

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4001**

BY DELEGATES FAST, HIGGINBOTHAM, FOSTER, MCGEEHAN,

KESSINGER, WESTFALL, MARTIN, AMBLER,

BUTLER, QUEEN AND SYPOLT

[Passed March 10, 2018; in effect ninety days from passage.]



1 AN ACT to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §9-7-2, §9-7-5, and §9-7-6 of said code; to amend said code by adding thereto  
3 a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8,  
4 §9-8-9, §9-8-10, §9-8-11, and §9-8-12; and to amend and reenact §61-3-54 of said code,  
5 all relating to investigations, inspections, evaluations, and review conducted by the  
6 Department of Health and Human Resources to prevent fraud and abuse; disenrolling  
7 providers who commit fraud and requiring repayment; authorizing secretary to develop a  
8 data analytics pilot program to identify potential fraud and help guide policy objectives to  
9 eliminate future fraud; requiring a report on the pilot project to the Legislature; defining  
10 fraud as it relates to Medicaid; creating criminal penalties against providers for failure to  
11 keep medical records for a specific time period; authorizing a civil cause of action for fraud  
12 when a person or entity knew or reasonably should have known a claim to be false;  
13 enlarging the statute of limitations to file health care fraud civil actions; defining terms  
14 relating to public assistance; requiring the Department of Health and Human Resources  
15 to implement work requirements for applicants of Supplemental Nutrition Assistance  
16 Program (SNAP); to limit recipients to 3 months of benefits in any 36-month period unless  
17 the recipient is working or participating in a work, educational, or volunteer program for at  
18 least 20 hours a week; providing further exemptions to work requirements; requiring  
19 discontinuance of a federal waiver in certain counties; requiring a study of the impact of  
20 the SNAP work requirements in those counties where they were implemented; eliminating  
21 the federal waiver statewide within a certain time-period; requiring a report to the  
22 Legislature; establishing work requirements; authorizing a waiver to if necessary to  
23 implement a policy that complies with federal law; authorizing rulemaking; requiring a  
24 design or establishment of a computerized income, asset, and identity verification system  
25 for each public assistance program administered by the Department of Health and Human  
26 Resources; allowing for contracting with a third-party vendor; setting out required contract

27 terms; requiring accessing information of various federal, state, and miscellaneous  
28 sources for eligibility verification; requiring identity authentication as a condition to receive  
29 public assistance; requiring the department to study the feasibility of requiring photos on  
30 EBT cards; specifying procedures for case review of public assistance benefits; setting  
31 forth notice requirements and right to a hearing; requiring referrals for fraud,  
32 misrepresentation, and inadequate documentation; authorizing referrals of suspected  
33 cases of fraud for criminal prosecution; requiring report to the Governor and Legislature;  
34 setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-  
35 state spending of SNAP and TANF benefits; providing for rulemaking; and providing a  
36 penalty for taking the identity of another person for the purpose of gaining employment.

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

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.**

#### **§9-2-6. Powers of secretary.**

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

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

9 (2) Promulgate, amend, revise, and rescind department rules and regulations respecting  
10 qualifications for receiving the different classes of welfare assistance consistent with or permitted

11 by federal laws, rules and policies, but not inconsistent with state law: *Provided*, That rules and  
12 policies respecting qualifications shall permit the expenditure of state funds to pay for care  
13 rendered in any birthing center licensed under the provisions of §16-2E-1, *et seq.* of this code by  
14 a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and  
15 which care is within the scope of duties for such licensed nurse midwife or midwife as permitted  
16 by the provisions of section seven of said article.

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

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

25 (5) Sign and execute a contract to implement professional health care, managed care,  
26 actuarial and health care-related monitoring, quality review/utilization, claims processing, and  
27 independent professional consultant contracts for the Medicaid program: *Provided*, That the  
28 provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract  
29 awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains  
30 in full force and effect and the secretary retains sole authority to review, approve, and issue  
31 changes to contracts issued under the former purchasing process, and is responsible for  
32 challenges, disputes, protests, and legal actions related to such contracts.

33 (6) Establish such special funds as may be required by the federal Social Security Act, as  
34 amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of  
35 the benefits and provisions thereof relating to the federal-state assistance and federal assistance  
36 programs administered by the department and to make payments into and disbursements out of

37 any such special fund or funds in accordance with the requirements of the federal Social Security  
38 Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state  
39 law and the objects and purposes of this chapter. In addition, the State Department of Health and  
40 Human Resources, through the secretary, is hereby authorized to accept any and all gifts or  
41 grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys,  
42 shall be placed in a separate fund and expended solely for the purpose of public assistance  
43 programs. No part of this special fund shall revert to the General Revenue Funds of this state. No  
44 expenses incurred pursuant to this special fund shall be a charge against the General Funds of  
45 this state.

46 (7) Establish within the department an Office of Inspector General for the purpose of  
47 conducting and supervising investigations, performing inspections, evaluations, and review, and  
48 providing quality control for the programs of the department. The Office of Inspector General shall  
49 be headed by the Inspector General who shall report directly to the secretary. Neither the  
50 secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector  
51 General or his or her employees from initiating, carrying out, or completing any investigation,  
52 inspection, evaluation, review or other activity oversight of public integrity by the Office of the  
53 Inspector General. The secretary shall place within the Office of Inspector General any function  
54 he or she deems necessary. Qualification, compensation, and personnel practice relating to the  
55 employees of the Office of the Inspector General, including that of the position of Inspector  
56 General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and  
57 rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office  
58 of Inspector General.

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

61 (9) Pay from available funds all or part of the reasonable expenses incurred by a person  
62 newly employed by the department in moving his household furniture, effects, and immediate

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

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

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

77 (12) Prepare and submit state plans which will meet the requirements of federal laws,  
78 rules governing federal-state assistance and federal assistance and which are not inconsistent  
79 with state law.

80 (13) Organize within the department a Board of Review, consisting of a chairman  
81 appointed by the secretary and as many assistants or employees of the department as may be  
82 determined by the secretary and as may be required by federal laws and rules respecting state  
83 assistance, federal-state assistance, and federal assistance, such Board of Review to have such  
84 powers of a review nature and such additional powers as may be granted to it by the secretary  
85 and as may be required by federal laws and rules respecting federal-state assistance and federal  
86 assistance.

87 (14) Provide by rules review and appeal procedures within the Department of Health and  
88 Human Resources as may be required by applicable federal laws and rules respecting state

89 assistance, federal-state assistance, and federal assistance and as will provide applicants for,  
90 and recipients of, all classes of welfare assistance an opportunity to be heard by the Board of  
91 Review, a member thereof or individuals designated by the board, upon claims involving denial,  
92 reduction, closure, delay, or other action or inaction pertaining to public assistance.

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

95 (16) Provide locations for making applications for the various classes of public assistance.

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

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

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

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

104 (21) Require a provider, subgrantee, or other entity performing services on behalf of the  
105 department to comply with all applicable laws, rules, and written procedures pertaining to the  
106 program for which the entity is providing or coordinating services, including, but not limited to,  
107 policy manuals, statements of work, program instructions, or other similar agreements. When  
108 submitting a claim for payment, the entity shall certify that it has complied with all material  
109 conditions for payment. Knowingly and intentionally submitting a claim or billing for services  
110 performed in material violation of any law, rule, policy, or other written agreement shall constitute  
111 fraud and the agreement for provision of services shall terminate. The entity shall be required to  
112 repay the department for any payment under the program for which the provider was not entitled,  
113 regardless of whether the incorrect payment was the result of department error, fraud, or other  
114 cause. A demand for repayment or termination of agreement for provision of services shall be



115 subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions  
116 of this subsection do not apply to fraud in the Medicaid program.

117 (22) Develop a data analytics pilot program to identify potential fraud and help guide policy  
118 objectives to eliminate future fraud. The Secretary shall submit a report containing the pilot  
119 program's results and recommendations to the Joint Committee on Government and Finance no  
120 later than December 31, 2020.

**§9-7-2. Definitions.**

1 For the purposes of this article:

2 "Assistance" means money payments, medical care, transportation and other goods and  
3 services necessary for the health or welfare of individuals, including guidance, counseling, and  
4 other welfare services and shall include all items of any nature contained within the definition of  
5 "welfare assistance" in §9-1-2 of this code.

6 "Benefits" means money payments, goods, services, or any other thing of value.

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

9 "Claim" means an application for payment for goods or services provided under the  
10 medical programs of the Department of Health and Human Resources.

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

13 "Financial Exploitation" means the intentional misappropriation or misuse of funds or  
14 assets of another.

15 "Fraud" means a knowing misrepresentation, knowing concealment, or reckless statement  
16 of a material fact.

17 "Medicaid" means that assistance provided under a state plan implemented pursuant to  
18 the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that  
19 chapter has been and may hereafter be amended.

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

22 "Provider" means any individual or entity furnishing goods or services under the medical  
23 programs of the Department of Health and Human Resources.

24 "Unit" means the Medicaid Fraud Control Unit established under §9-7-1 of this code.

**§9-7-5. Bribery; false claims; conspiracy; criminal penalties; failure to maintain records.**

1 (a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including  
2 any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of  
3 moneys from the medical services fund established pursuant to §9-4-2 of this code, which is not  
4 authorized by applicable laws or rules and regulations.

5 (b) A person shall not make or present or cause to be made or presented to the  
6 Department of Health and Human Resources a claim under the medical programs of the  
7 Department of Health and Human Resources knowing the claim to be false, fraudulent, or  
8 fictitious.

9 (c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid  
10 another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the  
11 medical programs of the Department of Health and Human Resources.

12 (d) Any person found to be in violation of §9-7-5(a), §9-7-5(b) or §9-7-5(c) of this code is  
13 guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less  
14 than one nor more than 10 years or shall be fined not to exceed \$10,000, or both fined and  
15 imprisoned.

16 (e) Any provider who, having submitted a claim for or received a benefit, payment, or  
17 allowance under the medical programs of the Department of Health and Human Resources,  
18 knowingly fails to maintain such records as are necessary to disclose fully the nature of a good  
19 or service for which a claim was submitted or benefit, payment, or allowance was received, or  
20 such records as are necessary to disclose fully all income and expenditures upon which rate of

21 payment were based, for a period of at least five years following the date on which payment was  
22 received, shall be guilty of a misdemeanor and, upon conviction, may be imprisoned in a state  
23 correctional facility not to exceed one year or may be fined up to \$1,000, or both fined and  
24 imprisoned. Any person who knowingly destroys such records within five years from the date the  
25 benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned  
26 in a state correctional facility not less than one nor more than 10 years or may be fined not to  
27 exceed \$10,000, or both fined and imprisoned.

**§9-7-6. Civil remedies; statute of limitations.**

1 (a) Any person, firm, corporation, or other entity which makes or attempts to make, or  
2 causes to be made, a claim for benefits, payments, or allowances under the medical programs of  
3 the Department of Health and Human Resources, when such person, firm, corporation, or entity  
4 knows, or reasonably should have known, such claim to be false, fictitious, or fraudulent, or fails  
5 to maintain such records as are necessary shall be liable to the Department of Health and Human  
6 Resources in an amount equal to three times the amount of such benefits, payments, or  
7 allowances to which he or she or it is not entitled, and shall be liable for the payment of reasonable  
8 attorney fees and all other fees and costs of litigation.

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

11 (c) A civil action under this section may be prosecuted and maintained on behalf of the  
12 Department of Health and Human Resources by the Attorney General and the Attorney General's  
13 assistants or a prosecuting attorney and the prosecuting attorney's assistants or by any attorney  
14 in contract with or employed by the Department of Health and Human Resources to provide such  
15 representation.

16 (d) Any civil action brought under this section shall be brought within five years from the  
17 time the false, fraudulent, or fictitious claim was made. Claims will be judged based on the  
18 Medicaid or program rules in existence at the time of the claim submission.

**ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.**

**§9-8-1. Definitions.**

1 As used in this article:

2 “Able bodied adult” means a person between the ages of 18 and 49 years of age without  
3 dependents and who does not meet any of the exemptions set forth in §9-8-2(a) of this code.

4 “Applicant” or “recipient” means a person who is applying for, or currently receiving, public  
5 assistance in the State of West Virginia from the department.

6 “Department” means the West Virginia Department of Health and Human Resources.

7 “Electronic benefit transfer” or “EBT” means any electronic system which allows the  
8 department to issue and track benefits via a magnetically encoded payment card.

9 “Good cause” means circumstances beyond the household’s control, including, but not  
10 limited to, illness, illness of another household member requiring the presence of the member, a  
11 household emergency, natural disaster, a declared state of emergency due to inclement weather,  
12 or the unavailability of transportation.

13 “Public assistance” means government benefits provided to qualifying individuals on the  
14 basis of need to provide basic necessities to individuals and their families. These shall include,  
15 but are not limited to, the following:

16 (A) Supplemental Nutrition Assistance Program, or SNAP;

17 (B) Medicaid; and

18 (C) Temporary Assistance to Needy Families, or TANF.

19 “Secretary” means the Secretary of the West Virginia Department of Health and Human  
20 Resources.

21 “Work” or “working” means:

22 (A) Work in exchange for money;

23 (B) Work in exchange for goods or services (“in kind” work);

24 (C) Unpaid work, verified under standards established by the department in rule; or

25 (D) Any combination thereof.

**§9-8-2. Work requirements.**

1 (a) All able bodied adults may receive Supplemental Nutrition Assistance benefits for only  
2 three months in each 36-month period. Recipients are exempt from the time limit if they are  
3 employed or are participating and complying with the requirements of a work, education, or  
4 volunteer program for at least 20 hours per week: *Provided*, That further exemptions may apply  
5 and shall be determined in accordance with federal law: *Provided, however*, That any such  
6 exemptions shall not exceed those granted by federal law.

7 (b) Beginning October 1, 2018, the department shall discontinue and shall not seek federal  
8 waivers granted pursuant to 7 U.S.C. § 2015(o) for Able Bodied Adults Without Dependents  
9 (ABAWD) for any county that cannot be demonstrated to have, through data in conformance with  
10 U.S. Bureau of Labor Statistics methodology set forth under federal law, a recent 12-month  
11 average unemployment rate above 10 percent; a recent 24-month average unemployment rate  
12 20 percent above the national average for the same 24-month period; qualification for extended  
13 unemployment benefits; or designation as a “labor surplus area” by the U.S. Department of Labor.  
14 These waivers exempt able bodied adults with no children from work requirements for receipt of  
15 SNAP benefits. Notwithstanding any provision in this code to the contrary, all counties shall be  
16 ineligible for any such waiver effective October 1, 2022.

17 (c) The department shall submit a report to the Legislative Oversight Committee on Health  
18 and Human Resources Accountability, no later than October 1, 2020, on the employment impact  
19 of ABAWD requirements in those counties where they were implemented as of October 1, 2018.  
20 The report shall include, on a county-by-county basis, information on the number of SNAP  
21 recipients subject to work requirements; the number exempted from work requirements and the  
22 reasons for exemption; the number of applicants denied benefits due to non-compliance with work  
23 requirements; the dollar amount of benefits withheld due to non-compliance; the estimated fiscal  
24 impact on SNAP retailers of withholding those benefits; the number of recipients who engaged in

25 work, education, or volunteerism in order to maintain benefits; the efforts made to assist recipients  
26 with meeting work requirements in order to maintain benefits; and any such recommendations  
27 pertaining to work requirements as the department deems advisable.

28 (d) If a recipient resides in a county subject to the provisions of this article, an applicant  
29 shall be deemed as complying with the requirements of a work, education, or volunteer program  
30 if any of the following requirements are satisfied:

31 (1) Working at least 20 hours per week, averaged monthly, or 80 hours a month;

32 (2) Participating in, and complying with, the requirements of a work force training program  
33 of 20 hours per week, as determined by the department in rule;

34 (3) Volunteering 20 hours a week, as determined by the department in rule;

35 (4) Any combination of working, volunteering and/or participating in a work program for a  
36 total of 20 hours per week, as determined by the department in legislative rule; or

37 (5) Participating in, and complying with, a workfare program as set out in 7 C.F.R.  
38 273.24(a)(3).

39 (e) As determined by the department, if a recipient would have worked an average of 20  
40 hours per week but missed some work for good cause, the recipient shall be considered to have  
41 met the work requirement if the absence from work is temporary and the recipient retains his or  
42 her job. Good cause includes circumstances beyond the household's control, such as, but not  
43 limited to, illness, illness of another household member requiring the presence of the member, a  
44 household emergency, natural disaster, a declared state of emergency due to inclement weather,  
45 or the unavailability of transportation.

46 (f) If the department determines that a waiver, or an amendment to a waiver, is necessary  
47 to implement a policy that complies with 7 C.F.R. 273.24, it shall request the waiver or the  
48 amendment to the waiver from the United States Department of Agriculture.

49 (g) The department shall propose legislative rules in accordance with the provisions of  
50 this code for a plan for implementation of the requirements set forth in this section in counties that  
51 are subject to the requirements set forth in §9-8-2 (d) of this code.

**§9-8-3. Income and identity verification.**

1 (a) By December 31, 2018, the department shall redesign an existing system or establish  
2 a new computerized income, asset, and identity eligibility verification system or contract with a  
3 third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste,  
4 fraud, and abuse in each public assistance program which it administers.

5 (b) The department may contract with a third-party vendor to develop a system to provide  
6 a service or verify income, assets, and identity eligibility of applicants to prevent fraud,  
7 misrepresentation, and inadequate documentation when determining eligibility for public  
8 assistance. This system or service shall be accessed prior to determining eligibility, periodically  
9 between eligibility redeterminations, and during eligibility redeterminations and reviews. The  
10 department may contract with a vendor to provide information to facilitate reviews of recipient  
11 eligibility conducted by the department.

12 (c) A contract made pursuant to this section may not include a provision that provides the  
13 vendor with a monetary incentive for reducing the number of recipients.

14 (d) Nothing in this article precludes the department from continuing to conduct additional  
15 eligibility verification processes currently in practice.

**§9-8-4. Eligibility verification.**

1 All applications for benefits must be processed through a system as set forth in this article.  
2 Complete applications, including the interview, shall be processed within 10 days of receipt or the  
3 maximum period required by federal law. Prior to determining eligibility, the department shall  
4 access information for every applicant from federal, state, and other sources: *Provided*, That such  
5 access does not violate any federal law.

**§9-8-5. Identity authentication.**

1 (a) Prior to awarding public assistance, applicants for benefits must complete a  
2 computerized identity authentication process to confirm the identity of the applicant. This shall be  
3 done with a knowledge-based questionnaire consisting of financial and/or personal questions.

4 The questionnaire must contain questions tailored to assist persons without a bank account or  
5 those who have poor access to financial and banking services or who do not have an established  
6 credit history. The questionnaire may be submitted online, in-person, or via telephone.

7 (b) The department shall submit a report to the Legislative Oversight Committee on Health  
8 and Human Resources Accountability regarding the feasibility of implementing the photo EBT  
9 card option under 7 U.S.C. § 2016(h)(9). The study shall address certain operational issues to  
10 ensure that state implementation would be consistent with all federal requirements, and that  
11 program access is protected for participating households, including, but not limited to, allowing  
12 the recipient to designate permitted users for purposes of utilizing the photo EBT card.

**§9-8-6. Case review.**

1 (a) If the information obtained from the review provided in this article does not result in the  
2 department finding a discrepancy or change in an applicant's or recipient's circumstances  
3 affecting eligibility, the department shall not take any further action and shall continue processing  
4 the application.

5 (b) If the review results in a discrepancy, the department shall promptly redetermine  
6 eligibility.

**§9-8-7. Notice and right to be heard.**

1 (a) An applicant shall be given written notice and the opportunity to explain any issues  
2 with the application or redetermination as set forth in §9-8-6 of this code. Self-declarations by  
3 applicants or recipients shall be accepted as verification of categorical and financial eligibility if no  
4 other verification source is available. In cases requiring expedited services an applicant's  
5 statement may be temporarily accepted until such time as verification is possible.

6 (b) The notice given to the applicant or recipient is required to describe the circumstances  
7 of the issue, the manner in which the applicant or recipient may respond, and the consequences  
8 of failing to take action. If the applicant does not respond timely as required by federal law, the



9 department shall take appropriate action. The department may request additional information as  
10 it finds necessary to reach a decision.

11 (c) An individual may respond in writing, electronically, or verbally. If an individual  
12 responds verbally, staff shall note the time and contents of the response in the individual's file.  
13 The response by the individual may:

14 (1) Disagree with the findings of the department. The department shall reinvestigate the  
15 matter if the applicant or recipient disagrees. If the department finds that there has been an error,  
16 the department shall take immediate action to correct it. If the department determines that there  
17 is no error, the department shall determine the effect of the response on the applicant's or  
18 recipient's case and take appropriate action. Written notice of the department's action shall be  
19 given to the applicant or recipient; or

20 (2) Agree with the findings of the department. The department shall determine the effect  
21 on the applicant's or recipient's case and take appropriate action. Written notice of the  
22 department's action shall be given to the applicant or recipient.

23 (d) If the applicant fails to respond to the notice, the department shall deny or discontinue  
24 assistance for failure to verify information. Eligibility for assistance may not be established or  
25 reestablished until the issue has been resolved.

**§9-8-8. Referrals for fraud, misrepresentation or inadequate documentation.**

1 (a) After the case review as set forth in §9-8-6 of this code, the department shall refer  
2 cases of suspected fraud to the Office of Inspector General within the department. That office  
3 shall take appropriate action, including civil penalties or referral to an appropriate prosecuting  
4 attorney for criminal prosecution.

5 (b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate  
6 legal options. These may include, but are not limited to, removal from other public assistance  
7 programs and garnishment of wages or state income tax refunds until the department recovers  
8 an equal amount of benefits fraudulently claimed.

9 (c) The department may refer suspected cases of fraud, misrepresentation, or inadequate  
10 documentation to appropriate agencies, divisions, or departments for review of eligibility issues in  
11 other public assistance programs. This should also include cases in which an individual is  
12 determined to be no longer eligible for the original program.

**§9-8-9. Reporting to the Governor and Legislature.**

1 The department shall prepare an annual report by January 15 each year to the Governor  
2 and Legislative Oversight Commission on Health and Human Resources Accountability. The  
3 report shall contain information on the effectiveness and general findings of the eligibility  
4 verification system, including the number of cases reviewed, the number of case closures, the  
5 number of referrals for criminal prosecution, recovery of improper payment, collection of civil  
6 penalties, the outcomes of cases referred to the Office of Inspector General, and any savings that  
7 have resulted from the system.

**§9-8-10. Prohibitions on use of electronic benefit transfer cards.**

1 (a) To ensure that public assistance program funds are used for their intended purposes,  
2 funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor  
3 or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos,  
4 travel services provided by a travel agent, money transmission to locations abroad, sexually  
5 oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets  
6 for other entertainment events intended for the general public.

7 (b) Electronic benefit transfer card transactions are prohibited at all casinos, gaming  
8 establishments, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie  
9 shops, vapor cigarette stores, psychic or fortune-telling businesses, bail bond companies, video  
10 arcades, movie theaters, swimming pools, cruise ships, theme parks, dog or horse racing  
11 facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments which provide  
12 adult-oriented entertainment in which performers disrobe or perform in an unclothed state for

13 entertainment, and businesses or retail establishments where minors under age 18 are not  
14 permitted.

15 (c) Upon enrollment, the department shall provide all applicants with an itemized list of  
16 prohibited purchases, including those specified in this section, and make such list available on  
17 the department's website.

18 (d) If a recipient is found to have violated the provisions of this section, the department  
19 shall issue a warning in writing to the recipient. The recipient is subject to disqualification of  
20 benefits for up to three months following the first offense, for up to one year following the second  
21 offense, and a permanent termination of benefits following the third offense, unless expressly  
22 prohibited by federal law.

**§9-8-11. Tracking out-of-state spending.**

1 (a) The department shall post on its website and provide to the Joint Committee on  
2 Government and Finance a report of Supplemental Nutrition Assistance Program and Temporary  
3 Assistance for Needy Families benefit spending on or before January 15 of each year.

4 (b) The report required by this section shall include:

5 (1) The dollar amount and number of transactions of Supplemental Nutrition Assistance  
6 Program benefits that are accessed or spent out-of-state, by state;

7 (2) The dollar amount and number of transactions of Temporary Assistance for Needy  
8 Families benefits that are accessed or spent out-of-state, by state;

9 (3) The dollar amount, number of transactions and times of transactions of Supplemental  
10 Nutrition Assistance Program benefits that are accessed or spent in-state, by retailer, institution  
11 or location; and

12 (4) The dollar amount, number of transactions and times of Temporary Assistance for  
13 Needy Families transactions of benefits that are accessed or spent in-state, disaggregated by  
14 retailer, institution, or location.

15 (c) The report required pursuant to this section shall not identify individual recipients.

**§9-8-12. Rulemaking.**

1           The secretary may promulgate rules for legislative approval in accordance with the  
2 provisions of §29A-3-1 *et seq.* of this code which he or she finds necessary to effectuate the  
3 provisions of this article.

**CHAPTER 61. CRIMES AND PUNISHMENT.**

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-54. Taking identity of another person; penalty.**

1           Any person who knowingly takes the name, birth date, social security number, or other  
2 identifying information of another person, without the consent of that other person, with the intent  
3 to fraudulently represent that he or she is the other person for the purpose of making financial or  
4 credit transactions in the other person's name, or for the purpose of gaining employment, is guilty  
5 of a felony and, upon conviction, shall be punished by confinement in the penitentiary not more  
6 than five years, or fined not more than \$1,000, or both: *Provided*, That the provisions of this  
7 section do not apply to any person who obtains another person's drivers license or other form of  
8 identification for the sole purpose of misrepresenting his or her age.

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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2018.

.....  
*Governor*