

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Second Engrossment**

**Committee Substitute**

**for**

**Senate Bill 597**

BY SENATORS FERNS AND PLYMALE

[Originating in the Committee on Health and Human

Resource; reported on February 17, 2016.]



1 A BILL to amend and reenact §5F-1-3a of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §9-4C-7 of said code; to amend and reenact §11-27-9 and §11-27-11 of said  
3 code; to amend and reenact §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-5F-6 of  
4 said code; to amend and reenact §16-29B-3, §16-29B-5, §16-29B-6, §16-29B-7, §16-29B-  
5 8, §16-29B-9, §16-29B-11, §16-29B-12, §16-29B-13, §16-29B-14, §16-29B-15, §16-29B-  
6 17, §16-29B-18, §16-29B-19a, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25 and  
7 §16-29B-26 of said code; to amend said code by adding thereto a new section, designated  
8 §16-29B-5a; to amend said code by adding thereto a new section, designated §16-29B-  
9 28; to amend and reenact §16-29G-2, §16-29G-5 and §16-29G-6 of said code; and to  
10 amend and reenact §16-29I-4 of said code, all relating generally to the Health Care  
11 Authority; employment of the members of the Board of the West Virginia Health Care  
12 Authority; creating effective date; providing executive director to set salaries for board  
13 members; allowing current members to serve until their term expires or they are  
14 reappointed; creating the position of Executive Director of the Health Care Authority;  
15 making the executive director the administrative head of the Health Care Authority; setting  
16 forth the qualifications of the executive director; providing the executive director is  
17 appointed by the Governor with advice and consent of the Senate; providing the executive  
18 director reports to the Secretary of the Department of Health and Human Resources;  
19 placing the Health Care Authority under the Department of Health and Human Resources;  
20 adding the executive director to the Public Employees Insurance Agency Advisory Board;  
21 clarifying where the administrative duties of the Health Care Authority are to be carried  
22 out; clarifying that the board of Directors of the Health Care Authority is the adjudicatory  
23 arm of the Health Care Authority; requiring that the members of the board of directors be  
24 employed on a part-time basis; setting forth other employment requirements for the board  
25 of directors; expanding the board of directors from three to five members; setting forth  
26 qualifications for appointment to the board of directors; providing that the board of directors

27 shall report to the executive director; setting forth minimum hearing requirements before  
28 the board of directors; providing for recommended decisions by the board of directors to  
29 the executive director; setting forth executive director procedure for review and approval  
30 of recommended decisions of the board of directors; providing for remand of a decision;  
31 clarifying that the executive director has all rule-setting powers; providing for a study by  
32 the Health Care Authority of concerns of hospitals in border counties; requiring a  
33 comprehensive study of the certificate of need program, including possible elimination of  
34 certificate of need; making technical corrections; granting authority to the Health Care  
35 Authority to review proposed cooperative agreements; defining terms; setting out  
36 legislative findings and purpose; allowing cooperative agreements between hospitals and  
37 health care providers; setting forth goals of a cooperative agreement; establishing a review  
38 process for cooperative agreements; setting forth standards for review of cooperative  
39 agreements; granting enforcement powers over cooperative agreements to the Health  
40 Care Authority; providing for rulemaking; requiring reporting to the Health Care Authority;  
41 setting out what must be included in a report; allowing the Health Care Authority to render  
42 a decision regarding reduced competition when a cooperative agreement pertains to an  
43 acquisition, merger or combination of hospitals or health care providers; and updating  
44 code references.

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

1 That §5F-1-3a of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §9-4C-7 of said code be amended and reenacted; that §11-27-9 and §11-27-11  
3 of said code be amended and reenacted; that §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5 and §16-  
4 5F-6 of said code be amended and reenacted; that §16-29B-3, §16-29B-5, §16-29B-6, §16-29B-  
5 7, §16-29B-8, §16-29B-9, §16-29B-11, §16-29B-12, §16-29B-13, §16-29B-14, §16-29B-15, §16-  
6 29B-17, §16-29B-18, §16-29B-19a, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25 and §16-  
7 29B-26 of said code be amended and reenacted; that said code be amended by adding thereto

8 a new section, designated §16-29B-5a; that said code be amended by adding thereto a new  
9 section, designated §16-29B-28; that §16-29G-2, §16-29G-5 and §16-29G-6 of said code be  
10 amended and reenacted; and that §16-29I-4 of said code be amended and reenacted, all to read  
11 as follows:

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

**ARTICLE 1. GENERAL PROVISIONS.**

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

1           There is hereby created an executive compensation commission composed of three  
2 members, one of whom shall be the secretary of administration, one of whom shall be appointed  
3 by the Governor from the names of two or more nominees submitted by the President of the  
4 Senate, and one of whom shall be appointed by the Governor from the names of two or more  
5 nominees submitted by the Speaker of the House of Delegates. The names of such nominees  
6 shall be submitted to the Governor by not later than June 1, 2000, and the appointment of such  
7 members shall be made by the Governor by not later than July 1, 2000. The members appointed  
8 by the Governor shall have had significant business management experience at the time of their  
9 appointment and shall serve without compensation other than reimbursement for their reasonable  
10 expenses necessarily incurred in the performance of their commission duties. For the 2001  
11 regular session of the Legislature and every four years thereafter, the commission shall review  
12 the compensation for cabinet secretaries and other appointed officers of this state, including, but  
13 not limited to, the following: Commissioner, Division of Highways; commissioner, Bureau of  
14 Employment Programs; director, Division of Environmental Protection; commissioner, Bureau of  
15 Senior Services; director of tourism; commissioner, division of tax; administrator, division of  
16 health; commissioner, Division of Corrections; director, Division of Natural Resources;  
17 superintendent, State Police; administrator, Lottery Division; director, Public Employees

18 Insurance Agency; administrator, Alcohol Beverage Control Commission; commissioner, Division  
19 of Motor Vehicles; director, Division of Personnel; Adjutant General; ~~chairman, Health Care~~  
20 ~~Authority; members, Health Care Authority;~~ the Executive Director of the Health Care Authority;  
21 director, Division of Rehabilitation Services; executive director, Educational Broadcasting  
22 Authority; executive secretary, Library Commission; Chairman and members of the Public Service  
23 Commission; Director of Emergency Services; administrator, Division of Human Services;  
24 executive director, Human Rights Commission; director, Division of Veterans Affairs; director,  
25 Office of Miner's Health Safety and Training; commissioner, Division of Banking; commissioner,  
26 Division of Insurance; commissioner, Division of Culture and History; commissioner, Division of  
27 Labor; director, Prosecuting Attorneys Institute; director, Board of Risk and Insurance  
28 Management; commissioner, Oil and Gas Conservation Commission; director, Geological and  
29 Economic Survey; executive director, Water Development Authority; executive director, Public  
30 Defender Services; director, State Rail Authority; Chairman and members of the Parole Board;  
31 members, Employment Security Review Board; members, Workers' Compensation Appeal  
32 Board; chairman, Racing Commission; executive director, Women's Commission; and director,  
33 Hospital Finance Authority.

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

**CHAPTER 9. HUMAN SERVICES.**

**ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.**

**§9-4C-7. Powers and duties.**

1           (a) Each board created pursuant to this article shall:

2           (1) Develop, recommend and review reimbursement methodology where applicable, and  
3 develop and recommend a reasonable provider fee schedule, in relation to its respective provider  
4 groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of  
5 annual funding available to the single state agency for the Medicaid program. In developing the  
6 fee schedule the board may refer to a nationally published regional specific fee schedule, if  
7 available, as selected by the secretary in accordance with section eight of this article. The board  
8 may consider identified health care priorities in developing its fee schedule to the extent permitted  
9 by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic  
10 primary and preventative health care services than for other services. In identifying basic primary  
11 and preventative health care services, the board may consider factors, including, but not limited  
12 to, services defined and prioritized by the basic services task force of the health care planning  
13 commission in its report issued in December of the year 1992; and minimum benefits and  
14 coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three  
15 of this code and section four, article sixteen-c of said chapter and rules of the Insurance  
16 Commissioner promulgated thereunder. If the single state agency approves the adjustments to  
17 the fee schedule, it shall implement the provider fee schedule;

18           (2) Review its respective provider fee schedule on a quarterly basis and recommend to  
19 the single state agency any adjustments it considers necessary. If the single state agency  
20 approves any of the board's recommendations, it shall immediately implement those adjustments  
21 and shall report the same to the Joint Committee on Government and Finance on a quarterly  
22 basis;

23           (3) Assist and enhance communications between participating providers and the  
24 Department of Health and Human Resources;

25           (4) Meet and confer with representatives from each specialty area within its respective  
26 provider group so that equity in reimbursement increases or decreases may be achieved to the  
27 greatest extent possible and when appropriate to meet and confer with other provider boards; and

28 (5) Appoint a chairperson to preside over all official transactions of the board.

29 (b) Each board may carry out any other powers and duties as prescribed to it by the  
30 secretary.

31 (c) Nothing in this section gives any board the authority to interfere with the discretion and  
32 judgment given to the single state agency that administers the state's Medicaid program. If the  
33 single state agency disapproves the recommendations or adjustments to the fee schedule, it is  
34 expressly authorized to make any modifications to fee schedules as are necessary to ensure that  
35 total financial requirements of the agency for the current fiscal year with respect to the state's  
36 Medicaid plan are met and shall report such modifications to the Joint Committee on Government  
37 and Finance on a quarterly basis. The purpose of each board is to assist and enhance the role of  
38 the single state agency in carrying out its mandate by acting as a means of communication  
39 between the health care provider community and the agency.

40 ~~(d) In addition to the duties specified in subsection (a) of this section, the ambulance~~  
41 ~~service provider Medicaid board shall work with the health care cost review authority to develop~~  
42 ~~a method for regulating rates charged by ambulance services. The health care cost review~~  
43 ~~authority shall report its findings to the Legislature by January 1, 1994. The costs of the report~~  
44 ~~shall be paid by the health care cost review authority. In this capacity only, the chairperson of the~~  
45 ~~health care cost review authority shall serve as an ex officio, nonvoting member of the board.~~

46 ~~(e)~~(d) On a quarterly basis, the single state agency and the board shall report the status  
47 of the fund, any adjustments to the fee schedule and the fee schedule for each health care  
48 provider identified in section two of this article to the Joint Committee on Government and  
49 Finance.

## **CHAPTER 11. TAXATION.**

### **ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

#### **§11-27-9. Imposition of tax on providers of inpatient hospital services.**

1           (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the  
2 business of providing inpatient hospital services, there is hereby levied and shall be collected  
3 from every person rendering such service an annual broad-based health care related tax:  
4 *Provided, That a hospital which meets all the requirements of section twenty-one, article twenty-*  
5 *nine-b, chapter sixteen of this code and regulations thereunder may change or amend its*  
6 *schedule of rates to the extent necessary to compensate for the tax in accordance with the*  
7 *following procedures:*

8           ~~(1) The health care cost review authority shall allow a temporary change in a hospital's~~  
9 ~~rates which may be effective immediately upon filing and in advance of review procedures when~~  
10 ~~a hospital files a verified claim that such temporary rate changes are in the public interest, and~~  
11 ~~are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to~~  
12 ~~relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's~~  
13 ~~position, the amount of increase in rates required to alleviate the situation and shall summarize~~  
14 ~~the overall effect of the rate increase. The claim shall be verified by either the chairman of the~~  
15 ~~hospital's governing body or by the chief executive officer of the hospital.~~

16           ~~(2) Following receipt of the verified claim for temporary relief, the health care cost review~~  
17 ~~authority shall review the claim through its usual procedures and standards; however, this power~~  
18 ~~of review does not affect the hospital's ability to place the temporary rate increase into effect~~  
19 ~~immediately. The review of the hospital's claim shall be for a permanent rate increase and the~~  
20 ~~health care cost review authority may include such other factual information in the review as may~~  
21 ~~be necessary for a permanent rate increase review. As a result of its findings from the permanent~~  
22 ~~review, the health care cost review authority may allow the temporary rate increase to become~~  
23 ~~permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase.~~

24           ~~(3) When any change affecting an increase in rates goes into effect before a final order is~~  
25 ~~entered in the proceedings, for whatever reasons, where it deems it necessary and practicable,~~  
26 ~~the health care cost review authority may order the hospital to keep a detailed and accurate~~

27 ~~account of all amounts received by reason of the increase in rates and the purchasers and third-~~  
28 ~~party payors from whom such amounts were received. At the conclusion of any hearing, appeal~~  
29 ~~or other proceeding, the health care cost review authority may order the hospital to refund with~~  
30 ~~interest to each affected purchaser and/or third-party payor any part of the increase in rates that~~  
31 ~~may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital~~  
32 ~~shall, under appropriate terms and conditions determined by the health care cost review authority,~~  
33 ~~charge over and amortize by means of a temporary decrease in rates whatever income is realized~~  
34 ~~from that portion of the increase in rates which was subsequently held to be excessive or~~  
35 ~~unreasonable.~~

36 ~~(4) The health care cost review authority, upon a determination that a hospital has~~  
37 ~~overcharged purchasers or charged purchasers at rates not approved by the health care cost~~  
38 ~~review authority or charged rates which were subsequently held to be excessive or unreasonable,~~  
39 ~~may prescribe rebates to purchasers and third-party payors in effect by the aggregate total of the~~  
40 ~~overcharge.~~

41 ~~(5) the rate adjustment provided for in this section is limited to a single adjustment during~~  
42 ~~the initial year of the imposition of the tax provided for in this section.~~

43 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be  
44 two and one-half percent of the gross receipts derived by the taxpayer from furnishing inpatient  
45 hospital services in this state.

46 (c) *Definitions.* —

47 (1) "Gross receipts" means the amount received or receivable, whether in cash or in kind,  
48 from patients, third-party payors and others for inpatient hospital services furnished by the  
49 provider, including retroactive adjustments under reimbursement agreements with third-party  
50 payors, without any deduction for any expenses of any kind: *Provided*, That accrual basis  
51 providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent  
52 such allowances are included therein, and by bad debts, to the extent the amount of such bad

53 debts was previously included in gross receipts upon which the tax imposed by this section was  
54 paid.

55 (2) "Contractual allowances" means the difference between revenue (gross receipts) at  
56 established rates and amounts realizable from third-party payors under contractual agreements.

57 (3) "Inpatient hospital services" means those services that are inpatient hospital services  
58 for purposes of Section 1903(w) of the Social Security Act.

59 (d) *Effective date.* — The tax imposed by this section shall apply to gross receipts received  
60 or receivable by providers after May 31, 1993.

**§11-27-11. Imposition of tax on providers of nursing facility services, other than services  
of intermediate care facilities for individuals with an intellectual disability.**

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the  
2 business of providing nursing facility services, other than those services of intermediate care  
3 facilities for individuals with an intellectual disability, there is levied and shall be collected from  
4 every person rendering such service an annual broad-based health care-related tax: *Provided,*  
5 That hospitals which provide nursing facility services may adjust nursing facility rates to the extent  
6 necessary to compensate for the tax: ~~without first obtaining approval from the Health Care~~  
7 ~~Authority~~ *Provided, however,* That the rate adjustment is limited to a single adjustment during the  
8 initial year of the imposition of the tax ~~which adjustment is exempt from prospective review by the~~  
9 ~~Health Care Authority~~ and further which is limited to an amount not to exceed the amount of the  
10 tax which is levied against the hospital for the provision of nursing facility services pursuant to this  
11 section. ~~The Health Care Authority shall retroactively review the rate increases implemented by~~  
12 ~~the hospitals under this section during the regular rate review process. A hospital which fails to~~  
13 ~~meet the criteria established by this section for a rate increase exempt from prospective review is~~  
14 ~~subject to the penalties imposed under article twenty-nine b, chapter sixteen of the code.~~

15 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five  
16 and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility

17 services in this state, other than services of intermediate care facilities for individuals with an  
18 intellectual disability. This rate shall be increased to five and seventy-two one hundredths percent  
19 of the gross receipts received or receivable by providers of nursing facility services on and after  
20 October 1, 2015, and shall again be decreased to five and one-half percent of the gross receipts  
21 received or receivable by providers of nursing services after June 30, 2016.

22 (c) *Definitions.* —

23 (1) “Gross receipts” means the amount received or receivable, whether in cash or in kind,  
24 from patients, third-party payors and others for nursing facility services furnished by the provider,  
25 including retroactive adjustments under reimbursement agreements with third-party payors,  
26 without any deduction for any expenses of any kind: *Provided*, That accrual basis providers are  
27 allowed to reduce gross receipts by their bad debts, to the extent the amount of those bad debts  
28 was previously included in gross receipts upon which the tax imposed by this section was paid.

29 (2) “Nursing facility services” means those services that are nursing facility services for  
30 purposes of §1903(w) of the Social Security Act.

31 (d) *Effective date.* — The tax imposed by this section applies to gross receipts received  
32 or receivable by providers after May 31, 1993.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

#### §16-5F-2. Definitions.

1 As used in this article:

2 (1) “Annual report” means an annual financial report for the covered facility’s or related  
3 organization’s fiscal year prepared by an accountant or the covered facility’s or related  
4 organization’s auditor.

5 (2) ~~“Board”~~ “Authority” means the West Virginia Health Care Authority.

6 (3) “Covered facility” means any hospital, skilled nursing facility, kidney disease treatment  
7 center, including a free-standing hemodialysis unit; intermediate care facility; ambulatory health

8 care facility; ambulatory surgical facility; home health agency; hospice agency; rehabilitation  
9 facility; health maintenance organization; or community mental health or intellectual disability  
10 facility, whether under public or private ownership or as a profit or nonprofit organization and  
11 whether or not licensed or required to be licensed, in whole or in part, by the state: *Provided,*  
12 That nonprofit, community-based primary care centers providing primary care services without  
13 regard to ability to pay which provide the ~~board~~ authority with a year-end audited financial  
14 statement prepared in accordance with generally accepted auditing standards and with  
15 governmental auditing standards issued by the Comptroller General of the United States shall be  
16 deemed to have complied with the disclosure requirements of this section.

17 (4) "Related organization" means an organization, whether publicly owned, nonprofit, tax-  
18 exempt or for profit, related to a covered facility through common membership, governing bodies,  
19 trustees, officers, stock ownership, family members, partners or limited partners, including, but  
20 not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes  
21 of this subdivision "family members" shall mean brothers and sisters whether by the whole or half  
22 blood, spouse, ancestors and lineal descendants.

23 (5) "Rates" means all rates, fees or charges imposed by any covered facility for health  
24 care services.

25 (6) "Records" includes accounts, books, charts, contracts, documents, files, maps, papers,  
26 profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or  
27 stored.

**§16-5F-3. General powers and duties of the ~~board~~ authority regarding reporting and  
review.**

1 (a) In addition to the powers granted to the ~~board~~ authority elsewhere in this article, the  
2 ~~board~~ authority shall have the powers as indicated by this section and it shall be its duty to:

3 (1) Promulgate legislative rules and regulations in accordance with the provisions of article  
4 three, chapter twenty-nine-a of this code, to implement and make effective the powers, duties and  
5 responsibilities contained in the provisions of this article.

6 (2) Require the filing of fiscal information by covered facilities and related organizations  
7 relating to any matter affecting the cost of health care services in this state.

8 (3) Exercise, subject to the limitations and restrictions herein imposed, all other powers  
9 which are reasonably necessary or essential to carry out the expressed purposes of this article.

10 (4) Require the filing of copies of all tax returns required by federal and state law to be  
11 filed by covered facilities and related organizations.

12 (b) The ~~board~~ authority shall also investigate and recommend to the Legislature whether  
13 other health care providers should be made subject to the provisions of this article.

14 (c) The ~~board~~ authority shall, not later than December 31 of each year, prepare and  
15 transmit to the Governor and to the clerks of both houses of the Legislature a report containing  
16 the material and data as required by section four of this article, based upon the most recent data  
17 available.

18 ~~The board shall, no later than July 1, 1992, prepare and transmit to the Governor and to~~  
19 ~~the clerks of both houses of the Legislature a special report containing the material and data~~  
20 ~~collected on related organizations. The report shall further explain the effect of the financial~~  
21 ~~activities of the related organizations as represented by the collected data and its relationship to~~  
22 ~~the rate setting powers of the board specified in section nineteen, article twenty-nine b of this~~  
23 ~~chapter~~

**§16-5F-4. Reports required to be published and filed; form of reports; right of inspection.**

1 (a) Every covered facility and related organization defined in this article, within one  
2 hundred twenty days after the end of each of their fiscal years, unless an extension be granted  
3 by the ~~board~~ authority for good cause shown, shall be required to file with the ~~board~~ authority and  
4 publish, as a Class I legal advertisement, pursuant to section two, article three, chapter fifty-nine  
5 of this code, in a qualified newspaper published within the county within which such covered  
6 facility or related organization is located, an annual report prepared by the covered facility's or  
7 related organization's auditor or an independent accountant.

8           Such report shall contain a complete statement of the following:

9           (1) Assets and liabilities;

10          (2) Income and expenses;

11          (3) Profit or loss for the period reported;

12          (4) A statement of ownership for persons owning more than five percent of the capital  
13 stock outstanding and the dividends paid thereon, if any, and to whom paid for the period reported  
14 unless the covered facility or related organization be duly registered on the New York Stock  
15 Exchange, American Stock Exchange, any regional stock exchange, or its stock traded actively  
16 over the counter. Such statement shall further contain a disclosure of ownership by any parent  
17 company or subsidiary, if applicable.

18           Such annual report shall also include a prominent notice that the details concerning the  
19 contents of the advertisement, together with the other reports, statements and schedules required  
20 to be filed with the ~~board~~ authority by the provisions of this section, shall be available for public  
21 inspection and copying at the ~~board's~~ authority's office.

22           (b) Every covered facility and related organization shall also file with the ~~board~~ authority  
23 the following statements, schedules or reports in such form and at such intervals as may be  
24 specified by the ~~board~~ authority, but at least annually:

25           (1) A statement of services available and services rendered;

26           (2) A statement of the total financial needs of such covered facility or related organization  
27 and the resources available or expected to become available to meet such needs;

28           (3) A complete schedule of such covered facility's or related organization's then current  
29 rates with costs allocated to each category of costs, in accordance with the rules ~~and regulations~~  
30 as promulgated by the ~~board~~ authority pursuant to section three hereof;

31           (4) A copy of such reports made or filed with the federal health care financing  
32 administration, or its successor, as the ~~board~~ authority may deem necessary or useful to  
33 accomplish the purposes of this article;

34 (5) A statement of all charges, fees or salaries for goods or services rendered to the  
35 covered facility or related organization for the period reported which shall exceed in total the sum  
36 of \$55,000 and a statement of all charges, fees or other sums collected by the covered facility or  
37 related organization for or on the account of any person, firm, partnership, corporation or other  
38 entity, however structured, which shall exceed in total the sum of \$55,000 during the period  
39 reported;

40 (6) Such other reports of the costs incurred in rendering services as the ~~board~~ authority  
41 may prescribe. The ~~board~~ authority may require the certification of specified financial reports by  
42 the covered facility's or related organization's auditor or independent accountant; and

43 (7) A copy of all tax returns required to be filed by federal and state law.

44 (c) Notwithstanding any provision to the contrary herein, any data or material that is  
45 furnished to the ~~board~~ authority pursuant to the provisions of subdivision (4), subsection (b) of  
46 this section need not be duplicated by any other requirements of this section requiring the filing  
47 of data and material.

48 (d) No report, statement, schedule or other filing required or permitted to be filed hereunder  
49 shall contain any medical or individual information personally identifiable to a patient or a  
50 consumer of health services, whether directly or indirectly. All such reports, statements and  
51 schedules filed with the ~~board~~ authority under this section shall be open to public inspection and  
52 shall be available for examination during regular hours. Copies of such reports shall be made  
53 available to the public upon request and the ~~board~~ authority may establish fees reasonably  
54 calculated to reimburse the ~~board~~ authority for its actual costs in making copies of such reports:  
55 *Provided*, That all tax returns filed pursuant to this article shall be confidential and it shall be  
56 unlawful for the ~~board~~ authority or any member of its staff to divulge or make known in any manner  
57 the tax return, or any part thereof, of any covered facility or related organization.

58 (e) Whenever further fiscal information is deemed necessary to verify the accuracy of any  
59 information set forth in any statement, schedule or report filed by a covered facility or related

60 organization under the provisions of this article, the ~~board~~ authority shall have the authority to  
61 require the production of any records necessary to verify such information.

62 (f) From time to time, the ~~board~~ authority shall engage in or carry out analyses and studies  
63 relating to health care costs, the financial status of any covered facility or related organization or  
64 any other appropriate related matters, and make determinations of whether, in its opinion, the  
65 rates charged by a covered facility are economically justified.

**§16-5F-5. Injunctions.**

1 Whenever it appears that any covered facility or related organization, required to file or  
2 publish such reports, as provided in this article, has failed to file or publish such reports, the  
3 Attorney General, upon the request of the ~~board~~ authority, may apply in the name of the state to,  
4 and the circuit court of the county in which such covered facility or related organization is located  
5 shall have jurisdiction for the granting of a mandatory injunction to compel compliance with the  
6 provisions of this article.

**§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to Supreme Court  
of Appeals.**

1 Every covered facility and related organization failing to make and transmit to the ~~board~~  
2 authority any of the reports required by law or failing to publish or distribute the reports as so  
3 required, shall forthwith be notified by the ~~board~~ authority and, if such failure continues for ten  
4 days after receipt of said notice, such delinquent facility or organization shall be subject to a  
5 penalty of \$1,000 for each day thereafter that such failure continues, such penalty to be recovered  
6 by the ~~board~~ authority through the Attorney General in a civil action and paid into the State  
7 Treasury to the account of the General Fund. Review of any final judgment or order of the circuit  
8 court shall be by appeal to the West Virginia Supreme Court of Appeals.

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

**§16-29B-3. Definitions.**

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

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

4 (a) "Authority" means the Health Care Authority created pursuant to the provisions of this  
5 article, a division within the State Department of Health and Human Resources;

6 (b) "Board" means the five-member board of directors of the West Virginia Health Care  
7 Authority;

8 ~~(a)~~(c) "Charges" means the economic value established for accounting purposes of the  
9 goods and services a hospital provides for all classes of purchasers;

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

15 ~~(c)~~ "Board" means the three-member board of directors of the West Virginia Health Care Authority,  
16 an autonomous division within the State Department of Health and Human Resources;

17 (e) "Executive director" or "director" means the executive director who is the administrative  
18 head of the Health Care Authority as set forth in section five-a of this article;

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

25 ~~(e)~~(g) "Hospital" means a facility subject to licensure as such under the provisions of article  
26 five-b of this chapter, and any acute care facility operated by the state government which is  
27 primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic  
28 and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick  
29 persons, and does not include state mental health facilities or state long-term care facilities;

30           ~~(f)~~(h) “Person” means an individual, trust, estate, partnership, committee, corporation,  
31 association or other organization such as a joint stock company, a state or political subdivision or  
32 instrumentality thereof or any legal entity recognized by the state;

33           ~~(g)~~(i) “Purchaser” means a consumer of patient care services, a natural person who is  
34 directly or indirectly responsible for payment for such patient care services rendered by a health  
35 care provider, but does not include third-party payers;

36           ~~(h)~~(j) “Rates” means all value given or money payable to health care providers for health  
37 care services, including fees, charges and cost reimbursements;

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

43           (l) “Related organization” means an organization, whether publicly owned, nonprofit, tax-  
44 exempt or for profit, related to a health care provider through common membership, governing  
45 bodies, trustees, officers, stock ownership, family members, partners or limited partners including,  
46 but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the  
47 purposes of this subsection, family members shall mean brothers and sisters, whether by the  
48 whole or half blood, spouse, ancestors and lineal descendants; and

49           ~~(j)~~(m) “Third-party payor” means any natural person, person, corporation or government  
50 entity responsible for payment for patient care services rendered by health care providers.

51           ~~(k) “Related organization” means an organization, whether publicly owned, nonprofit, tax-~~  
52 ~~exempt or for profit, related to a health care provider through common membership, governing~~  
53 ~~bodies, trustees, officers, stock ownership, family members, partners or limited partners including,~~  
54 ~~but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the~~  
55 ~~purposes of this subsection family members shall mean brothers and sisters, whether by the~~  
56 ~~whole or half blood, spouse, ancestors and lineal descendants.~~

**§16-29B-5. West Virginia Health Care Authority; composition of the board; qualifications; terms; oath; expenses of members; vacancies; appointment of chairman; and meetings of the board.**

1           ~~The “West Virginia Health Care Cost Review Authority” is continued as an autonomous~~  
2 ~~division of the Department of Health and Human Resources and shall be known as~~ Effective July  
3 1, 2016, the West Virginia Health Care Authority is continued and reassigned as a division of the  
4 Department of Health and Human Resources and is hereinafter referred to as the “~~board~~”  
5 “authority”. The Board of Directors of the West Virginia Health Care Authority shall hereinafter be  
6 referred to as the “board”. The members of the board in office as of January 1, 2016, shall continue  
7 to serve until their respective terms expire or until a successor has been appointed and qualified.  
8 Any references in this code to the West Virginia Health Care Cost Review Authority means the  
9 West Virginia Health Care Authority.

10           (a) The board shall consist of ~~three~~ five members, appointed by the Governor, with the  
11 advice and consent of the Senate. The members of the board shall be employed on a part-time  
12 basis. The board members shall not be permitted to hold political office in the government of the  
13 state either by election or appointment while serving as a member of the board. The board  
14 members shall not be eligible for civil service coverage as provided in section four, article six,  
15 chapter twenty-nine of this code. The board members shall be citizens and residents of this state.  
16 No more than ~~two~~ three of the board members may be members of the same political party. One  
17 board member shall have a background in health care finance or economics, one board member  
18 shall have previous employment experience in human services, business administration or  
19 substantially related fields, one board member shall have previous experience in the  
20 administration of a health care facility, one board member shall have previous experience as a  
21 provider of health care services, and one board member shall be a consumer of health services  
22 with a demonstrated interest in health care issues.

23 (b) Each board member shall, before entering upon the duties of his or her office, take and  
24 subscribe to the oath provided by section five, article IV of the Constitution of the State of West  
25 Virginia, which oath shall be filed in the office of the Secretary of State. ~~The Governor shall~~  
26 ~~designate one of the board members to serve as chairman at the Governor's will and pleasure.~~  
27 ~~The chairman shall be the chief administrative officer of the board~~

28 (c) The Governor may remove any board member only for incompetency, neglect of duty,  
29 gross immorality, malfeasance in office or violation of the provisions of this article. Appointments  
30 are for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired  
31 term only.

32 ~~(e)~~(d) No person while in the employ of, or holding any official relation to, any hospital or  
33 health care provider subject to the provisions of this article, or who has any pecuniary interest in  
34 any hospital or health care provider, may serve as a member of the board or as an employee of  
35 the board. Nor may any board member be a candidate for or hold public office or be a member of  
36 any political committee while acting as a board member; nor may any board member or employee  
37 of the board receive anything of value, either directly or indirectly, from any third-party payor or  
38 health care provider. If any of the board members become a candidate for any public office or for  
39 membership on any political committee, the Governor shall remove the board member from the  
40 board and shall appoint a new board member to fill the vacancy created. No board member or  
41 former board member may accept employment with any hospital or health care provider subject  
42 to the jurisdiction of the board in violation of the West Virginia Governmental Ethics Act, chapter  
43 six-b of this code: *Provided*, That the act shall not apply to employment accepted after termination  
44 of the board.

45 ~~(d)~~(e) The concurrent judgment of ~~two~~ three of the board members when in session as the  
46 board shall be considered the action of the board. A vacancy in the board shall not affect the right  
47 or duty of the remaining board members to function as a board.

48 (f) The board is under the direct supervision of the executive director. The executive  
49 director shall serve as the *ex officio*, non-voting chair of the board. The board shall serve as the  
50 adjudicatory body of the authority and shall conduct all hearings as required in this article, article  
51 two-d of this chapter and any other hearing as required by this code or any legislative or  
52 procedural rule of the authority. The executive director shall act as hearing examiner for all  
53 hearings before the board.

54 (g) The board shall advise the executive director created in section five-a of this article on  
55 matters relative to the administration of the authority. This shall include contracting authority,  
56 staffing, rulemaking and data collection and interpretation.

57 (h) Board members are entitled to receive from the authority's funds compensation as set  
58 by the executive director for his or her service. Board members shall also be reimbursed from  
59 the authority's funds for sums necessary to carry out its responsibilities and for reasonable travel  
60 expenses to attend meetings.

**§16-29B-5a. Executive Director of the Health Care Authority; powers and duties.**

1 (a) The Governor, with advice and consent of the Senate, shall appoint an individual as  
2 Executive Director of the Health Care Authority. This person shall oversee the daily operation of  
3 the Health Care Authority. This person shall be qualified by training and experience to direct the  
4 operations of the Health Care Authority. The executive director is ineligible for civil service  
5 coverage as provided in section four, article six, chapter twenty-nine of this code and serves at  
6 the will and pleasure of the Governor.

7 (b) The executive director shall:

8 (1) Serve on a full-time basis and may not be engaged in any other profession or  
9 occupation;

10 (2) Not hold political office in the government of the state either by election or appointment  
11 while serving as executive director;

12           (3) Shall be a citizen of the United States and shall become a citizen of the state within  
13 ninety days of appointment;

14           (4) Shall be paid a salary as set by the Governor;

15           (5) Report to the Secretary of the Department of Health and Human Resources; and

16           (6) Before entering upon the duties of his or her office, take and subscribe to the oath  
17 provided by section five, article IV of the Constitution of the State of West Virginia, which oath  
18 shall be filed in the office of the Secretary of State.

19           (c) The executive director has other powers and duties as set forth in this article.

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

1           (a) The executive director, with advice from the board, shall: Coordinate and oversee the  
2 health data collection of state agencies; lead state agencies' efforts to make the best use of  
3 emerging technology to effect the expedient and appropriate exchange of health care information  
4 and data, including patient records and reports; and coordinate database development, analysis  
5 and reporting to facilitate cost management, utilization review and quality assurance efforts by  
6 state payor and regulatory agencies, insurers, consumers, providers and other interested parties.  
7 Agencies of the state collecting health data shall work together through the ~~board~~ executive  
8 director to develop an integrated system for the efficient collection, responsible use and  
9 dissemination of such data and to facilitate and support the development of statewide health  
10 information systems that will allow for the electronic transmittal of all health information and claims  
11 processing activities of state agencies within the state and that will coordinate the development  
12 and use of electronic health information systems within state government. The executive director,  
13 with advice from the board, shall establish minimum requirements and issue reports relating to  
14 information systems of all state health programs, including simplifying and standardizing forms,  
15 establishing information standards and reports for capitated managed care programs to be  
16 managed by the ~~Insurance Commission~~ Office of the Insurance Commissioner and shall develop  
17 a comprehensive system to collect ambulatory health care data. The ~~board~~ executive director or  
18 his or her designee is authorized to gain access to any health-related database in state

19 government for the purposes of fulfilling ~~its~~ his or her duties: *Provided*, That, for any database to  
20 which the ~~board~~ executive director gains access, the use and dissemination of information from  
21 the database shall be subject to the confidentiality provisions applicable to such database.

22 (b) To advise the executive director and the board in its efforts under this section, the  
23 ~~board~~ executive director or his or her designee shall create a data advisory group. ~~and appoint~~  
24 ~~one of the board's members as chair of the group~~ The executive director or his or her designee  
25 shall be the chair of the group. The group shall be composed of representatives of consumers,  
26 businesses, providers, payors and state agencies. At least one of the members shall represent  
27 the interest of hospitals which are regulated by the Health Care Authority. The data advisory group  
28 shall assist the executive director and the board in developing priorities and protocols for data  
29 collection and the development and reform of health information systems provided under this  
30 section.

31 (c) The ~~board's~~ staff of the Health Care Authority shall gather information on cost  
32 containment efforts, including, but not limited to, the provision of alternative delivery systems,  
33 prospective payment systems, alternative rate-making methods, and programs of consumer  
34 education. The ~~board~~ authority shall pay particular attention to the economic, quality of care and  
35 health status impact of such efforts on purchasers or classes of purchasers, particularly the elderly  
36 and those on low or fixed incomes.

37 (d) The ~~board~~ authority staff shall further gather information on state-of-the-art advances  
38 in medical technology, the cost effectiveness of such advances and their impact on advances in  
39 health care services and management practices, and any other state-of-the-art concepts relating  
40 to health care cost containment, health care improvement or other issues the ~~board~~ authority finds  
41 relevant and directs staff to investigate. The ~~board~~ authority staff shall prepare and keep a register  
42 of such information and update it on an annual basis.

43 (e) The data advisory group members shall be reimbursed from the ~~board~~ authority's funds  
44 for sums necessary to carry out its responsibilities and for reasonable travel expenses to attend  
45 meetings.

**§16-29B-7. Staff.**

1           (a) The executive director with advice from the board may employ such persons as may  
2 be necessary to effect the provisions of this article. The executive director with advice from the  
3 board shall set the respective salaries or compensations of all staff. Any person employed by the  
4 ~~board~~ Health Care Authority, other than on a part-time basis, shall devote full time to the  
5 performance of his or her duties as such employee during the regular working hours of the ~~board~~  
6 authority.

7           (b) The ~~board~~ executive director shall appoint general counsel who shall act as legal  
8 counsel to the executive director and the board. The general counsel shall serve at the will and  
9 pleasure of the ~~board~~ executive director and is not eligible for civil service coverage as provided  
10 in section four, article six, chapter twenty-nine of this code.

11           (1) The general counsel may act to bring and to defend actions on behalf of the authority,  
12 the executive director and the board in the courts of the state and in federal courts.

13           (2) In all adjudicative matters before the board, the general counsel shall ~~advise~~ present  
14 the matter before the board and offer legal and administrative advice to the board. The staff shall  
15 represent itself in all such actions before the board.

16           (c) The ~~board~~ executive director may contract with third parties, including state agencies,  
17 for any services that may be necessary to perform the duties imposed upon ~~it~~ him or her by this  
18 article where such contractual agreements will promote economy, avoid duplication of effort or  
19 make the best use of available expertise.

20           (d) The executive director, with advice from the board, shall identify which members of the  
21 staff of the health care ~~cost-review~~ authority shall be exempted from the salary schedules or pay  
22 plan adopted by the state personnel board, and further identify such staff members by job  
23 classification or designation, together with the salary or salary ranges for each such job  
24 classification or designation. This information shall be filed by the ~~board~~ executive director or his

25 or her designee with the Director of the Division of Personnel no later than July 1, 1991, ~~and~~  
26 ~~thereafter as necessary annually.~~

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

1 (a) In addition to the powers granted to the ~~board~~ executive director elsewhere in this  
2 article, the executive director, with advice from the board, may:

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

9 (2) Hold public hearings, conduct investigations and require the filing of information  
10 relating to matters affecting the costs of health care services subject to the provisions of this article  
11 and may subpoena witnesses, papers, records, documents and all other data in connection  
12 therewith. The board, who serves as the adjudicatory arm of the authority, may administer oaths  
13 or affirmations in any hearing or investigation;

14 (3) Apply for, receive and accept gifts, payments and other funds and advances from the  
15 United States, the state or any other governmental body, agency or agencies or from any other  
16 private or public corporation or person, with the exception of hospitals subject to the provisions of  
17 this article, or associations representing them, doing business in the State of West Virginia, except  
18 in accordance with subsection (c) of this section, and enter into agreements with respect thereto,  
19 including the undertaking of studies, plans, demonstrations or projects. Any such gifts or  
20 payments that may be received or any such agreements that may be entered into shall be used  
21 or formulated only so as to pursue legitimate, lawful purposes of the ~~board~~ authority, and shall in  
22 no respect inure to the private benefit of the executive director, a board member, staff member,  
23 donor or contracting party;

24 (4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell,  
25 encumber and assign rights or dispose of any property, real or personal, consistent with the  
26 objectives of the ~~board~~ authority as set forth in this article: *Provided*, That such acquisition or  
27 purchase of real property or construction of facilities shall be consistent with planning by the state  
28 building commissioner and subject to the approval of the Legislature;

29 (5) Contract and be contracted with and execute all instruments necessary or convenient  
30 in carrying out the ~~board's~~ authority's functions and duties; and

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

33 (b) The executive director, with advice from the board, shall annually prepare a budget for  
34 the next fiscal year for submission to the Governor and the Legislature which shall include all  
35 sums necessary to support the activities of the executive director, board and ~~its staff~~ staff of the  
36 authority.

37 (c) Each hospital subject to the provisions of this article shall be assessed by the executive  
38 director, with the advice of the board, on a pro rata basis using the net patient revenue, as defined  
39 under generally accepted accounting principles, of each hospital as reported under the authority  
40 of section eighteen of this article as the measure of the hospital's obligation. The amount of such  
41 fee shall be determined by the executive director, with the advice of the board, except that in no  
42 case shall the hospital's obligation exceed one tenth of one percent of its net patient revenue.  
43 Such fees shall be paid on or before July 1 in each year and shall be paid into the State Treasury  
44 and kept as a special revolving fund designated "Health Care Cost Review Fund", with the moneys  
45 in such fund being expendable after appropriation by the Legislature for purposes consistent with  
46 this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the  
47 treasury, but shall remain in said fund and such moneys shall be expendable after appropriation  
48 by the Legislature in ensuing fiscal years.

49 (d) Each hospital's assessment shall be treated as an allowable expense by the ~~board~~  
50 authority.

51 (e) The ~~board~~ authority is empowered to withhold ~~rate approvals~~, certificates of need and  
52 rural health system loans and grants if any such fees remain unpaid, unless exempted under  
53 subsection (g), section four, article two-d of this chapter.

**§16-29B-9. Annual report.**

1 The ~~board~~ executive director shall, within thirty days of the close of the fiscal year, or from  
2 time to time as requested by the Legislature, prepare and transmit to the Governor and the  
3 Legislative Oversight Commission on Health and Human Resources Accountability a report of its  
4 operations and activities for the preceding fiscal year. This report shall include summaries of all  
5 reports made by the hospitals subject to this article, together with facts, suggestions and policy  
6 recommendations the ~~board~~ authority considers necessary. ~~The board shall, after rate review and~~  
7 ~~determination in accordance with the provisions of this article, include such rate schedules in its~~  
8 ~~annual report or other reports as may be requested by the Legislature.~~

**§16-29B-11. Related programs.**

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

**§16-29B-12. Hearings; administrative procedures act applicable; hearings examiner;  
subpoenas.**

1 (a) The ~~board~~ Health Care Authority may conduct such hearings as it deems necessary  
2 for the performance of its functions and shall hold hearings when required by the provisions of

3 this chapter or upon a written demand therefor by a person aggrieved by any act or failure to act  
4 by the ~~board~~ Health Care Authority or by any legislative or procedural rule ~~regulation~~ or order of  
5 the ~~board~~ Health Care Authority. All hearings of the ~~board~~ Health Care Authority shall be  
6 announced in a timely manner and shall be open to the public except as may be necessary to  
7 conduct business of an executive nature. All hearings shall be conducted by the board of directors  
8 who shall serve as the adjudicatory arm of the Health Care Authority. The executive director shall  
9 serve as the hearing examiner and shall preside over all hearings before the board.

10 (b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to  
11 and govern the hearing and administrative procedures in connection with and following the  
12 hearing except as specifically stated to the contrary in this article. The executive director shall  
13 assure that all hearings are to be conducted in a professional and respectful manner. The  
14 executive director, board members and all other participants involved in the hearing shall be  
15 courteous to those persons who appear before them and shall carefully examine all evidence and  
16 information presented. The general counsel for the authority shall represent the interest of the  
17 authority at all hearings. No board member or the executive director may participate in a decision  
18 unless he or she has heard all of the information presented during the course of the hearing. If  
19 necessary, recesses in the hearing may be called. Decisions of the board shall be issued by the  
20 executive director as the hearing examiner for all hearings before the board pursuant to the  
21 provisions of this article.

22 (c) Any hearing may be conducted by ~~members of the board or by a hearing examiner~~  
23 ~~appointed for such purpose~~ the executive director or his or her designee. Any member of the  
24 ~~board~~ The executive director may issue subpoenas and subpoenas duces tecum which shall be  
25 issued and served pursuant to the time, fee and enforcement specifications in section one, article  
26 five, chapter twenty-nine-a of this code.

27 (d) Notwithstanding any other provision of state law, when a hospital alleges that a factual  
28 determination made by the board or the executive director is incorrect, the burden of proof shall

29 be on the hospital to demonstrate that such determination is, in light of the total record, not  
30 supported by substantial evidence. The burden of proof remains with the hospital in all cases.

31 (e) After any hearing, after due deliberation, and in consideration of all the testimony, the  
32 evidence and the total record made, the board as the adjudicatory arm of the authority shall render  
33 a recommended decision in writing to the executive director. The recommended written decision  
34 shall be accompanied by findings of fact and conclusions of law as specified in section three,  
35 article five, chapter twenty-nine-a of this code, and forwarded to the executive director within thirty  
36 days of the hearing. The executive director shall approve the recommended decision as final  
37 within thirty days of receipt unless he or she finds a factual or legal error in the decision's findings  
38 or conclusions. If the executive director feels that there is insufficient information upon which to  
39 base the decision, he or she may remand the decision to the board for further consideration. The  
40 executive director may not consider any additional information in making the decision final that  
41 was not presented to the board during the course of the hearing. Once the executive director  
42 approves the decision as final the copy of the decision and accompanying findings and  
43 conclusions shall be served by certified mail, return receipt requested, upon the party demanding  
44 the hearing, and upon its attorney of record, if any.

45 (f) Any interested individual, group or organization shall be recognized as affected parties  
46 upon written request from the individual, group or organization. Affected parties shall have the  
47 right to bring relevant evidence before the ~~board~~ authority and testify thereon. Affected parties  
48 shall have equal access to records, testimony and evidence before the ~~board~~ authority, and shall  
49 have equal access to the expertise of the ~~board's~~ authority's staff. The executive director with  
50 advice from the board shall have authority to develop legislative rules ~~and regulations~~ to  
51 administer provisions of this section.

52 (g) The decision of the board and executive director is final unless reversed, vacated or  
53 modified upon judicial review thereof, in accordance with the provisions of section thirteen of this  
54 article.

**§16-29B-13. Review of final orders of board.**

1           (a) A final decision of the ~~board~~ executive director and the record upon which it was made  
2 shall, upon request of any affected party, be reviewed by the agency of the state designated by  
3 the Governor to hear appeals under the provisions of article two-d of this chapter. To be effective,  
4 such request must be received within thirty days after the date upon which all parties received  
5 notice of the ~~board~~ executive director's final decision, and the hearing shall commence within  
6 thirty days of receipt of the request.

7           (b) For the purpose of administrative review of ~~board~~ executive director decisions, the  
8 review agency shall conduct its proceedings in conformance with the West Virginia Rules of Civil  
9 Procedure for Trial Courts of Record and the local rules for use in the civil courts of Kanawha  
10 County and shall review appeals in accordance with the provisions governing the judicial review  
11 of contested administrative cases in section four, article five, chapter twenty-nine-a of this code,  
12 notwithstanding the exceptions of section five, article five, chapter twenty-nine-a of this code.

13           (c) The decision of the review agency shall be made in writing within forty-five days after  
14 the conclusion of such hearing.

15           (d) The written findings of the review agency shall be sent to all affected parties, and shall  
16 be made available by the commission to others upon request.

17           (e) The decision of the review agency shall be considered the final decision of the ~~board~~  
18 authority; however, the review agency may remand the matter to the ~~board~~ authority for further  
19 action or consideration.

20           (f) Upon the entry of a final decision by the review agency, any affected party may within  
21 thirty days after the date upon which all affected parties receive notice of the decision of the review  
22 agency, appeal said decision in the circuit court of Kanawha County. The decision of the review  
23 agency shall be reviewed by that circuit court in accordance with the provisions for the judicial  
24 review of administrative decisions contained in section four, article five, chapter twenty-nine-a of  
25 this code.

**§16-29B-14. Injunction; mandamus.**

1           The ~~board~~ executive director may compel obedience to its lawful orders by injunction or  
2 mandamus or other proper proceedings in the name of the state in any circuit court having  
3 jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals direct, and  
4 such proceeding shall be determined in an expeditious manner.

**§16-29B-15. Refusal to comply.**

1           (a) Whenever a hospital fails or refuses to furnish to the executive director or the board  
2 any records or information requested under the provisions of this article or otherwise fails or  
3 refuses to comply with the requirements of this article or any reasonable legislative or procedural  
4 ~~rule and regulation~~ promulgated by the ~~board~~ authority under the provisions of this article, the  
5 board as the adjudicatory arm of the authority may make and enter an order of enforcement and  
6 serve a copy thereof on the hospital in question by certified mail, return receipt requested.

7           (b) The hospital shall be granted a hearing on the order of enforcement if, within twenty  
8 days after receipt of a copy thereof, it files with the ~~board~~ authority a written demand for hearing.  
9 A demand for hearing shall operate automatically to stay or suspend the execution of the order of  
10 enforcement, with the exception of orders relating to rate increases.

11           (c) Upon receipt of a written demand for a hearing, the ~~board~~ authority shall set a time and  
12 place therefor, not less than ten and no more than thirty days thereafter. Any scheduled hearing  
13 may be continued by the ~~board~~ authority upon motion for good cause shown by the hospital  
14 demanding the hearing.

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

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

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

10 (b) The ~~board~~ authority may provide for modification in the accounting and reporting  
11 system in order to correctly reflect differences in the scope or type of services and financial  
12 structures of the various categories, sizes and types of hospitals and in a manner consistent with  
13 the purposes of this article.

14 (c) The ~~board~~ authority may provide technical assistance to those hospitals which request  
15 it and which evidence sufficient need for assistance in the establishment of a data collection  
16 system to the extent that funds are available to the ~~board~~ authority for this purpose.

17 (d) The ~~board~~ authority shall, after consultation with health care providers, purchasers,  
18 classes of purchasers and third-party payors, adopt a mandatory form for reporting to the ~~board~~  
19 authority, at its request, medical diagnosis, treatment and other services rendered to each  
20 purchaser by health care providers subject to the provisions of this article.

21 (e) Following a public hearing, the ~~board~~ authority shall establish a program to minimize  
22 the administrative burden on hospitals by eliminating unnecessary duplication of financial and  
23 operational reports; and to the extent possible, notwithstanding any other law, coordinate reviews,  
24 reports and inspections performed by federal, state, local and private agencies.

**§16-29B-18. Annual reporting.**

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

5 (1) A balance sheet detailing the assets, liabilities and net worth of the hospital for its  
6 preceding fiscal year;

7 (2) A statement of income and expenses for the preceding fiscal year;

8 (3) A statement of services rendered and services available; and

9 (4) Such other reports as the ~~board~~ authority may prescribe.

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

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

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

17 (2) A statement of income and expenses;

18 (3) A statement of cash flows; and

19 (4) Such other information as the ~~board~~ authority may prescribe.

20 After the initial filing of the financial information required by this subsection, every related  
21 organization shall thereafter file annual financial reports with the ~~board~~ authority in a form  
22 specified by the ~~board~~ authority.

23 (c) The annual financial statements filed pursuant to this section shall be prepared in  
24 accordance with the system of accounting and reporting adopted under section seventeen of this  
25 article. The ~~board~~ authority may require attestations from responsible officials of the hospitals or  
26 related organizations that such reports have to the best of their knowledge been prepared  
27 truthfully and in accordance with the prescribed system of accounting and reporting.

28 (d) All reports filed under any provisions of this article, except personal medical information  
29 personally identifiable to a purchaser and any tax return, shall be open to public inspection and  
30 shall be available for examination at the offices of the ~~board~~ authority during regular business  
31 hours.

32 (e) Whenever a further investigation is deemed necessary or desirable to verify the  
33 accuracy of any information set forth in any statement, schedule or report filed by a health care  
34 provider or related organization under the provisions of this section, the ~~board~~ authority may  
35 require a full or partial audit of the records of the health care provider or related organization.

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

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

4 (1) The certificate of need program, including the effect of any changes on managed care  
5 and access for uninsured and rural consumers; determining which services or capital  
6 expenditures should be exempt and why; ~~and~~ the status of similar programs in other states; is  
7 there a means to accommodate concerns of health care providers and hospitals situate in West  
8 Virginia which border states that do not have a certificate of need programs; and whether there  
9 exists a benefit to discontinuing the certificate of need program in its entirety. The results of the  
10 study should be presented to the Legislative Oversight Commission on Health and Human  
11 Resources Accountability by December 1, 2016;

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

14 ~~(3)~~ (2) Managed care markets, including the need for regulatory programs in managed  
15 care markets; and

16 ~~(4)~~ (3) Barriers or obstacles, if any, presented by the certificate of need program or  
17 standards in the state health plan to health care providers' need to reduce excess capacity,  
18 restructure services and integrate the delivery of services.

19 (b) The executive director may consult with the board and may form task forces to assist  
20 it in addressing these issues. ~~and it~~ The executive director or his or her designee shall prepare a  
21 report on ~~its~~ his or her findings and recommendations, which is to be filed with the Governor, the

22 President of the Senate and the Speaker of the House of Delegates on or before ~~the first day of~~  
23 ~~October, one thousand nine hundred ninety-eight~~ December 1, 2016, identifying each problem  
24 and recommendation with specificity and the effect of each recommendation on cost, access and  
25 quality of care. The task forces, if formed, shall be composed of representatives of consumers,  
26 businesses, providers, payors and state agencies.

27 (c) The ~~board~~ executive director shall report quarterly to the Legislative Oversight  
28 Commission on Health and Human Resources Accountability regarding the appointment,  
29 direction and progress of the studies.

**16-29B-22. Incentives.**

1 The ~~board~~ authority shall be required to allow, as an incentive to the efficient management  
2 and operation of hospitals covered by this article, that if said hospitals are more efficient than  
3 anticipated, they shall retain a portion of the resulting savings and if less efficient shall bear the  
4 resulting deficits.

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

1 (a) In order to avoid unnecessary or inappropriate utilization of health care services and  
2 to ensure high quality health care, the ~~board~~ authority shall establish a utilization review and  
3 quality assurance program. The ~~board~~ authority shall coordinate this program with utilization  
4 review and peer review programs presently established in state agencies, hospital services and  
5 health service corporations, hospitals or other organizations.

6 (b) With the assistance of the above-mentioned entities, and after public hearings, the  
7 ~~board~~ authority shall develop a plan for the review, on a sampling basis, of the necessity of  
8 admissions, length of stay and quality of care rendered at said hospitals.

9 (c) The ~~board~~ authority shall monitor identified problem areas and shall impose such  
10 sanctions and provide such incentives as necessary to ensure high quality and appropriate  
11 services and utilization in hospitals under the jurisdiction of this article.

12 (d) To assist the ~~board~~ authority in its efforts under this section, the ~~board~~ executive  
13 director shall create a quality assurance advisory group and appoint one of the board's members  
14 as chairman of the group. The group shall be composed of representatives of consumers,  
15 providers, payors and regulating agencies.

**§16-29B-24. Powers with respect to insurance policies and health organizations.**

1 (a) With respect to any policy of accident or health insurance, including, but not limited to,  
2 those insurance policies covered by articles fifteen, sixteen and sixteen-a, chapter thirty-three of  
3 this code, and with respect to any health service, care or maintenance organization, or similar  
4 health-related organizations, including, but not limited to, those covered by articles twenty-four,  
5 twenty-five and twenty-five-a, chapter thirty-three of this code, the ~~board~~ authority shall:

6 (1) Be considered for all purposes a directly affected party before the Insurance  
7 Commissioner for purposes of any application, hearing or appeal on insurance matters;

8 (2) Review requests for, and make comments on, proposed rate increases or coverage  
9 decreases submitted to the Insurance Commissioner with respect to the reasonableness of the  
10 request and impact on health care cost containment;

11 (3) Comment on the advisability, reasonableness and impact on health care cost  
12 containment of any other matter coming before the Insurance Commissioner or any other  
13 governmental agency or body.

14 (b) On or before the date of filing with the Insurance Commissioner of any rate, including  
15 any proposed increase or decrease thereof, and any coverage matter, including any proposed  
16 increase or decrease thereof, each company or organization, described in subsection (a) of this  
17 section, shall notify the ~~board~~ authority of such filing, by copy thereof or notice form, as the ~~board~~  
18 authority directs.

19 (c) Each company or organization, described in subsection (a) above, shall establish, in a  
20 written report which shall be incorporated into each proposed rate application, that it has  
21 thoroughly investigated and considered:

22 (1) The economic and social impact of any proposed rate increase, or coverage decrease,  
23 on health care cost containment and upon health care purchasers, including classes of  
24 purchasers, such as the elderly and low and fixed income persons;

25 (2) State-of-the-art advances in insurance and health care management and rate design  
26 as alternatives to or in mitigation of any rate increase, or coverage decrease, which report shall  
27 describe the state-of-the-art advances considered and shall contain specific findings as to each  
28 consideration, including the reasons for adoption or rejection of each;

29 (3) Implementation of cost control systems, including a combination of education,  
30 persuasion, financial incentives and disincentives to control costs;

31 (4) Initiatives to create alternative delivery systems; and

32 (5) Efforts to encourage health care providers to control costs, including the elimination of  
33 unnecessary or duplicative facilities and services, promotion of alternative forms of care, and  
34 other cost control mechanisms.

**§16-29B-25. Public disclosure.**

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

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

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

7 It is the intention of the Legislature that this chapter shall also immunize cooperative  
8 agreements approved and supervised by the authority and activities conducted pursuant thereto  
9 from challenge or scrutiny under both state and federal antitrust law.

**§16-29B-28. Review of Cooperative agreements.**

1 (a) Definitions. — As used in this section the following terms have the following meanings:

2 (1) “Academic medical center” means an accredited medical school, one or more faculty  
3 practice plans affiliated with the medical school or one or more affiliated hospitals which meet the  
4 requirements set forth in 42 C. F. R. 411.355(e)(2).

5 (2) “Cooperative agreement” means an agreement between a teaching hospital which is  
6 a member of an academic medical center and one or more other hospitals or other health care  
7 providers. The agreement shall provide for the sharing, allocation, consolidation by merger or  
8 other combination of assets, or referral of patients, personnel, instructional programs, support  
9 services and facilities or medical, diagnostic, or laboratory facilities or procedures or other  
10 services traditionally offered by hospitals or other health care providers.

11 (3) “Commercial health plan” means a plan offered by any third party payor that negotiates  
12 with a party to a cooperative agreement with respect to patient care services rendered by health  
13 care providers.

14 (4) “Health care provider” means the same as that term is defined in section three of this  
15 article.

16 (5) “Teaching hospital” means a hospital or medical center that provides clinical education  
17 and training to future and current health professionals.

18 (6) “Qualified hospital” means a teaching hospital, which meets the requirements of 42 C.  
19 F. R. 411.355(e)(2)(iii) and which has entered into a cooperative agreement with one or more  
20 hospitals or other health care providers but is not a critical access hospital for purposes of this  
21 section.

22 (b) Findings. —

23 (1) The Legislature finds that the state's schools of medicine, affiliated universities and  
24 teaching hospitals are critically important in the training of physicians and other healthcare  
25 providers who practice health care in this state. They provide access to healthcare and enhance  
26 quality healthcare for the citizens of this state.

27 (2) A medical education is enhanced when medical students, residents and fellows have  
28 access to modern facilities, state of the art equipment and a full range of clinical services and that,  
29 in many instances, the accessibility to facilities, equipment and clinical services can be achieved  
30 more economically and efficiently through a cooperative agreement among a teaching hospital  
31 and one or more hospitals or other health care providers.

32 (c) Legislative purpose. — The Legislature encourages cooperative agreements if the  
33 likely benefits of such agreements outweigh any disadvantages attributable to a reduction in  
34 competition. When a cooperative agreement, and the planning and negotiations of cooperative  
35 agreements, might be anticompetitive within the meaning and intent of state and federal antitrust  
36 laws the Legislature believes it is in the state's best interest to supplant competition with regulatory  
37 oversight by the Health Care Authority as set out in this article. The authority has the power to  
38 review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of  
39 the state and to medical education, to ensure compliance with the provisions of the cooperative  
40 agreements relative to the commitments made by the qualified hospital and conditions imposed  
41 by the Health Care Authority.

42 (d) Cooperative Agreements. —

43 (1) A hospital which is a member of an academic medical center may negotiate and enter  
44 into a cooperative agreement with other hospitals or health care providers in the state:

45 (A) In order to enhance or preserve medical education opportunities through collaborative  
46 efforts and to ensure and maintain the economic viability of medical education in this state and to  
47 achieve the goals hereinafter set forth; and

48 (B) When the likely benefits outweigh any disadvantages attributable to a reduction in  
49 competition that may result from the proposed cooperative agreement.

50 (2) The goal of any cooperative agreement would be to:

51 (A) Improve access to care;

52 (B) Advance health status;

53 (C) Target regional health issues;

54 (D) Promote technological advancement;

55 (E) Ensure accountability of the cost of care;

56 (F) Enhance academic engagement in regional health;

57 (G) Preserve and improve medical education opportunities;

58 (H) Strengthen the workforce for health-related careers; and

59 (I) Improve health entity collaboration and regional integration, where appropriate.

60 (3) A qualified hospital located in this state may submit an application for approval of a  
61 proposed cooperative agreement to the authority. The application shall state in detail the nature  
62 of the proposed arrangement including the goals and methods for achieving:

63 (A) Population health improvement;

64 (B) Improved access to health care services;

65 (C) Improved quality;

66 (D) Cost efficiencies;

67 (E) Ensuring affordability of care;

68 (F) Enhancing and preserving medical education programs; and

69 (G) Supporting the authority's goals and strategic mission, as applicable.

70 (4) (A) If the cooperative agreement involves a combination of hospitals through merger,  
71 consolidation or acquisition, the qualified hospital must have been awarded a certificate of need  
72 for the project by the authority, as set forth in article two-d of this chapter prior to submitting an  
73 application for review of a cooperative agreement.

74 (B) In addition to a certificate of need, the authority may also require that an application  
75 for review of a cooperative agreement as provided in this section be submitted and approved prior  
76 to the finalization of the cooperative agreement. If the cooperative agreement involves the merger,  
77 consolidation or acquisition by a qualified hospital located within a distance of twenty-five highway  
78 miles of the main campus of the qualified hospital, and the authority shall have determined that  
79 combination is likely to produce anti-competitive effects due to a reduction of competition. Any  
80 such determination shall be communicated to the parties to the cooperative agreement within  
81 seven days from approval of a certificate of need for the project.

82 (C) In reviewing an application for cooperative agreement, the authority shall give  
83 deference to the policy statements of the Federal Trade Commission.

84 (D) If an application for a review of a cooperative agreement is not required by the  
85 authority, the parties to the agreement may then complete the transaction following a final order  
86 by the authority on the certificate of need as set forth in article two-d of this code. The qualified  
87 hospital may apply to the authority for approval of the cooperative agreement either before or  
88 after the finalization of the cooperative agreement.

89 (E) A party who has received a certificate of need prior to the enactment of this provision  
90 during the 2016 regular session of the Legislature may apply for approval of a cooperative  
91 agreement whether or not the transaction contemplated thereby has been completed.

92 (F) The complete record in the certificate of need proceeding shall be part of the record  
93 in the proceedings under this section and information submitted by an applicant in the certificate  
94 of need proceeding need not be duplicated in proceedings under this section.

95 (e) Procedure for review of cooperative agreements. —

96 (1) Upon receipt of an application, the authority shall determine whether the application is  
97 complete. If the authority determines the application is incomplete, it shall notify the applicant in  
98 writing of additional items required to complete the application. A copy of the complete application  
99 shall be provided by the parties to the Office of the Attorney General simultaneous with the

100 submission to the authority. If an applicant believes the materials submitted contain proprietary  
101 information that is required to remain confidential, such information must be clearly identified and  
102 the applicant shall submit duplicate applications, one with full information for the authority's use  
103 and one redacted application available for release to the public.

104 (2) The authority shall upon receipt of a completed application, publish notification of the  
105 application on its website. The public may submit written comments regarding the application  
106 within ten days following publication. Following the close of the written comment period, the  
107 authority shall, review the application as set forth in this section. Within thirty days of the receipt  
108 of a complete application that authority may:

109 (i) Issue a certificate of approval which shall contain any conditions the authority finds  
110 necessary for the approval;

111 (ii) Deny the application; or

112 (iii) Order a public hearing if the authority finds it necessary to make an informed decision  
113 on the application.

114 (3) The authority shall issue a written decision within seventy-five days from receipt of the  
115 completed application or at the conclusion of the public hearing, if one is held. The authority may  
116 request additional information in which case they shall have an additional fifteen days following  
117 receipt of the supplemental information to approve or deny the proposed cooperative agreement.

118 (4) Notice of any hearing shall be sent certified mailed to the applicants and all persons,  
119 groups or organizations who have submitted written comments on the proposed cooperative  
120 agreement. Any individual, group or organization who submitted written comments regarding the  
121 application and wishes to present evidence at the public hearing shall request to be recognized  
122 as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later  
123 than forty-five days after receipt of the application. The authority shall publish notice of the hearing  
124 on the authority's website fifteen days prior to the hearing.

125 (5) Parties may file a motion for an expedited decision.

126 (f) Standards for review of cooperative agreements. —

127 (1) In its review of an application of a cooperative agreement submitted pursuant to this  
128 section, the authority may consider the proposed cooperative agreement and any supporting  
129 documents submitted by the applicant, any written comments submitted by any person and any  
130 written or oral comments submitted, or evidence presented, at any public hearing.

131 (2) The authority shall approve a proposed cooperative agreement and issue a certificate  
132 of approval if it determines that the benefits likely to result from the proposed cooperative  
133 agreement outweigh the disadvantages likely to result from a reduction in competition from the  
134 proposed cooperative agreement.

135 (3) In evaluating the potential benefits of a proposed cooperative agreement, the authority  
136 shall consider whether one or more of the following benefits may result from the proposed  
137 cooperative agreement:

138 (A) Enhancement and preservation of existing academic and clinical educational  
139 programs;

140 (B) Enhancement of the quality of hospital and hospital-related care, including mental  
141 health services and treatment of substance abuse provided to citizens served by the authority;

142 (C) Enhancement of population health status consistent with the health goals established  
143 by the authority;

144 (D) Preservation of hospital facilities in geographical proximity to the communities  
145 traditionally served by those facilities to ensure access to care;

146 (E) Gains in the cost-efficiency of services provided by the hospitals involved;

147 (F) Improvements in the utilization of hospital resources and equipment;

148 (G) Avoidance of duplication of hospital resources;

149 (H) Participation in the state Medicaid program; and

150 (I) Constraints on increases in the total cost of care.

151 (4) The authority's evaluation of any disadvantages attributable to any reduction in  
152 competition likely to result from the proposed cooperative agreement shall include, but need not  
153 be limited to, the following factors:

154 (A) The extent of any likely adverse impact of the proposed cooperative agreement on the  
155 ability of health maintenance organizations, preferred provider organizations, managed health  
156 care organizations or other health care payors to negotiate reasonable payment and service  
157 arrangements with hospitals, physicians, allied health care professionals or other health care  
158 providers:

159 (B) The extent of any reduction in competition among physicians, allied health  
160 professionals, other health care providers or other persons furnishing goods or services to, or in  
161 competition with, hospitals that is likely to result directly or indirectly from the proposed  
162 cooperative agreement;

163 (C) The extent of any likely adverse impact on patients in the quality, availability and price  
164 of health care services; and

165 (D) The availability of arrangements that are less restrictive to competition and achieve  
166 the same benefits or a more favorable balance of benefits over disadvantages attributable to any  
167 reduction in competition likely to result from the proposed cooperative agreement.

168 (5) (A) After a complete review of the record, including, but not limited to, the factors set  
169 out in subsection (e) of this section, any commitments made by the applicant or applicants and  
170 any conditions imposed by the authority, if the authority determines that the benefits likely to result  
171 from the proposed cooperative agreement outweigh the disadvantages likely to result from a  
172 reduction in competition from the proposed cooperative agreement, the authority shall approve  
173 the proposed cooperative agreement.

174 (B) The authority may reasonably condition approval upon the parties' commitments to:

175 (i) Achieving improvements in population health;

176 (ii) Access to health care services;

177 (iii) Quality and cost efficiencies identified by the parties in support of their application for  
178 approval of the proposed cooperative agreement; and

179 (iv) Any additional commitments made by the parties to the cooperative agreement.

180 Any conditions set by the authority shall be fully enforceable by the authority. No condition  
181 imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to  
182 religious or ethical directives established by its governing board.

183 (6) The authority's decision to approve or deny an application shall constitute a final order  
184 or decision pursuant to the West Virginia Administrative Procedure Act (§ 29A-1-1, et seq.). The  
185 authority may enforce commitments and conditions imposed by the authority in the circuit court  
186 of Kanawha County or the circuit court where the principal place of business of a party to the  
187 cooperative agreement is located.

188 (7) The authority may consult with the Attorney General of this state regarding his or her  
189 assessment of whether or not to approve the proposed cooperative agreement.

190 (g) Enforcement and supervision of cooperative agreements. — The authority shall  
191 enforce and supervise any approved cooperative agreement for compliance.

192 (1) The authority shall promulgate emergency rules pursuant to the provisions of section  
193 fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section.

194 These rules shall include, at a minimum:

195 (A) An annual report by the parties to a cooperative agreement. This report is required to  
196 include:

197 (i) Information about the extent of the benefits realized and compliance with other terms  
198 and conditions of the approval;

199 (ii) A description of the activities conducted pursuant to the cooperative agreement,  
200 including any actions taken in furtherance of commitments made by the parties or terms imposed  
201 by the authority as a condition for approval of the cooperative agreement;

202 (iii) Information relating to price, cost, quality, access to care and population health  
203 improvement;

204 (iv) Disclosure of any reimbursement contract between a party to a cooperative  
205 agreement approved pursuant to this section and a commercial health plan or insurer entered into  
206 subsequent to the finalization of the cooperative agreement. This shall include the amount, if any,  
207 by which an increase in the average rate of reimbursement exceeds inpatient services for such  
208 year, the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient  
209 services as published by the Bureau of Labor Statistics for such year and, with respect to  
210 outpatient services, the increase in the Consumer Price Index for all Urban Consumers for  
211 hospital outpatient services for such year; and

212 (v) Any additional information required by the authority ensure compliance with the  
213 cooperative agreement.

214 (B) If an approved application involves the combination of hospitals, disclosure of the  
215 performance of each hospital with respect to a representative sample of quality metrics selected  
216 annually by the authority from the most recent quality metrics published by the Centers for  
217 Medicare and Medicaid Services. The representative sample shall be published by the authority  
218 on its website.

219 (C) A procedure for a corrective action plan where the average performance score of the  
220 parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all  
221 United States hospitals with respect to the quality metrics as set forth in (B) of this subsection.  
222 The corrective action plan is required to:

223 (i) Be submitted one hundred twenty days from the commencement of the next calendar  
224 year; and

225 (ii) Provide for a rebate to each commercial health plan or insurer with which they have  
226 contracted an amount not in excess of one percent of the amount paid to them by such  
227 commercial health plan or insurer for hospital services during such two-year period if in any two

228 consecutive-year period the average performance score is below the fiftieth percentile for all  
229 United States hospitals. The amount to be rebated shall be reduced by the amount of any  
230 reduction in reimbursement which may be imposed by a commercial health plan or insurer under  
231 a quality incentive or awards program in which the hospital is a participant.

232 (D) A procedure where if the excess above the increase in the Consumer Price Index for  
233 all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent  
234 or greater the authority may order the rebate of the amount which exceeds the respective indices  
235 by two percent or more to all health plans or insurers which paid such excess unless the party  
236 provides written justification of such increase satisfactory to the authority taking into account case  
237 mix index, outliers and extraordinarily high cost outpatient procedure utilizations.

238 (E) The ability of the authority to investigate, as needed, to ensure compliance with the  
239 cooperative agreement.

240 (F) The ability of the authority to take appropriate action, including revocation of a  
241 certificate of approval, if it determines that:

242 (i) The parties to the agreement are not complying with the terms of the agreement or the  
243 terms and conditions of approval;

244 (ii) The authority's approval was obtained as a result of an intentional material  
245 misrepresentation;

246 (iii) The parties to the agreement have failed to pay any required fee; or

247 (iv) The benefits resulting from the approved agreement no longer outweigh the  
248 disadvantages attributable to the reduction in competition resulting from the agreement.

249 (G) If the authority determines the parties to an approved cooperative agreement have  
250 engaged in conduct that is contrary to state policy or the public interest, including the failure to  
251 take action required by state policy or the public interest, the authority may initiate a proceeding  
252 to determine whether to require the parties to refrain from taking such action or requiring the  
253 parties to take such action, regardless of whether or not the benefits of the cooperative agreement

254 continue to outweigh its disadvantages. Any determination by the authority shall be final. The  
255 authority is specifically authorized to enforce its determination in the circuit court of Kanawha  
256 County or the circuit court where the principal place of business of a party to the cooperative  
257 agreement is located.

258 (H) Fees as set forth in subsection (h).

259 (2) Until the promulgation of the emergency rules, the authority shall monitor and regulate  
260 cooperative agreements to ensure that their conduct is in the public interest and shall have the  
261 powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth  
262 in paragraph (G), subdivision (1) of this subsection.

263 (h) Fees. — The authority may set fees for the approval of a cooperative agreement.  
264 These fees shall be for all reasonable and actual costs incurred by the authority in its review and  
265 approval of any cooperative agreement pursuant to this section. These fees shall not exceed  
266 \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the  
267 supervision of any cooperative agreement approved pursuant to this section and to support the  
268 implementation and administration of the provisions of this section.

269 (i) Miscellaneous provisions. —

270 (1) Hospital parties to a cooperative agreement involving the combination of two or more  
271 hospitals through merger, consolidation or acquisition and who seek the authority's approval of  
272 such agreement may, as part of the application for approval, agree to maintain their existing rate  
273 schedules pursuant to the agreement of the parties or any agreement with any state official or  
274 agency.

275 (2) The authority shall maintain on file all cooperative agreements the authority has  
276 approved, including any conditions imposed by the authority.

277 (3) Any party to a cooperative agreement that terminates its participation in such  
278 cooperative agreement shall file a notice of termination with the authority thirty days after  
279 termination.

280 (4) No hospital which is a party to a cooperative agreement for which approval is required  
281 pursuant to this section may knowingly bill or charge for health services resulting from, or  
282 associated with, such cooperative agreement until approved by the authority. Additionally, no  
283 hospital which is a party to a cooperative agreement may knowingly bill or charge for health  
284 services resulting from, or associated with, such cooperative agreement for which approval has  
285 been revoked or terminated.

286 (5) By submitting an application for review of a cooperative agreement pursuant to this  
287 section, the hospitals or health care providers shall be deemed to have agreed to submit to the  
288 regulation and supervision of the authority as provided in this section.

**ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.**

**§16-29G-2. Creation of West Virginia Health Information Network board of directors;  
powers of the board of directors.**

1 (a) The network is created under the Health Care Authority for administrative, personnel  
2 and technical support purposes. The network shall be managed and operated by a board of  
3 directors. The board of directors is an independent, self-sustaining board with the powers  
4 specified in this article.

5 (b) The board is part-time. Each member shall devote the time necessary to carry out the  
6 duties and obligations of members on the board.

7 (c) Members appointed by the Governor may pursue and engage in another business or  
8 occupation or gainful employment that is not in conflict with his or her duties as a member of the  
9 board.

10 (d) The board shall meet at such times as the chair may decide. Eight members of the  
11 board are a quorum for the purposes of the transaction of business and for the performance of  
12 any duty.

13 (e) A majority vote of the members present is required for any final determination by the  
14 board. Voting by proxy is not allowed.

15 (f) The Governor may remove any board member for incompetence, misconduct, gross  
16 immorality, misfeasance, malfeasance or nonfeasance in office.

17 (g) The board shall consist of seventeen members, designated as follows:

18 (1) The Dean of the West Virginia University School of Medicine or his or her designee;

19 (2) The Dean of the Marshall University John C. Edwards School of Medicine or his or her  
20 designee;

21 (3) The President of the West Virginia School of Osteopathic Medicine or his or her  
22 designee;

23 (4) The Secretary of the Department of Health and Human Resources or his or her  
24 designee;

25 (5) The President of the West Virginia Board of Pharmacy or his or her designee;

26 (6) The Director of the Public Employees Insurance Agency or his or her designee;

27 (7) The Chief Technology Officer of the Office of Technology or his or her designee;

28 (8) The Chair of the Health Care Authority or his or her designee;

29 (9) The President of the West Virginia Hospital Association or his or her designee;

30 (10) The President of the West Virginia State Medical Association or his or her designee;

31 (11) The Chief Executive Officer of the West Virginia Health Care Association or his or her  
32 designee;

33 (12) The Executive Director of the West Virginia Primary Care Association or his or her  
34 designee; and

35 (13) Five public members that serve at the will and pleasure of the Governor and are  
36 appointed by the Governor with advice and consent of the Senate as follows:

37 (i) One member with legal expertise in matters concerning the privacy and security of  
38 health care information;

39 (ii) Two physicians actively engaged in the practice of medicine in the state;

40 (iii) One member engaged in the business of health insurance who is employed by a  
41 company that has its headquarters in West Virginia; and

42 (iv) The chief executive officer of a West Virginia corporation working with West Virginia  
43 health care providers, insurers, businesses and government to facilitate the use of information  
44 technology to improve the quality, efficiency and safety of health care for West Virginians.

45 (h) The Governor shall appoint one of the board members to serve as chair of the board  
46 at the Governor's will and pleasure. The board shall annually select one of its members to serve  
47 as vice chair. The ~~Chair~~ Executive Director of the Health Care Authority shall serve as the  
48 secretary-treasurer of the board.

49 (i) The public members of the board shall serve a term of four years and may serve two  
50 consecutive terms. At the end of a term, a member of the board shall continue to serve until a  
51 successor is appointed. Those members designated in subdivisions (1) through (12), inclusive,  
52 subsection (g) of this section shall serve on the board only while holding the position that entitle  
53 them to membership on the board.

54 (j) The board may propose the adoption or amendment of rules to the Health Care  
55 Authority to carry out the objectives of this article.

56 (k) The board may appoint committees or subcommittees to investigate and make  
57 recommendations to the full board. Members of such committees or subcommittees need not be  
58 members of the board.

59 (l) Each member of the board and the board's committees and subcommittees is entitled  
60 to be reimbursed for actual and necessary expenses incurred for each day or portion thereof  
61 engaged in the discharge of official duties in a manner consistent with guidelines of the Travel  
62 Management Office of the Department of Administration.

**§16-29G-5. Immunity from suit; limitation of liability.**

1 The network is not a health care provider and is not subject to claims under article seven-  
2 b, chapter fifty-five of this code. No person who participates or subscribes to the services or

3 information provided by the network is liable in any action for damages or costs of any nature, in  
4 law or equity, which result solely from that person's use or failure to use network information or  
5 data that was imputed or retrieved in accordance with the Health Insurance Portability and  
6 Accountability Act of 1996 and any amendments and regulations under the act, state  
7 confidentiality laws and the rules of the network as approved by the Executive Director of the  
8 Health Care Authority. In addition, no person is subject to antitrust or unfair competition liability  
9 based on membership or participation in the network, which provides an essential governmental  
10 function for the public health and safety and enjoys state action immunity.

**§16-29G-6. Property rights.**

1 (a) All persons providing information and data to the network shall retain a property right  
2 in that information or data, but grant to the other participants or subscribers a nonexclusive license  
3 to retrieve and use that information or data in accordance with the Health Insurance Portability  
4 and Accountability Act of 1996 and any amendments and regulations under the act, state  
5 confidentiality laws and the legislative rules proposed by the Health Care Authority.

6 (b) All processes or software developed, designed or purchased by the network shall  
7 remain its property subject to use by participants or subscribers in accordance with the rules ~~of~~  
8 ~~regulations~~ proposed by the Health Care Authority.

**ARTICLE 29I. WEST VIRGINIA HEALTH CARE AUTHORITY REVOLVING LOAN  
AND GRANT FUND.**

**§16-29I-4. Revolving fund created.**

9 (a) (1) The ~~board~~ authority shall create and establish a special revolving fund of moneys  
10 made available to the fund by appropriation, grant, contribution, loan, or statutory dedication to  
11 be known as the West Virginia Health Care Authority Revolving Loan Fund. The fund shall be  
12 governed, administered and accounted for by the ~~board~~ executive director or his or her designee.

13           (2) Any money collected pursuant to this section, including the repayment of loans made  
14 by the ~~board~~ authority, shall be paid into the fund by any state agent or entity charged with the  
15 collection of the money, credited to the fund, and used only for the purposes set forth in this article.

16           (b) The ~~board~~ authority may pledge revenues to the fund and from time to time establish  
17 one or more restricted accounts within the fund for the purpose of providing funds to guarantee  
18 loans made pursuant to this article. No loan guarantee shall be made pursuant to this article  
19 unless recourse under the loan guarantee is limited solely to amounts in the restricted account or  
20 accounts. No person shall have any recourse to any restricted accounts established pursuant to  
21 this subsection other than those persons to whom the loan guarantee or loan guarantees have  
22 been made.

23           (c) Each loan or loan guarantee made or provided by the ~~board~~ authority from the fund  
24 shall be evidenced by a loan document, a loan guarantee document or any other writing or  
25 document or documents as the ~~board~~ authority may consider appropriate, between the Health  
26 Care Authority ~~Board~~ and the hospital or hospitals to which the loan, or loan guarantee, was made  
27 available or provided. The agreements shall include, without limitation and to the extent  
28 applicable, the following provisions:

29           (1) The estimated total costs of the hospital restructuring plan, the amount of the loan, or  
30 loan guarantee and the terms of repayment and the security for the loan if any;

31           (2) The specific purposes for which the loan proceeds shall be expended and the  
32 conditions and procedures for dispersing a loan proceeds; and

33           (3) The duties, conditions and obligations imposed by the ~~board~~ authority upon the hospital  
34 or hospitals regarding the hospital restructuring plan.

35           (d) Moneys in the fund shall be approved for expenditure by the Health Care Authority  
36 ~~Board~~ only as the moneys are available in the fund. Approval of expenditures by the ~~board~~  
37 authority may occur without appropriation by the Legislature prior to July 1, 2008. After July 1,  
38 2008, expenditures from the fund shall be made by the ~~board~~ authority only pursuant to available  
39 amounts appropriated by the Legislature.