts  
22 or any matter reasonably calculated to lead to the discovery of  
23 admissible evidence.

1           (b) When the unit has probable cause to believe that a person  
2 has engaged in an act or activity which is subject to prosecution  
3 under this article, or section twenty nine, article two, chapter  
4 sixty-one of this code, either before, during, or after an  
5 investigation pursuant to this section, the secretary, or an  
6 employee of the unit designated by the secretary, may request  
7 search warrants and present and swear or affirm criminal  
8 complaints.

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

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

23           (e) The unit shall not make public the name or identity of a

1 person whose acts or conduct is investigated pursuant to this  
2 section or the facts disclosed in the investigation except as the  
3 same may be used in any legal action or enforcement proceeding  
4 brought pursuant to this article or any other provision of this  
5 code.

6 **§9-4D-3. Agency lawyers assisting prosecutors.**

7 Attorneys employed and assigned to the Medicaid Fraud Control  
8 Unit created by the provisions of section one of this article may  
9 assist in the prosecution of criminal violations of this article.

10 **§9-4D-4. Applications for medical assistance; false statements or**  
11 **representations; criminal penalties.**

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

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

20 (c) A person shall not knowingly and intentionally conceal or  
21 fail to disclose any fact with the intent to obtain medical  
22 assistance under the medical programs of the Department of Health  
23 and Human Resources to which the person or any other person is not

1 entitled.

2 (d) Any person found to be in violation of subsection (a), (b)  
3 or (c) of this section is guilty of a felony and, upon conviction,  
4 shall be imprisoned in a state correctional facility not less than  
5 one nor more than ten years, or shall be fined not to exceed  
6 \$10,000 or both fined and imprisoned.

7 **§9-4D-5. Bribery; false claims; conspiracy; criminal penalties.**

8 (a) A person shall not solicit, offer, pay, or receive any  
9 unlawful remuneration, including any kickback, rebate or bribe,  
10 directly or indirectly, with the intent of causing an expenditure  
11 of moneys from the Medical Services Fund established pursuant to  
12 section two, article four of this chapter, which is not authorized  
13 by applicable laws or rules and regulations.

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

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

22 (d) Any person found to be in violation of subsection (a), (b)  
23 or (c) of this section is guilty of a felony and, upon conviction,

1 shall be imprisoned in a state correctional facility not less than  
2 one nor more than ten years or shall be fined not to exceed  
3 \$10,000, or both fined and imprisoned.

4 **§9-4D-6. Venue for criminal offenses.**

5 In addition to other venues permitted by state law, a criminal  
6 prosecution under section five of this article may be commenced in  
7 the circuit court of Kanawha County or of any county in which:

8 (1) The defendant is conducting business; or

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

11 **§9-4D-7. Civil remedies.**

12 (a) Any person, firm, corporation or other entity which  
13 willfully, by means of a false statement or representation, or by  
14 concealment of any material fact, or by other fraudulent scheme,  
15 devise or artifice on behalf of himself, herself, its or others,  
16 obtains or attempts to obtain benefits or payments or allowances  
17 under the medical programs of the department to which he or she  
18 is not entitled, or, in a greater amount than that to which he or  
19 she is entitled, shall be liable to the department in an amount  
20 equal to three times the amount of such benefits, payments or  
21 allowances to which he or she is not entitled, and shall be liable  
22 for the payment of reasonable attorney fees and all other fees and  
23 costs of litigation.



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

4 (c) A civil action under this section may be prosecuted and  
5 maintained on behalf of the department by the Attorney General and  
6 the Attorney General's assistants or a prosecuting attorney and the  
7 prosecuting attorney's assistants or by any attorney in contract  
8 with or employed by the department to provide such representation.

9 **§9-4D-8. Liability of employees of the department.**

10 There is no civil liability on the part of, and no cause of  
11 action shall arise against the secretary, the department, its  
12 employees or its agents for any action taken by them in good faith  
13 and in the lawful performance of their powers and duties under this  
14 article.

15 **§9-4D-9. Licensing of vehicles for use by the Medicaid fraud  
16 control unit.**

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

21 **§9-4D-10. Remedies and penalties not exclusive.**

22 The remedies and penalties provided in this article governing  
23 the operation of the medical programs of the department are in

1 addition to those remedies and penalties provided elsewhere by law.

2 **ARTICLE 4E. ASSIGNMENT OF RIGHTS.**

3 **§9-4E-1. Assignment of rights.**

4 (a) Submission of an application to the department is, as a  
5 matter of law, an assignment of the right of the applicant or his  
6 or her legal representative to recover from third parties past  
7 medical expenses paid for by the Medicaid program.

8 (b) At the time an application for medical assistance is made,  
9 the department shall include a statement along with the application  
10 that explains that the applicant has assigned all of his or her  
11 rights as provided in this section and the legal implications of  
12 making this assignment.

13 (c) This assignment of rights does not extend to Medicare  
14 benefits.

15 (d) This section does not prevent the recipient or his or her  
16 legal representative from maintaining an action for injuries or  
17 damages sustained by the recipient against any third-party and from  
18 including, as part of the compensatory damages sought to be  
19 recovered, the amounts of his or her past medical expenses.

20 (e) The department shall be legally subrogated to the rights  
21 of the recipient against the third party.

22 (f) The department shall have a priority right to be paid  
23 first out of any payments made to the recipient for past medical

1 expenses before the recipient can recover any of his or her own  
2 costs for medical care.

3 (g) A recipient is considered to have authorized all third-  
4 parties to release to the department information needed by the  
5 department to secure or enforce its rights as assignee under this  
6 chapter.

7 **§9-4E-2. Notice requirement for claims and civil actions.**

8 (a) A recipient's legal representative shall provide notice to  
9 the department within sixty days of asserting a claim against a  
10 third party. If the claim is asserted in a formal civil action,  
11 the recipient's legal representative shall notify the department  
12 within sixty days of service of the complaint and summons upon the  
13 third party by causing a copy of the summons and a copy of the  
14 complaint to be served on the department as though it were named a  
15 party defendant.

16 (b) If the recipient has no legal representative and the third  
17 party knows or reasonably should know that a recipient has no  
18 representation then the third party shall provide notice to the  
19 department within sixty days of receipt of a claim or within thirty  
20 days of receipt of information or documentation reflecting the  
21 recipient is receiving Medicaid benefits, whichever is later in  
22 time.

23 (c) In any civil action implicated by this section, the

1 department may file a notice of appearance and shall thereafter  
2 have the right to file and receive pleadings, intervene and take  
3 other action permitted by law.

4 (d) The department shall provide the recipient and the third  
5 party, if the recipient is without legal representation, notice of  
6 the amount of the purported subrogation lien within thirty days of  
7 receipt of notice of the claim. The department shall provide  
8 related supplements in a timely manner, but no later than fifteen  
9 days after receipt of a request for same.

10 **§9-4E-3. Notice of settlement requirement.**

11 (a) A recipient or his or her representative shall notify the  
12 department of a settlement with a third-party and retain in escrow  
13 an amount equal to the amount of the subrogation lien asserted by  
14 the department. The notification shall include the amount of the  
15 settlement being allocated for past medical expenses paid for by  
16 the Medicaid program. Within thirty days of the receipt of any  
17 such notice, the department shall notify the recipient of its  
18 consent or rejection of the proposed allocation. If the department  
19 consents, the recipient or his or her legal representation shall  
20 issue payment out of the settlement proceeds in a manner directed  
21 by the secretary or his or her designee within thirty days of  
22 consent to the proposed allocation.

23 (b) If the total amount of the settlement is less than the

1 department's subrogation lien, then the settling parties shall  
2 obtain the department's consent to the settlement before finalizing  
3 the settlement. The department shall advise the parties within  
4 thirty days and provide a detailed itemization of all past medical  
5 expenses paid by the department on behalf of the recipient for  
6 which the department seeks reimbursement out of the settlement  
7 proceeds.

8 (c) If the department rejects the proposed allocation, the  
9 department shall seek a judicial determination within thirty days  
10 and provide a detailed itemization of all past medical expenses  
11 paid by the department on behalf of the recipient for which the  
12 department seeks reimbursement out of the settlement proceeds.

13 (d) If judicial determination becomes necessary, the trial  
14 court is required to hold an evidentiary hearing. The recipient  
15 and the department shall be provided ample notice of the same and  
16 be given just opportunity to present the necessary evidence,  
17 including fact witness and expert witness testimony, to establish  
18 the amount to which the department is entitled to be reimbursed  
19 pursuant to this section.

20 (e) The department shall have the burden of proving by a  
21 preponderance of the evidence that the allocation agreed to by the  
22 parties was improper. For purposes of appeal, the trial court's  
23 decision should be set forth in a detailed order containing the

1 requisite findings of fact and conclusions of law to support its  
2 rulings.

3 (f) Any settlement by a recipient with one or more third-  
4 parties which would otherwise fully resolve the recipient's claim  
5 for an amount collectively not to exceed \$20,000 shall be exempt  
6 from the provisions of this section.

7 (g) Nothing herein prevents a recipient from seeking judicial  
8 intervention to resolve any dispute as to allocation prior to  
9 effectuating a settlement with a third party.

10 **§9-4E-4. Department failure to respond to notice of settlement.**

11 If the department fails to appropriately respond to a  
12 notification of settlement, the amount to which the department is  
13 entitled to be paid from the settlement shall be limited to the  
14 amount of the settlement the recipient has allocated toward past  
15 medical expenses.

16 **§9-4E-5. Penalty for failure to notify the department.**

17 A legal representative acting on behalf of a recipient or  
18 third party that fails to comply with the provisions of this  
19 section is liable to the department for all reimbursement amounts  
20 the department would otherwise have been entitled to collect  
21 pursuant to this section but for the failure to comply. Under no  
22 circumstances may a pro se recipient be penalized for failing to  
23 comply with the provisions of this section.

1 **§9-4E-6. Miscellaneous provisions relating to trial.**

2 (a) Where an action implicated by this section is tried by a  
3 jury, the jury may not be informed at any time as to the  
4 subrogation lien of the department.

5 (b) Where an action implicated by this section is tried by  
6 judge or jury, the trial judge shall, or in the instance of a jury  
7 trial, require that the jury, identify precisely the amount of the  
8 verdict awarded that represents past medical expenses.

9 (c) Upon the entry of judgment on the verdict, the court shall  
10 direct that upon satisfaction of the judgment any damages awarded  
11 for past medical expenses be withheld and paid directly to the  
12 department, not to exceed the amount of past medical expenses paid  
13 by the department on behalf of the recipient.

14 **§9-4E-7. Attorneys' fees.**

15 Irrespective of whether an action or claim is terminated by  
16 judgment or settlement without trial, from the amount required to  
17 be paid to the department there shall be deducted the reasonable  
18 costs and attorneys' fees attributable to the amount in accordance  
19 with and in proportion to the fee arrangement made between the  
20 recipient and his or her attorney of record so that the department  
21 shall bear the pro rata share of the reasonable costs and  
22 attorneys' fees: *Provided*, That if there is no recovery, the  
23 department shall under no circumstances be liable for any costs or

1 attorneys' fees expended in the matter.

2 **§9-4E-8. Class actions and multiple plaintiff actions not**  
3 **authorized.**

4 Nothing in this article shall authorize the department to  
5 institute a class action or multiple plaintiff action against any  
6 manufacturer, distributor or vendor of any product to recover  
7 medical care expenditures paid for by the Medicaid program.

8 **§9-4E-9. Secretary's authority.**

9 The secretary or his or her designee may compromise, settle  
10 and execute a release of any claim relating to the department's  
11 right of subrogation, in whole or in part.

12 **§9-4E-10. Notice of action or claim.**

13 If either the recipient or the department brings an action or  
14 claim against a third person, the recipient, his or her attorney or  
15 the department shall, within thirty days of filing the action, give  
16 to the other written notice of the action or claim by certified  
17 mail. This notice shall contain the name of the third person and  
18 the court in which the action is brought. If the department  
19 institutes said action, the notice shall advise the recipient of  
20 their right to bring such action in their own name, in which they  
21 may include as a part of their claim the sums claimed by the  
22 department. Proof of the notice shall be filed in said action  
23 subject to the notice and intent procedure as outlined in section



1 eleven of this article. If an action or claim is brought by either  
2 the recipient or the department, the other may, at any time before  
3 trial, become a party to the action, or shall consolidate his or  
4 her action or claim with the other if brought independently:  
5 *Provided*, That this consolidation or entry as a party does not  
6 delay the proceedings.

7 **§9-4E-11. Release of information.**

8 (a) All recipients of medical assistance under the Medicaid  
9 program are considered to have authorized all third parties,  
10 including, but not limited to, insurance companies and providers of  
11 medical care, to release to the department information needed by  
12 the department to secure or enforce its rights as assignee under  
13 this chapter.

14 (b) As a condition of doing business in the state, health  
15 insurers, including self-insured plans, group health plans as  
16 defined in §6074(a) of the Employee Retirement Income Security Act  
17 of 1974, service benefit plans, third-party administrators, managed  
18 care organizations, pharmacy benefit managers or other parties that  
19 are by statute, contract or agreement, legally responsible for  
20 payment of a claim for a health care item or service are required  
21 to comply with the following:

22 (1) Upon the request of the Bureau for Medical Services, or  
23 its contractor, provide information to determine the period that

1 the service recipients, their spouse or dependents may be or may  
2 have been covered by the health insurer, including the nature of  
3 the coverage that is or was provided by the health insurer, the  
4 name, address, date of birth, Social Security number, group number,  
5 identifying number of the plan, and effective and termination  
6 dates. The information shall be provided in a format suitable for  
7 electronic data matches, conducted under the direction of the  
8 department, no less than monthly or as prescribed by the secretary.  
9 The health insurer must respond within sixty working days after  
10 receipt of a written request for enrollment data from the  
11 department or its contractor;

12 (2) Accept the right of the Bureau for Medical Services of  
13 recovery and the assignment to the state of any right of an  
14 individual or other entity to payment from the party for an item or  
15 service for which payment has been made by the Bureau for Medical  
16 Services;

17 (3) Respond to any inquiry by the Bureau for Medical Services  
18 regarding a claim for payment for any health care item or service  
19 that is submitted not later than three years after the date of the  
20 provision of the health care item or service; and

21 (4) Accept a claim submitted by the Bureau for Medical  
22 Services regardless of the date of submission of the claim, the  
23 type or format of the claim form, lack of preauthorization or the

1 failure to present proper documentation at the point-of-sale that  
2 is the basis of the claim: *Provided*, That the claim is submitted  
3 by the Bureau for Medical Services within the three-year period  
4 beginning on the date on which the item or service was furnished  
5 and any action by the Bureau for Medical Services to enforce its  
6 right with respect to the claim is commenced within six years of  
7 the Bureau for Medical Services' submission of the claim.

8 **§9-4E-12. Right of the Department to recover medical assistance.**

9 (a) Upon the death of a person who was fifty-five years of age  
10 or older at the time the person received assistance consisting of  
11 nursing facility services, home and community-based services, and  
12 related hospital and prescription drug services, the department, in  
13 addition to any other available remedy, may file a claim or lien  
14 against the estate of the recipient for the total amount of medical  
15 assistance provided by Medicaid for nursing facility services, home  
16 and community-based services, and related hospital and prescription  
17 drug services provided for the benefit of the recipient. Claims so  
18 filed shall be classified as and included in the class of debts due  
19 the state.

20 (b) The department may recover pursuant to subsection (a) only  
21 after the death of the individual's surviving spouse, if any and  
22 only after such time as the individual has no surviving children  
23 under the age of twenty-one, or when the individual has no

1 surviving children who meet the Social Security Act's definition of  
2 blindness or permanent and total disability.

3       (c) The state shall have the right to place a lien upon the  
4 property of individuals who are inpatients in a nursing facility,  
5 intermediate care facility for individuals with an intellectual  
6 disability or other medical institution who, after notice and an  
7 opportunity for a hearing, the state has deemed to be permanently  
8 institutionalized. This lien shall be in an amount equal to  
9 Medicaid expenditures for services provided by a nursing facility,  
10 intermediate care facility for individuals with an intellectual  
11 disability or other medical institution, and shall be rendered  
12 against the proceeds of the sale of property except for a minimal  
13 amount reserved for the individual's personal needs. Any such lien  
14 dissolves upon that individual's discharge from the medical  
15 institution. The secretary has authority to compromise or  
16 otherwise reduce the amount of this lien in cases where enforcement  
17 would create a hardship.

18       (d) No lien may be imposed on an individual's home when the  
19 home is the lawful residence of:

20       (1) The spouse of the individual;

21       (2) The individual's child who is under the age of twenty-one;

22       (3) The individual's child meets the Social Security Act's  
23 definition of blindness or permanent and total disability; or

1           (4) The individual's sibling has an equity interest in the  
2 home and was residing in the home for a period of at least one year  
3 immediately before the date of the individual's admission to a  
4 medical institution.

5           (e) The filing of a claim, pursuant to this section, neither  
6 reduces or diminishes the general claims of the department, except  
7 that the department may not receive double recovery for the same  
8 expenditure. The death of the recipient neither extinguishes or  
9 diminishes any right of the department to recover. Nothing in this  
10 section affects or prevents a proceeding to enforce a lien pursuant  
11 to this section or a proceeding to set aside a fraudulent  
12 conveyance.

13           (f) Any claim or lien imposed pursuant to this section is  
14 effective for the full amount of medical assistance provided by  
15 Medicaid for nursing facility services, home and community-based  
16 services, and related hospital and prescription drug services. The  
17 lien attaches and is perfected automatically as of the beginning  
18 date of medical assistance, the date when a recipient first  
19 receives treatment for which the department may be obligated to  
20 provide medical assistance. A claim may be waived by the  
21 department, if the department determines, pursuant to applicable  
22 federal law and rules and regulations, that the claim will cause  
23 substantial hardship to the surviving dependents of the deceased.

1 **ARTICLE 5. WV WORKS ACT.**

2 **§9-5-1. Short title.**

3 This article may be cited as the "WV Works Act".

4 **§9-5-2. Legislative findings; purpose.**

5 (a) The Legislature hereby finds and declares that:

6 (1) The entitlement of any person to receive federal-state  
7 cash assistance is hereby discontinued;

8 (2) At-risk families are capable of becoming self-supporting;

9 (3) An assistance program should both expect and assist a  
10 parent and caretaker-relatives in at-risk families to support their  
11 dependent children and children for which they are caretakers;

12 (4) Every parent or caretaker-relative can exhibit responsible  
13 patterns of behavior so as to be a positive role model;

14 (5) Every parent or caretaker-relative who receives cash  
15 assistance has a responsibility to participate in an activity to  
16 help them prepare for, obtain and maintain gainful employment;

17 (6) For a parent or caretaker-relative who receives cash  
18 assistance and for whom full-time work is not feasible,  
19 participation in some activity is required to further himself or  
20 herself, his or her family or his or her community;

21 (7) The state should promote the value of work and the  
22 capabilities of individuals;

23 (8) Job development efforts should enhance the employment

1 opportunities of participants;

2 (9) Education is the key to achieving and maintaining life-  
3 long self-sufficiency; and

4 (10) An assistance program should be structured to achieve a  
5 clear set of outcomes; deliver services in an expedient, effective  
6 and efficient manner; and maximize community support for  
7 participants.

8 (b) The goals of the program are to achieve more efficient and  
9 effective use of public assistance funds; reduce dependency on  
10 public programs by promoting self-sufficiency; and structure the  
11 assistance programs to emphasize employment and personal  
12 responsibility. The success of the program is to be evaluated on  
13 the following activities, including, but not limited to: Job  
14 entry, job retention, federal work participation requirements and  
15 completion of educational activities.

16 **§9-5-3. Definitions.**

17 For the purposes of this article:

18 "Income" means money received by any member of an at-risk  
19 family which can be used at the discretion of the household to meet  
20 its basic needs: *Provided*, That income does not include:

21 (1) Supplemental security income paid to any member or members  
22 of the at-risk family;

23 (2) Earnings of minor children;

1 (3) Payments received from earned income tax credit or tax  
2 refunds;

3 (4) Earnings deposited in an individual development account  
4 approved by the department;

5 (5) Any educational grant or scholarship income regardless of  
6 source; or

7 (6) Any moneys specifically excluded from countable income by  
8 federal law;

9 **§9-5-4. Authorization for program.**

10 (a) The secretary shall conduct the West Virginia Works  
11 Program in accordance with this article and any applicable  
12 regulations promulgated by the secretary of the federal Department  
13 of Health and Human Services in accordance with federal block-grant  
14 funding or similar federal funding stream. This program shall  
15 expend only the funds appropriated by the Legislature to establish  
16 and operate the program or any other funds available to the  
17 program; establish administrative due process procedures for  
18 reduction or termination proceedings; and implement any other  
19 procedures necessary to accomplish the purpose of this article.

20 (b) The West Virginia Works Program does not create an  
21 entitlement to that program or any services offered within that  
22 program, unless entitlement is created pursuant to a federal law or  
23 regulation. The West Virginia Works Program and each component of



1 that program or the expansion of any component established pursuant  
2 to federal law or regulation is subject to the annual appropriation  
3 of funds by the Legislature.

4 **§9-5-5. WV works program fund.**

5       There is continued a special account within the State Treasury  
6 to be known as the "West Virginia Works Program Fund".  
7 Expenditures from the fund shall be used exclusively to meet the  
8 necessary expenditures of the program, including wage  
9 reimbursements to participating employers, temporary assistance to  
10 needy families, payments for support services, employment-related  
11 child care payments, transportation expenses and administrative  
12 costs directly associated with the operation of the program.  
13 Moneys paid into the account shall be from specific annual  
14 appropriations of funds by the Legislature.

15 **§9-5-6. Program participation.**

16       (a) Unless otherwise noted in this article, all adult  
17 beneficiaries of cash assistance and work eligible individuals  
18 shall participate in the West Virginia Works Program in accordance  
19 with the provisions of this article. The level of participation,  
20 services to be delivered and work requirements shall be defined  
21 through legislative rules established by the secretary.

22       (b) Any individual exempt under the provisions of section  
23 eight of this article may participate in the activities and

1 programs offered through the West Virginia Works Program.

2 (c) Support services other than cash assistance through the  
3 West Virginia Works Program may be provided to at-risk families to  
4 assist in meeting the work requirements or to eliminate the need  
5 for cash assistance.

6 (d) Cash assistance through the West Virginia Works Program  
7 may be provided to an at-risk family if the combined family income,  
8 as defined in section three of this article, is below the income  
9 test levels established by the department, subject to the  
10 following:

11 (1) Any adult member of an at-risk family who receives  
12 supplemental security income shall be excluded from the benefit  
13 group;

14 (2) Within the limits of funds appropriated therefor, an at-  
15 risk family that includes a married man and woman and dependent  
16 children of either one or both may receive an additional cash  
17 assistance benefit in an amount of \$100 or less; and

18 (3) An at-risk family shall receive an additional cash  
19 assistance benefit in the amount of \$25 regardless of the amount of  
20 child support collected in a month on behalf of a child or children  
21 of the at-risk family, as allowed by federal law.

22 **§9-5-7. Work requirements.**

23 (a) Unless otherwise exempted by the provisions of section

1 eight of this article, the West Virginia Works Program shall  
2 require that anyone who possesses a high school diploma, or its  
3 equivalent, or anyone who is of the age of twenty years or more, to  
4 work or attend an educational or training program for at least the  
5 minimum number of hours per week required by federal law under the  
6 work participation rate requirements for all families in order to  
7 receive any form of cash assistance. Participation in any  
8 education or training activity shall be counted toward satisfaction  
9 of the work requirement imposed by this section to the extent  
10 permissible under federal law and regulation: *Provided*, That the  
11 participant demonstrates adequate progress toward completion of the  
12 program. In accordance with federal law or regulation, the work,  
13 education and training requirements of this section are waived for  
14 any qualifying participant with a child under six years of age if  
15 the participant is unable to obtain appropriate and available child  
16 care services.

17 (b) The department and representatives of the Higher Education  
18 Policy Commission and the West Virginia Council for Community and  
19 Technical College Education shall develop and implement a plan to  
20 use and expand the programs available at the state's community and  
21 technical colleges, colleges and universities to assist  
22 beneficiaries or participants who are enrolled or wish to become  
23 enrolled in vocational-educational training not to exceed twelve

1 months with respect to any individual to meet the work requirements  
2 of this section. Vocational-educational training shall be  
3 supervised daily and on an ongoing basis.

4 **§9-5-8. Exemptions.**

5 The secretary shall establish by rule categories of persons  
6 exempt, but the exemption applies only to the work requirements of  
7 the program: *Provided*, That a person who is exempt from the work  
8 requirements may nevertheless participate voluntarily in work  
9 activities. The categories of exemptions are limited to the  
10 following:

11 (1) Undocumented aliens and aliens under the five-year ban;

12 (2) Parents, or at state option on a case-by-case basis,  
13 anyone receiving supplemental security income;

14 (3) A parent who is providing medically necessary care for a  
15 disabled family member who resides in the home and is not a full-  
16 time student;

17 (4) Minor parents who are not head of household (spouses of  
18 the head of household); and

19 (5) Grandparents and other nonparental caretakers.

20 **§9-5-9. Personal responsibility contract.**

21 (a) (1) Every eligible adult beneficiary and work eligible  
22 individual shall participate in a program orientation, family  
23 assessments and in the development, and subsequent revisions, of a

1 personal responsibility contract. The contract shall be defined  
2 based on the program time limits, support services available, work  
3 requirements and family assessments.

4 (2) The participant's contract shall include the following  
5 requirements:

6 (A) That the participant develop and maintain, with the  
7 appropriate health care provider, a schedule of preventive care for  
8 his or her dependent child or children, including routine  
9 examinations and immunizations;

10 (B) Assurance of school attendance for school-age children  
11 under his or her care;

12 (C) Assurance of properly supervised child care, including  
13 after-school care;

14 (D) Establishment of paternity or active pursuit of child  
15 support, or both, if applicable and if considered necessary; and

16 (E) Nutrition or other counseling, parenting or family-  
17 planning classes.

18 (3) If the participant is a teenage parent, he or she may  
19 work, but the contract shall include the requirements that the  
20 participant:

21 (A) Remain in an educational activity to complete high school,  
22 obtain a general equivalency diploma or obtain vocational training  
23 and make satisfactory scholastic progress;

1 (B) Attend parenting classes or participate in a mentorship  
2 program, or both, if appropriate; and

3 (C) Live at home with his or her parent or guardian or in some  
4 other adult-supervised arrangements if he or she is an  
5 unemancipated minor.

6 (4) If the participant is under the age of twenty years and  
7 does not have a high school diploma or its equivalent, the contract  
8 shall include requirements to participate in mandatory education or  
9 training which, if the participant is unemployed, may include a  
10 return to high school, with satisfactory scholastic progress  
11 required.

12 (b) In order to receive cash assistance, the participant shall  
13 enter into a personal responsibility contract. If the participant  
14 refuses to sign the personal responsibility contract, the  
15 participant and family members are ineligible to receive cash  
16 assistance: *Provided*, That a participant who alleges that the  
17 terms of a personal responsibility contract are inappropriate based  
18 on his or her individual circumstances may request and shall be  
19 provided a fair and impartial hearing in accordance with  
20 administrative procedures established by the department and due  
21 process of law. A participant who signs a personal responsibility  
22 contract or complies with a personal responsibility contract does  
23 not waive his or her right to request and receive a hearing under

1 this subsection.

2 (c) Personal responsibility contracts shall be drafted by the  
3 department on a case-by-case basis; take into consideration the  
4 individual circumstances of each beneficiary; reviewed and  
5 reevaluated periodically, but not less than on an annual basis;  
6 and, in the discretion of the department, amended on a periodic  
7 basis.

8 **§9-5-10. Participation limitation; exceptions.**

9 The length of time a participant may receive cash assistance  
10 through the West Virginia Works Program may not exceed a period  
11 longer than sixty months, except in circumstances as defined by the  
12 secretary.

13 **§9-5-11. Breach of contract; notice; sanctions.**

14 (a) The department may terminate cash assistance benefits to  
15 an at-risk family if it finds any of the following:

16 (1) Fraud or deception by the beneficiary in applying for or  
17 receiving program benefits;

18 (2) A substantial breach by the beneficiary of the  
19 requirements and obligations set forth in the personal  
20 responsibility contract and any amendments or addenda to the  
21 contract; or

22 (3) A violation by the beneficiary of any provision of the  
23 personal responsibility contract or any amendments or addenda to

1 the contract, this article, or any rule promulgated by the  
2 secretary pursuant to this article.

3 (b) If the department determines that benefits received by the  
4 beneficiary are subject to reduction or termination, written notice  
5 of the reduction or termination and the reason for the reduction or  
6 termination shall be deposited in the United States mail, postage  
7 prepaid and addressed to the beneficiary at his or her last known  
8 address at least thirteen days prior to the termination or  
9 reduction. The notice shall state the action being taken by the  
10 department and grant to the beneficiary a reasonable opportunity to  
11 be heard at a fair and impartial hearing before the department in  
12 accordance with administrative procedures established by the  
13 department and due process of law.

14 (c) In any hearing conducted pursuant to the provisions of  
15 this section, the beneficiary has the burden of proving that his or  
16 her benefits were improperly reduced or terminated and shall bear  
17 his or her own costs, including attorneys fees.

18 (d) The secretary shall determine by rule what constitutes de  
19 minimis violations and those violations subject to sanctions and  
20 maximum penalties. If the department finds that a beneficiary has  
21 violated any provision of this article, of his or her personal  
22 responsibility contract or any amendment or addenda to the  
23 contract, or any applicable department rule, the department shall



1 impose sanctions against the beneficiary as follows:

2 (1) For the first violation, a one-third reduction of benefits  
3 for three months;

4 (2) For a second violation, a two-thirds reduction of benefits  
5 for three months;

6 (3) For a third or subsequent violation, a total termination  
7 of benefits for three months.

8 (e) For any sanction imposed pursuant to subsection (d) of  
9 this section, if the beneficiary is found to have good cause for  
10 noncompliance, as defined by the secretary, the reduction or  
11 termination in benefits shall not be imposed and the violation  
12 shall not count in determining the level of sanction to be imposed  
13 for any future violation. Once a reduction in benefits is in  
14 effect, it shall remain in effect for the designated time period:  
15 *Provided*, That if a participant incurs a subsequent sanction before  
16 the sanction for a previous violation has expired, the sanctions  
17 shall run concurrently: *Provided, however*, That if a third  
18 violation occurs before the period for a previous sanction has  
19 expired, benefits shall be terminated and may not be reinstated  
20 until the three-month termination period has expired.

21 **§9-5-12. Diversionary assistance allowance in lieu of monthly cash**  
22 **assistance.**

23 (a) In order to encourage at-risk families not to apply for

1 ongoing monthly cash assistance from the state, the secretary may  
2 issue one-time diversionary assistance allowances to families in an  
3 amount not to exceed the equivalent of three months of cash  
4 assistance in order to enable the families to become immediately  
5 self-supporting.

6 (b) The secretary shall establish by rule the standards to be  
7 considered in making diversionary assistance allowances.

8 (c) Nothing in this section may be construed to require that  
9 the department or any assistance issued pursuant to this section be  
10 subject to any of the provisions of chapter thirty-one or chapter  
11 forty-six-a of this code.

12 **§9-5-13. Subsidized employment.**

13 (a) To the extent that resources are available, an employer  
14 may be paid a subsidy by the department to employ a parent or  
15 caretaker-relative of an at-risk family if the employer agrees to  
16 hire the West Virginia Works Program participant at the end of the  
17 subsidized period. If the employer does not hire the participant  
18 at the end of the subsidized period, the program may not use that  
19 employer for subsidized employment for the next twelve months.

20 (b) If the department determines that an employer has  
21 demonstrated a pattern of discharging employees hired pursuant to  
22 the provisions of this section subsequent to the expiration of the  
23 subsidized period without good cause, the employer shall no longer

1 be eligible for participation in the subsidized employment program  
2 for a period to be determined by the department.

3 **§9-5-14. Transitional assistance.**

4 The West Virginia Works Program may provide transitional  
5 assistance in the form of supportive services.

6 **§9-5-15. Interagency coordination.**

7 (a) The Legislature encourages the development of a system of  
8 coordinated services, shared information and streamlined  
9 application procedures between the program and the other agencies  
10 within the department to implement the provisions of this article.  
11 The secretary shall require the coordination of activities between  
12 the program and the following agencies:

13 (b) The child support enforcement division for the purpose of  
14 establishing paternity, promoting cooperation in the pursuit of  
15 child support, encouraging noncustodial parents to get job search  
16 assistance and determining eligibility for cash assistance and  
17 support services;

18 (c) The Bureau of Public Health for the purpose of determining  
19 appropriate immunization schedules, delivery systems and  
20 verification procedures; and

21 (d) The bureau for the purpose of reporting eligibility for  
22 medical assistance and transitional benefits.

23 (e) The secretary may require the coordination of procedures

1 and services with any other agency he or she considers necessary to  
2 implement this program: *Provided*, That all agencies coordinating  
3 services with the department shall, when provided with access to  
4 department records or information, abide by state and federal  
5 confidentiality requirements including the provisions of section  
6 twenty of this article.

7 (f) The secretary shall propose any rules, including emergency  
8 rules, necessary for the coordination of various agency activities  
9 in the implementation of this section.

10 **§9-5-16. Intergovernmental coordination.**

11 (a) The Commissioner of the Bureau of Employment Programs and  
12 the Superintendent of the Department of Education shall assist the  
13 secretary in the establishment of the West Virginia Works Program.  
14 Before implementation of this program, each department shall  
15 address in its respective plan the method in which its resources  
16 will be devoted to facilitate the identification of or delivery of  
17 services for participants and shall coordinate its respective  
18 programs with the department in the provision of services to  
19 participants and their families. Each county board of education  
20 shall designate a person to coordinate with the local Department of  
21 Health and Human Resources office the board's services to  
22 participant families and that person shall work to achieve  
23 coordination at the local level.

1 (b) The secretary and the superintendent shall develop a plan  
2 for program implementation to occur with the use of existing state  
3 facilities and county transportation systems within the project  
4 areas whenever practicable. This agreement shall include, but not  
5 be limited to, the use of buildings, grounds and buses. Whenever  
6 possible, the supportive services, education and training programs  
7 should be offered at the existing school facilities.

8 (c) The commissioner shall give priority to participants of  
9 the West Virginia Works Program within the various programs of the  
10 Bureau of Employment Programs. The secretary and the commissioner  
11 shall develop reporting and monitoring mechanisms between their  
12 respective agencies.

13 **§9-5-17. Public-private partnerships.**

14 The secretary may enter into agreements with any private,  
15 nonprofit, charitable or religious organizations to promote the  
16 development of the community support services necessary for the  
17 effective implementation of this program, including cooperative  
18 arrangements with private employers of former program participants  
19 for the purpose of obtaining and maintaining employer-based family  
20 health insurance coverage for former participants and their spouses  
21 and dependent children through direct payments to the employers out  
22 of funds appropriated for the cooperative agreements.

23 **§9-5-18. Relationship with other law.**

1        If any provision of this article conflicts with any other  
2 provision of this code or rules, the provisions of this article  
3 shall supersede such provisions: *Provided*, That the provisions of  
4 this article shall not supersede any provisions which are required  
5 or mandated by federal law.

6        Any reference in this code or rules to "aid to families with  
7 dependent children" means "temporary assistance for needy  
8 families" or any successor state program funded under Part A, Title  
9 IV of the Social Security Act.

10 **§9-5-19. Legislative oversight.**

11        The Legislative Oversight Commission on Health and Human  
12 Resources Accountability is charged with immediate and ongoing  
13 oversight of the program created by this article. This commission  
14 shall study, review and examine the work of the program, the  
15 department and its staff; study, review and examine all rules  
16 proposed by the department; and monitor the development and  
17 implementation of the West Virginia Works Program. The commission  
18 shall review and make recommendations to the Legislature and the  
19 Legislative Rule - Making Review Committee regarding any plan,  
20 policy or rule proposed by the secretary, the department or the  
21 program.

22 **§9-5-20. Confidentiality, fines and penalties.**

23        (a) Except as otherwise provided in this code or rules, all

1 records and information of the department regarding any beneficiary  
2 or beneficiary's family members, including food stamps, child  
3 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  
6 regulations;

7 (2) Upon the express written consent of the beneficiary or his  
8 or her legally authorized representative;

9 (3) Pursuant to an order of any court of record of this state  
10 or the United States based upon a finding that the information is  
11 sufficiently relevant to a proceeding before the court to outweigh  
12 the importance of maintaining the confidentiality established by  
13 this section: *Provided*, That all confidential records and  
14 information presented to the court shall after review be sealed by  
15 the clerk and shall not be open to any person except upon order of  
16 the court upon good cause being shown for the confidential records  
17 and information to be opened; or

18 (4) To a department or division of the state or other entity,  
19 pursuant to the terms of an interagency or other agreement:  
20 *Provided*, That any agreement specifically references this section  
21 and extends its requirements for confidentiality to the other  
22 entity receiving the records or information, its agents and  
23 employees.

1 (b) Any person who knowingly and willfully releases or causes  
2 to be released the confidential records and information described  
3 in this section, except under the specific circumstances enumerated  
4 in this section, is guilty of a misdemeanor and, upon conviction  
5 thereof, shall be fined not more than \$500 or confined in a  
6 regional jail for not more than six months, or both.

7 **§9-5-21. West Virginia Works Separate State College Program;**  
8 **eligibility; special revenue account.**

9 (a) The West Virginia Works Separate State College Program is  
10 continued. The program shall provide funding for participants who  
11 are enrolled in post-secondary courses leading to a two- or four-  
12 year degree. There is continued within the State Treasury a  
13 special revenue account to be known as the "West Virginia Works  
14 Separate State College Program Fund". Expenditures from the fund  
15 shall be for the purposes set forth in this section and are not  
16 authorized from collections but are to be made only in accordance  
17 with appropriations by the Legislature and in accordance with the  
18 provisions of article three, chapter twelve of this code and upon  
19 fulfillment of the provisions of article two, chapter eleven-b of  
20 this code. Necessary expenditures include wage reimbursements to  
21 participating employers, temporary assistance to needy families,  
22 payments for support services, employment-related child care  
23 payments, transportation expenses and administrative costs directly



1 associated with the operation of the program.

2       (b) All eligible adults attending post-secondary courses  
3 leading to a two- or four-year degree and who are not participating  
4 in vocational education training, as that term is defined in this  
5 article, shall be enrolled in the West Virginia Works Separate  
6 State College Program. Participants in the program shall not be  
7 required to engage in more than ten hours per week of federally  
8 defined work activities. The work, education and training  
9 requirements of this article are waived for any qualifying  
10 participant with a child under six years of age if the participant  
11 is unable to obtain appropriate and available child care services.  
12 All other requirements of West Virginia Works Program apply to  
13 program administration for adults enrolled in the program.

14       (c) The department shall work with the Higher Education Policy  
15 Commission, as set forth in article one-b, chapter eighteen-b of  
16 this code, and the Council for Community and Technical College  
17 Education, as set forth in article two-b, chapter eighteen-b of  
18 this code, to develop and implement a plan to use and expend funds  
19 for the programs available at the state's community and technical  
20 colleges and colleges and universities to assist participants who  
21 are enrolled, or wish to become enrolled, in two- and four-year  
22 degree programs of post-secondary education to meet the work  
23 requirements of this article.

1 **§9-5-22. West Virginia Works Separate State Two-Parent Families**  
2 **Program.**

3 (a) The West Virginia Works Separate State Two-Parent Families  
4 Program is continued. The program shall provide funding for  
5 participants who are a two-parent family as that term is defined in  
6 this article. There is continued within the State Treasury a  
7 special revenue account to be known as the West Virginia Works  
8 Separate State Two-Parent Program Fund. Expenditures from the fund  
9 shall be for the purposes set forth in this section and are not  
10 authorized from collections but are to be made only in accordance  
11 with appropriations by the Legislature and in accordance with the  
12 provisions of article three, chapter twelve of this code and upon  
13 fulfillment of the provisions of article two, chapter eleven-b of  
14 this code. Necessary expenditures include wage reimbursements to  
15 participating employers, temporary assistance to needy families,  
16 payments for support services, employment-related child care  
17 payments, transportation expenses and administrative costs directly  
18 associated with the operation of the program.

19 (b) All eligible two parent families shall enroll in the West  
20 Virginia Works Separate State Two-Parent Families Program. All  
21 requirements of West Virginia Works shall apply to program  
22 administration for two-parent families enrolled in the program.

23 **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

1 **§9-6-1. Exemption of grants from certain taxes and claims.**

2 Grants assistance received under the provisions of this  
3 chapter shall be exempted from the collection of taxes except sales  
4 taxes, from levy of execution, garnishment, suggestion, and any  
5 other legal process.

6 **§9-6-2. Release of liens and reassignment of insurance policies.**

7 All liens and claims upon real and personal property and all  
8 assignments of insurance policies, imposed, existing or made under  
9 the provisions of chapter one, Acts of the Legislature, first  
10 extraordinary session, 1936, chapter one hundred five, Acts of the  
11 Legislature, regular session, 1939, chapter seventy-four, Acts of  
12 the Legislature, regular session, 1941, chapter one hundred twenty-  
13 four, Acts of the Legislature, regular session, 1947, and chapter  
14 one hundred forty-three, Acts of the Legislature, regular session,  
15 1953, which have not been released or reassigned, shall be released  
16 or reassigned by the commissioner by the preparation, execution and  
17 acknowledgment of a release of each lien or claim and by the  
18 delivery of the release to the person or persons entitled thereto  
19 for recordation and by a reassignment of each such insurance policy  
20 to the person or persons entitled thereto.

21 **§9-6-3. Recipient of assistance not a pauper.**

22 A recipient of assistance shall not be deemed a pauper by  
23 reason of the receipt of assistance.

1 **§9-6-4. Penalties for false statements, etc.**

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

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

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

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

15 (B) If the aggregate value of all funds or other benefits  
16 obtained or attempted to be obtained exceeds \$500, the person so  
17 convicted shall be guilty of a felony and, shall be fined not more  
18 than \$5,000 or confined in jail not less than one year nor more  
19 than five years.

20 **§9-6-5. Liability of relatives for support.**

21 (a) The relatives of an indigent person, who are of sufficient  
22 ability, shall be liable to support the person in the manner  
23 required by the department and to pay the expenses of burial when

1 he dies, in the following order:

2 (1) The children.

3 (2) The father.

4 (3) The brothers and sisters.

5 (4) The mother.

6 (b) The commissioner may proceed by motion in the circuit  
7 court of the county in which the indigent person may be, against  
8 one or more of the relatives liable.

9 (c) If a relative so liable does not reside in this state and  
10 has no estate or debts due him or her within the state by means of  
11 which the liability can be enforced against him or her, the other  
12 relatives shall be liable as provided by this section, but a  
13 relative shall not be compelled to receive the indigent person in  
14 his or her own home.

15 (d) If it appears that a relative liable for the support of an  
16 indigent person is unable wholly to support him or her, but is able  
17 to contribute toward his or her support, the court may assess upon  
18 the relative the proportion which he or she shall be required to  
19 contribute either to the past expense incurred by the department or  
20 to the future support. The court may assess the residue upon the  
21 relatives in the order of their liability.

22 (e) Payment with interest and costs may be enforced by  
23 execution.

1 **§9-6-6. Funeral expenses for indigent persons; filing of affidavit**  
2 **to certify indigency; penalties for false swearing;**  
3 **payment by division.**

4 (a) The department shall pay for reasonable funeral service  
5 expenses for indigent persons, in an amount not to exceed \$1,250.

6 (b) For purposes of this section, the indigency of a deceased  
7 person is determined by the filing of an affidavit with the  
8 department, in a form provided by and determined in accordance with  
9 the income guidelines as set forth by the department:

10 (1) Signed by the heir or heirs-at-law which states that the  
11 estate of the deceased person is pecuniarily unable to pay the  
12 costs associated with a funeral; or

13 (2) Signed by the county coroner or the county health officer,  
14 the attending physician or other person signing the death  
15 certificate or the state medical examiner stating that the deceased  
16 person has no heirs or that heirs have not been located after a  
17 reasonable search and that the deceased person had no estate or the  
18 estate is pecuniarily unable to pay the costs associated with a  
19 funeral.

20 (c) Payment shall be made by the department to the person or  
21 persons who have furnished the services and supplies for the  
22 indigent person's funeral expenses or to the persons who have  
23 advanced payment for same, as the department may determine,

1 pursuant to appropriations for expenditures made by the Legislature  
2 for such purpose.

3 (d) Any person who knowingly swears falsely in an affidavit  
4 required by this section shall be guilty of a misdemeanor and, upon  
5 conviction thereof, shall be fined not more than \$1,000 or confined  
6 in a regional jail for a period of not more than six months, or  
7 both.

8 **ARTICLE 7. SOCIAL SERVICES FOR ADULTS.**

9 **§9-7-1. Definitions.**

10 The words and terms, used in this article, shall mean the  
11 following:

12 (1) "Adult protective services agency" means any public or  
13 nonprofit private agency, corporation, board or organization  
14 furnishing protective services to adults;

15 (2) "Abuse" means the infliction or threat to inflict physical  
16 pain or injury on or the imprisonment of any incapacitated adult or  
17 facility resident;

18 (3) "Neglect" means:

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

22 (B) The unlawful expenditure or willful dissipation of the  
23 funds or other assets owned or paid to or for the benefit of an

1 incapacitated adult or resident;

2       (4) "Incapacitated adult" means any person who by reason of  
3 physical, mental or other infirmity is unable to independently  
4 carry on the daily activities of life necessary to sustaining life  
5 and reasonable health;

6       (5) "Emergency" or "emergency situation" means a situation or  
7 set of circumstances which presents a substantial and immediate  
8 risk of death or serious injury to an incapacitated adult;

9       (6) "Legal representative" means a person lawfully invested  
10 with the power and charged with the duty of taking care of another  
11 person or with managing the property and rights of another person,  
12 including, but not limited to, a guardian, conservator, medical  
13 power of attorney representative, trustee or other duly appointed  
14 person;

15       (7) "Nursing home" or "facility" means any institution,  
16 residence, intermediate care facility for the mentally retarded,  
17 care home or any other adult residential facility, or any part or  
18 unit thereof, that is subject to the provisions of articles five-c,  
19 five-d, five-e or five-h, chapter sixteen of this code;

20       (8) "Regional long-term care ombudsman" means any paid staff  
21 of a designated regional long-term care ombudsman program who has  
22 obtained appropriate certification from the bureau for senior  
23 services and meets the qualifications set forth in section seven,



1 article five-1, chapter sixteen of this code;

2 (9) "Facility resident" means an individual living in a  
3 nursing home or other facility, as that term is defined in  
4 subdivision (7) of this section;

5 (10) "Responsible family member" means a member of a  
6 resident's family who has undertaken primary responsibility for the  
7 care of the resident and who has established a working relationship  
8 with the nursing home or other facility in which the resident  
9 resides. For purposes of this article, a responsible family member  
10 may include someone other than the resident's legal representative;

11 (11) "State long-term care ombudsman" means an individual who  
12 meets the qualifications of section five, article five-1, chapter  
13 sixteen of this code and who is employed by the state bureau for  
14 senior services to implement the state long-term care ombudsman  
15 program.

16 **§9-7-2. Adult protective services; immunity from civil liability;**  
17 **rules; organization and duties.**

18 (a) There is continued within the department the system of  
19 adult protective services heretofore existing.

20 (b) The secretary shall propose rules for legislative approval  
21 in accordance with the provisions of article three, chapter twenty-  
22 nine-a of this code regarding the organization and duties of the  
23 adult protective services system and the procedures to be used by

1 the department to effectuate the purposes of this article. The  
2 rules may be amended and supplemented from time to time.

3 (c) The secretary shall design and arrange such rules to  
4 attain, or move toward the attainment, of the following goals to  
5 the extent that the secretary believes feasible under the  
6 provisions of this article within the state appropriations and  
7 other funds available:

8 (1) Assisting adults who are abused, neglected or  
9 incapacitated in achieving or maintaining self-sufficiency and  
10 self-support and preventing, reducing and eliminating their  
11 dependency on the state;

12 (2) Preventing, reducing and eliminating neglect and abuse of  
13 adults who are unable to protect their own interests;

14 (3) Preventing and reducing institutional care of adults by  
15 providing less intensive forms of care, preferably in the home;

16 (4) Referring and admitting abused, neglected or incapacitated  
17 adults to institutional care only where other available services  
18 are inappropriate;

19 (5) Providing services and monitoring to adults in  
20 institutions designed to assist adults in returning to community  
21 settings;

22 (6) Preventing, reducing and eliminating the exploitation of  
23 incapacitated adults and facility residents through the joint

1 efforts of the various agencies of the department, the adult  
2 protective services system, the state and regional long-term care  
3 ombudsmen, administrators of nursing homes or other residential  
4 facilities and county prosecutors;

5 (7) Preventing, reducing and eliminating abuse and neglect of  
6 residents in nursing homes or facilities; and

7 (8) Coordinating investigation activities for complaints of  
8 abuse and neglect of incapacitated adults and facility residents  
9 among the various agencies of the department, the adult protective  
10 services system, the state and regional long-term care ombudsmen,  
11 administrators of nursing homes or other residential facilities,  
12 county prosecutors, if necessary, and other state or federal  
13 agencies or officials, as appropriate.

14 (d) No adult protective services caseworker may be held  
15 personally liable for any professional decision or action thereupon  
16 arrived at in the performance of his or her official duties as set  
17 forth in this section or agency rules promulgated thereupon:  
18 *Provided*, That nothing in this subsection protects any adult  
19 protective services worker from any liability arising from the  
20 operation of a motor vehicle or for any loss caused by gross  
21 negligence, willful and wanton misconduct or intentional  
22 misconduct.

23 (e) The rules proposed by the secretary shall provide for the

1 means by which the department shall cooperate with federal, state  
2 and other agencies to fulfill the objectives of the system of adult  
3 protective services.

4 **§9-7-3. Cooperation among agencies; termination and reduction of**  
5 **assistance by commissioner.**

6 The secretary shall direct the coordination of the  
7 investigation of complaints of abuse or neglect made pursuant to  
8 this article; and the various agencies of the department, the adult  
9 protective services system, the state and regional long-term care  
10 ombudsmen, administrators of nursing homes or other residential  
11 facilities, county prosecutors and any other applicable state or  
12 federal agency shall cooperate among each other for the purposes of  
13 observing, reporting, investigating and acting upon complaints of  
14 abuse or neglect of any incapacitated adult or facility resident in  
15 this state.

16 **§9-7-4. Action to abate abuse, neglect or emergency.**

17 The department or any reputable person may bring and maintain  
18 an action against any person having actual care, custody or control  
19 of an incapacitated adult, for injunctive relief, including a  
20 preliminary injunction, to restrain and abate any abuse or neglect  
21 of an incapacitated adult or to abate an emergency situation. In  
22 any such proceeding the court shall appoint a guardian ad litem, to  
23 protect the interests of the incapacitated adult, who shall not be

1 an employee of the state nor be a party to the proceeding nor be  
2 selected by or in the employ of any party to the proceeding:  
3 *Provided*, That the court may by order terminate assistance granted  
4 or paid to any person found to have abused or neglected an  
5 incapacitated adult and order any such assistance to be paid to  
6 another person solely for the use and benefit of such abused or  
7 neglected person, and grant such other equitable relief as may be  
8 appropriate in the circumstances to restrain and abate such abuse  
9 or neglect: *Provided, however*, That in the case of an action to  
10 abate an emergency situation, the court may grant the relief  
11 authorized in section five of this article.

12 **§9-7-5. Emergency immediate remedial treatment; procedure.**

13 (a) Whenever a circuit court shall find in an action to abate  
14 an emergency situation that there is probable cause to believe that  
15 an incapacitated adult is in an emergency situation and that the  
16 person or persons having the immediate care, custody and control of  
17 the incapacitated adult refuses to take necessary steps to  
18 alleviate the emergency, or that the incapacitated adult is without  
19 the actual care, custody and control of any persons, it may issue  
20 an order of attachment for the incapacitated adult and direct that  
21 the peace officer executing the same deliver the incapacitated  
22 adult in his or her custody to a hospital or other safe place  
23 except a jail, for immediate remedial treatment to reduce or avoid

1 the risk of death or serious injury. In the event, that an order  
2 of attachment is issued pursuant to this section, any peace officer  
3 executing the order, and any employees of the department the peace  
4 officer directs to accompany him or her, may enter into the place  
5 of abode to remove the incapacitated person, notwithstanding the  
6 residence therein of other persons.

7 (b) If any employee or officer of the department shall by  
8 direct observation of an incapacitated adult not in the immediate  
9 care, custody or control of another have reasonable cause to  
10 believe that the incapacitated person is then and there in an  
11 emergency situation, then the officer or employee may offer  
12 transportation to a hospital or other safe place, other than a  
13 jail, to the incapacitated adult for immediate remedial treatment  
14 to reduce or avoid the risk of death, or serious injury.

15 (c) Immediately upon delivery of any incapacitated person to  
16 a hospital or other safe place, the officer or employee shall apply  
17 to the circuit court for and the court shall appoint, and in the  
18 case of an attachment the court shall contemporaneously with its  
19 issuance appoint, a guardian ad litem who shall not be an employee  
20 of the state, nor be an interested party nor be selected by nor in  
21 the employ of any interested party, to represent the interests of  
22 the incapacitated adult, and the court shall fix a time, not later  
23 than one judicial day later, to determine if the remedial treatment

1 shall continue or the incapacitated adult should be released. A  
2 copy of that attachment and notice of the hearing shall be served  
3 on any person in whose actual care, custody and control the  
4 incapacitated adult is found. If further remedial treatment is  
5 required, application shall be promptly made to the county  
6 commission or other proper tribunal for appropriate relief:  
7 *Provided*, That the commitment for further remedial treatment may be  
8 continued until proceedings for appropriate relief be concluded:  
9 *Provided, however*, That application for release from such remedial  
10 treatment may be made and granted at any time that the emergency  
11 ceases.

12 **§9-7-6. Payment and termination of payment for services to**  
13 **incapacitated adult.**

14 If any incapacitated adult:

15 (1) Requires and is granted remedial treatment for an  
16 emergency or the department determines that an incapacitated adult  
17 is

18 (2) Abused, or

19 (3) Neglected;

20 the department may pay any assistance granted for the use and  
21 benefit of the incapacitated adult to the person actually providing  
22 care for the adult, and terminate payments to any person alleged or  
23 shown to have abused or neglected the incapacitated adult, or to

1 whom payments were made prior to the remedial treatment, for so  
2 long as the remedial treatment continues, or until the abuse or  
3 neglect is abated, and the incapacitated adult continues to be in  
4 the immediate care, custody and control of such person.

5 **§9-7-7. Comprehensive system of adult protective services;**  
6 **compulsory assistance prohibited.**

7 (a) The department shall develop a plan for a comprehensive  
8 system of adult protective services including social case work,  
9 medical and psychiatric services, home care, day care, counseling,  
10 research and others to achieve the goals of this article.

11 (b) It shall offer such services as are available and  
12 appropriate in the circumstances to persons who, other than for  
13 compensation, have or intend to have the actual, physical custody  
14 and control of an incapacitated adult and to incapacitated adults  
15 or to adults who may request and be entitled to the protective  
16 services: *Provided*, That except as expressly provided in this  
17 article, the department may not directly or indirectly compel the  
18 acceptance of the services by any person or discriminate against a  
19 person who refuses the services.

20 **§9-7-8. Confidentiality of records.**

21 (a) Except as otherwise provided in this section, all records  
22 of the department, state and regional long-term care ombudsmen,  
23 nursing home or facility administrators, the office of health



1 facility licensure and certification and all protective services  
2 agencies concerning an adult or facility resident under this  
3 article are confidential and may not be released, except in  
4 accordance with the provisions of section eleven of this article.

5 (b) Unless the adult concerned is receiving adult protective  
6 services or unless there are pending proceedings with regard to the  
7 adult, the records maintained by the adult protective services  
8 agency shall be destroyed thirty years following their preparation.

9 (c) Notwithstanding the provisions of subsection (a) of this  
10 section or any other provision of this code to the contrary, all  
11 records concerning reports of abuse, neglect or exploitation of  
12 vulnerable adults, including all records generated as a result of  
13 such reports, may be made available to:

14 (1) Employees or agents of the department who need access to  
15 the records for official business;

16 (2) Any law-enforcement agency investigating a report of known  
17 or suspected abuse, neglect or exploitation of a vulnerable adult;

18 (3) The prosecuting attorney of the judicial circuit in which  
19 the vulnerable adult resides or in which the alleged abuse, neglect  
20 or exploitation occurred;

21 (4) A circuit court or the Supreme Court of Appeals  
22 subpoenaing the records. The court shall, before permitting use of  
23 the records in connection with any court proceeding, review the

1 records for relevancy and materiality to the issues in the  
2 proceeding. The court may issue an order to limit the examination  
3 and use of the records or any part of the record;

4 (5) A grand jury, by subpoena, upon its determination that  
5 access to the records is necessary in the conduct of its official  
6 business;

7 (6) The recognized protection and advocacy agency for the  
8 disabled of the State of West Virginia;

9 (7) The victim; and

10 (8) The victim's legal representative, unless he or she is the  
11 subject of an investigation under this article.

12 (d) Notwithstanding the provisions of subsection (a) of this  
13 section or any other provision of this code to the contrary,  
14 summaries concerning substantiated investigative reports of abuse,  
15 neglect or exploitation of adults may be made available to:

16 (1) Any person who the department has determined to have  
17 abused, neglected or exploited the victim;

18 (2) Any appropriate official of the state or regional long-  
19 term care ombudsman investigating a report of known or suspected  
20 abuse, neglect or exploitation of a vulnerable adult;

21 (3) Any person engaged in bona fide research or auditing, as  
22 defined by the department. However, information identifying the  
23 subjects of the report may not be made available to the researcher;

1 (4) Employees or agents of an agency of another state that has  
2 jurisdiction to investigate known or suspected abuse, neglect or  
3 exploitation of vulnerable adults;

4 (5) A professional person when the information is necessary  
5 for the diagnosis and treatment of, and service delivery to, a  
6 vulnerable adult; and

7 (6) A department administrative hearing officer when the  
8 hearing officer determines the information is necessary for the  
9 determination of an issue before the officer.

10 (e) The identity of any person reporting abuse, neglect or  
11 exploitation of a vulnerable adult may not be released, without  
12 that person's written consent, to any person other than employees  
13 of the department responsible for protective services or the  
14 appropriate prosecuting attorney or law-enforcement agency. This  
15 subsection grants protection only for the person who reported the  
16 abuse, neglect or exploitation and protects only the fact that the  
17 person is the reporter. This subsection does not prohibit the  
18 subpoena of a person reporting the abuse, neglect or exploitation  
19 when deemed necessary by the prosecuting attorney or the department  
20 to protect a vulnerable adult who is the subject of a report, if  
21 the fact that the person made the report is not disclosed.

22 **§9-7-9. Mandatory reporting of incidences of abuse, neglect or**  
23 **emergency situation.**

1           (a) If any medical, dental or mental health professional,  
2 Christian Science practitioner, religious healer, social service  
3 worker, law-enforcement officer, humane officer, state or regional  
4 ombudsman or any employee of any nursing home or other residential  
5 facility has reasonable cause to believe that an incapacitated  
6 adult or facility resident is or has been neglected, abused or  
7 placed in an emergency situation, or if the person observes an  
8 incapacitated adult or facility resident being subjected to  
9 conditions that are likely to result in abuse, neglect or an  
10 emergency situation, the person shall immediately report the  
11 circumstances pursuant to the provisions of section eleven of this  
12 article: *Provided*, That nothing in this article is intended to  
13 prevent individuals from reporting on their own behalf.

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

18           (c) The secretary shall develop a form for the filing of  
19 written complaints and provide these forms to all nursing homes or  
20 other residential facilities, hospitals, ombudsmen and adult  
21 protective service agencies in this state. The forms shall be  
22 designed to protect the identity of the complainant, if desired,  
23 and to facilitate the prompt filing of complaints.

1 (d) The department shall develop and implement a procedure to  
2 notify any person mandated to report suspected abuse and neglect of  
3 an incapacitated adult or facility resident of whether an  
4 investigation into the reported suspected abuse or neglect has been  
5 initiated and when the investigation is completed.

6 **§9-7-10. Mandatory reporting suspected of animal cruelty by adult**  
7 **protective service workers.**

8 If an adult protective service worker, in response to a report  
9 mandated by section nine of this article, forms a reasonable  
10 suspicion that an animal is the victim of cruel or inhumane  
11 treatment, he or she shall report the suspicion and the basis  
12 therefor to the county humane officer provided within twenty-four  
13 hours of the response to the report.

14 **§9-7-11. Mandatory reporting to medical examiner or coroner;**  
15 **postmortem investigation.**

16 (a) Any person or official who is required under section nine  
17 of this article to report cases of suspected abuse or neglect and  
18 who has probable cause to believe that an incapacitated adult or  
19 facility resident has died as a result of abuse or neglect shall  
20 report that fact to the appropriate medical examiner or coroner.

21 (b) Upon the receipt of such a report, the medical examiner or  
22 coroner shall cause an investigation to be made and shall report  
23 the findings to the local law-enforcement agency, the local

1 prosecuting attorney, the department's local adult protective  
2 services agency, and, if the institution making a report is a  
3 hospital, nursing home or other residential facility, to the  
4 administrator of the facility, the state and regional long-term  
5 care ombudsman and the office of health facility licensure and  
6 certification.

7 **§9-7-12. Reporting procedures.**

8 (a) A report of neglect or abuse of an incapacitated adult or  
9 facility resident or of an emergency situation involving such an  
10 adult shall be made immediately by telephone to the department's  
11 local adult protective services agency and shall be followed by a  
12 written report by the complainant or the receiving agency within  
13 forty-eight hours. The department shall, upon receiving any such  
14 report, take such action as may be appropriate and shall maintain  
15 a record thereof. The department shall receive such telephonic  
16 reports on its twenty-four hour, seven-day-a-week, toll-free number  
17 established to receive calls reporting cases of suspected or known  
18 adult abuse or neglect.

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

21 (1) The department;

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

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

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

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

10 (e) Reports of known or suspected institutional abuse or  
11 neglect of an incapacitated adult or facility resident or the  
12 existence of an emergency situation in an institution, nursing home  
13 or other residential facility shall be made, received and  
14 investigated in the same manner as other reports provided in this  
15 article. In the case of a report regarding an institution, nursing  
16 home or residential facility, the department shall immediately  
17 cause an investigation to be conducted.

18 (f) Upon receipt of a written complaint, the department shall  
19 coordinate an investigation.

20 **§9-7-13. Reporting person's immunity from liability.**

21 (a) Any person who in good faith makes or causes to be made  
22 any report permitted or required by this article shall be immune  
23 from any civil or criminal liability which might otherwise arise

1 solely out of making the report.

2 (b) No nursing home may discharge or in any manner  
3 discriminate against any resident, family member, legal  
4 representative or employee for the reason that he or she filed a  
5 complaint or participated in any matter or proceeding stemming from  
6 the provisions of this article.

7 (c) Violation of the prohibition contained in subsection (b)  
8 of this section by a nursing home or other residential facility  
9 constitutes grounds for the suspension or revocation of the license  
10 of the facility, if it operates under license pursuant to this  
11 code, or other appropriate measure.

12 **§9-7-14. Abrogation of privileged communications.**

13 The privileged status of communications between husband and  
14 wife, and with any person required to make reports, except  
15 communications between an attorney and his or her client, is  
16 abrogated in circumstances involving suspected or known abuse or  
17 neglect of an incapacitated adult or where the incapacitated adult  
18 is in a known or suspected emergency situation.

19 **§9-7-15. Failure to report; penalty.**

20 Any person subject to the mandatory reporting provisions of  
21 this article who knowingly fails to make any required report or any  
22 person who knowingly prevents another person from making a report  
23 is guilty of a misdemeanor and, upon conviction thereof, shall be



1 fined not more than \$100 or imprisoned in a regional jail for not  
2 more than ten days, or both fined and imprisoned.

3 **§9-7-16. Compelling production of information.**

4 (a) (1) In order to obtain information regarding the location  
5 of an adult who is the subject of an allegation of abuse or  
6 neglect, the secretary may serve, by certified mail, personal  
7 service or facsimile, an administrative subpoena on any  
8 corporation, partnership, business or organization for production  
9 of information leading to determining the location of the adult.  
10 In case of disobedience to the subpoena, adult protective services  
11 may petition any circuit court to require the production of  
12 information.

13 (2) In case of disobedience to the subpoena, in compelling the  
14 production of information the secretary may invoke the aid of:

15 (A) The circuit court with jurisdiction over the served party,  
16 if the entity served is located in this state; or

17 (B) The circuit court of the county in which the local  
18 protective services office conducting the investigation is located,  
19 if the entity served is a nonresident.

20 (3) A circuit court shall not enforce an administrative  
21 subpoena unless it finds that:

22 (A) The investigation is one the division of adult protective  
23 services is authorized to make and is being conducted pursuant to

1 a legitimate purpose;

2 (B) The inquiry is relevant to that purpose;

3 (C) The inquiry is not too broad or indefinite;

4 (D) The information sought is not already in the possession of  
5 the division of adult protective services; and

6 (E) Any administrative steps required by law have been  
7 followed.

8 (4) If circumstances arise where the secretary, or his or her  
9 designee, determines it necessary to compel an individual to  
10 provide information regarding the location of an adult who is the  
11 subject of an allegation of abuse or neglect, the secretary, or his  
12 or her designee, may seek a subpoena from the circuit court with  
13 jurisdiction over the individual from whom the information is  
14 sought.

NOTE: The purpose of this bill is to revise, arrange, consolidate and recodify the laws of the State of West Virginia relating to the Department of Health and Human Resources and the Bureau of Medical Services.

The entire chapter is substantially rewritten; therefore strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Legislative Oversight Commission on Health and Human Resources Accountability.