

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2006

By Delegates Summers, Toney, Pinson, Gearheart,
Mallow, W. Hall, Rohrbach, Hite, Honaker, Lucas and
Westfall

[Originating in the Committee on Finance;

February 8, 2023]

1 A BILL to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §5F-2-1 and §5F-2-2 of said code; to amend said code by adding thereto a
3 new section designated §5F-2-1a; to repeal §9-1-1 of said code; to amend and reenact §9-
4 1-2 of said code; to amend and reenact §9-2-1 of said code; to repeal §9-2-1a of said code;
5 to amend and reenact §9-2-2, §9-2-5 and §9-2-6, of said code; to repeal §9-2-9 of said
6 code; to amend and reenact §9-2-9a of said code; to repeal §9-2-13 of said code; to repeal
7 §9-5-8a, §9-5-8a and §9-5-8b of said code; to amend and reenact §16-1-2, §16-1-3, §16-1-
8 4, §16-1-5 and §16-1-6 of said code; to amend said code by adding thereto new sections
9 designated, §16-1-22, §16-1-22a, §16-1-22b and §16-1-22c of said code; to amend and
10 reenact §16-29A-4 of said code; to amend and reenact §26-1-1, §26-1-2 and §26-1-3 of
11 said code; to amend said code by adding thereto a new section, designated §26-1-4 of said
12 code; to repeal §26-3-1, §26-3-2, §26-3-3, §26-3-4 and §26-3-5 of said code; to repeal
13 §26-5-1 of said code; to repeal §26-5A-5a of said code; to repeal §26-8-1, §26-8-2 and
14 §26-8-3 of said code; to repeal §26-9-1 and §26-9-2 of said code; to repeal §26-10-1 of
15 said code; to repeal §26-11-1, §26-11-2, §26-11-3 and §26-11-4 of said code; to amend
16 and reenact §48-14-401 of said code; to amend and reenact §48-18-101 of said code; and
17 to amend and reenact §49-1-106 of said code, all relating to reorganizing the Department
18 of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created.

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

- 3 (1) Department of Administration;
- 4 (2) Department of Environmental Protection;
- 5 (3) Department of Health and Human Resources: Provided, That the Department of
- 6 Health and Human Resources is terminated beginning January 1, 2024;
- 7 (4) Department of Homeland Security;
- 8 (5) Department of Revenue;
- 9 (6) Department of Transportation;
- 10 (7) Department of Commerce;
- 11 (8) Department of Veterans' Assistance;
- 12 (9) Department of Economic Development; ~~and~~
- 13 (10) Department of Tourism;
- 14 (11) Beginning January 1, 2024, the following:
- 15 (A) Department of Human Services; and
- 16 (B) Department of Health; and
- 17 (C) Department of Health Facilities.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

- 4 (1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;
- 5 (2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;
- 6 (3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

7 (4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this
8 code;

9 (5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

10 (6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

11 (7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

12 (8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

13 (9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

14 (10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

15 (11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

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

19 (1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

20 (A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of
21 this code; and

22 (B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of
23 this code.

24 (2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code.

25 The following boards are transferred to the Office of Miners' Health, Safety, and Training for
26 purposes of administrative support and liaison with the Office of the Governor:

27 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
28 Committee provided in §22A-6-1 *et seq.* of this code;

29 (B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of
30 this code; and

31 (C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

32 (3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1
33 *et seq.* of this code;

34 (4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

35 (5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

36 (6) Workforce West Virginia provided in chapter 21A of this code, which includes:

37 (A) Division of Unemployment Compensation;

38 (B) Division of Employment Service;

39 (C) Division of Workforce Development;

40 (D) Division of Research, Information and Analysis; and

41 (7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

42 (c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is
43 continued as an independent agency within the executive branch.

44 (d) The Water Development Authority and the Water Development Authority Board
45 provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the
46 executive branch.

47 (e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of
48 this code is continued as a separate independent agency within the Department of Arts, Culture,
49 and History, which shall provide administrative support for the authority.

50 (f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is
51 continued as a separate independent agency within the Executive Branch as the Department of
52 Arts, Culture, and History. All references throughout this code to the "Division of Culture and
53 History" means the "Department of Arts, Culture, and History".

54 (g) The following agencies and boards, including all of the allied, advisory, and affiliated
55 entities, are transferred to the Department of Environmental Protection for purposes of
56 administrative support and liaison with the Office of the Governor:

57 (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

- 58 (2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;
- 59 (3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of
60 this code;
- 61 (4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;
- 62 (5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;
- 63 (6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and
- 64 (7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.
- 65 (h) The Subject to the provisions of §5F-2-1a of this code, the following agencies and
66 boards, including all of the allied, advisory, affiliated, or related entities and funds associated with
67 any agency or board, are incorporated in and administered as a part of the Department of Health
68 and Human Resources:
- 69 (1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;
- 70 (2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;
- 71 (3) Office of Emergency Medical Services and the Emergency Medical Service Advisory
72 Council provided in §16-4C-1 *et seq.* of this code;
- 73 (4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;
- 74 (5) ~~State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code~~
75 The Developmental Disabilities Council established by Executive Order No. 6-88 and continued
76 by Executive Order No. 15-99;
- 77 (6) Women's Commission provided in §29-20-1 *et seq.* of this code; and
- 78 (7) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.
- 79 (i) The following agencies and boards, including all of the allied, advisory, affiliated, or
80 related entities and funds associated with any agency or board, are incorporated in and
81 administered as a part of the Department of Homeland Security:
- 82 (1) West Virginia State Police;

83 (2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and
84 Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That
85 notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule
86 promulgated thereunder, a reference is made to the Division of Homeland Security and
87 Emergency Management, it shall be construed to mean the Division of Emergency Management;

88 (3) Division of Administrative Services;

89 (4) Division of Corrections and Rehabilitation;

90 (5) Fire Commission;

91 (6) State Fire Marshal;

92 (7) Board of Probation and Parole;

93 (8) The West Virginia Fusion Center;

94 (9) Division of Protective Services; and

95 (10) Any other agency or entity hereinafter established within the Department of Homeland
96 Security by an act of the Legislature.

97 (j) The following agencies and boards, including all of the allied, advisory, affiliated, or
98 related entities and funds associated with any agency or board, are incorporated in and
99 administered as a part of the Department of Revenue:

100 (1) Tax Division provided in §11-1-1 *et seq.* of this code;

101 (2) Racing Commission provided in §19-23-1 *et seq.* of this code;

102 (3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this
103 code;

104 (4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

105 (5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of
106 this code and §60-2-1 *et seq.* of this code;

107 (6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

108 (7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;

- 109 (8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;
- 110 (9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;
- 111 (10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;
- 112 (11) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and
- 113 (12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.
- 114 (k) The following agencies and boards, including all of the allied, advisory, affiliated, or
- 115 related entities and funds associated with any agency or board, are incorporated in and
- 116 administered as a part of the Department of Transportation:
- 117 (1) Division of Highways provided in §17-2A-1 *et seq.* of this code;
- 118 (2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;
- 119 (3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;
- 120 (4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;
- 121 (5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;
- 122 (6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and
- 123 (7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.
- 124 (l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code,
- 125 including all of the allied, advisory, affiliated, or related entities and funds associated with it, is
- 126 incorporated in and administered as a part of the Department of Veterans' Assistance.
- 127 (m) Except for powers, authority, and duties that have been delegated to the secretaries of
- 128 the departments by §5F-2-2 of this code, the position of administrator and the powers, authority,
- 129 and duties of each administrator and agency are not affected by the enactment of this chapter.
- 130 (n) Except for powers, authority, and duties that have been delegated to the secretaries of
- 131 the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards
- 132 and the membership, terms, and qualifications of members of the boards are not affected by the
- 133 enactment of this chapter. All boards that are appellate bodies or are independent decision makers

134 may not have their appellate or independent decision-making status affected by the enactment of
135 this chapter.

136 (o) Any department previously transferred to and incorporated in a department by prior
137 enactment of this section means a division of the appropriate department. Wherever reference is
138 made to any department transferred to and incorporated in a department created in §5F-1-2 of this
139 code, the reference means a division of the appropriate department and any reference to a
140 division of a department so transferred and incorporated means a section of the appropriate
141 division of the department.

142 (p) When an agency, board, or commission is transferred under a bureau or agency other
143 than a department headed by a secretary pursuant to this section, that transfer is solely for
144 purposes of administrative support and liaison with the Office of the Governor, a department
145 secretary, or a bureau. Nothing in this section extends the powers of department secretaries under
146 §5F-2-2 of this code to any person other than a department secretary and nothing limits or
147 abridges the statutory powers and duties of statutory commissioners or officers pursuant to this
148 code.

149 (q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this
150 code is continued as a separate independent agency within the Executive Branch.

151 (r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued
152 as a separate independent agency within the Executive Branch.

**§5F-2-1a. Termination of the department of health and human resources; transfer and
incorporation of agencies and boards legislative intent; creation of new
departments.**

1 (a) It is the intent of the Legislature to devolve the functions of the Department of Health
2 and Human Resources into three new and separate departments of the executive branch as
3 provided in this Act over a period of transition that concludes with the termination of the
4 Department of Health and Human Resources. It is the intent of the Legislature that the provisions

5 of this Act be construed to achieve the restructuring and reallocation of the powers, duties and
6 functions of the Department of Health and Human Resources to the three new departments
7 created in this section in an orderly manner designed to maintain the delivery of services that have
8 heretofore been provided by the Department of Health and Human Resources by the new
9 departments during the transition and beyond the termination of the Department of Health and
10 Human Resources without disruption and to streamline and, where possible, to share
11 administrative and operative expenses where common to each of the new departments. To that
12 end, the Secretary of the Department of Health and Human Resources, the Secretary of the
13 Department of Human Services, the Secretary of the Department of Health and the Secretary of
14 the Department of Health Facilities shall enter into a memorandum of understanding to effect the
15 provisions of this Act that shall, at a minimum, create a Office of Shared Administration mutually
16 administered by the secretaries that shall coordinate efforts with the Department of Administration
17 to maximize efficiencies and function of services in an effort to contain expenses within the
18 Department of Human Services, the Department of Health and the Department of Health
19 Facilities. The Office of Shared Administration shall implement a plan to maximize function and
20 efficiency administrative services for the purpose of streamlining administrative services and
21 reducing expenses within the departments. The Office of Shared Administration shall complete
22 implementation by June 30, 2024, and shall provide quarterly updates to the Legislative Oversight
23 Commission on Health and Human Resources Accountability.

24 (b) (1) The Department of Human Services created under §5F-1-2 of this code, beginning
25 January 1, 2024, is a separate and distinct department of the executive branch. Beginning January
26 1, 2024, the following agencies and boards, including all of the allied, advisory, affiliated, or related
27 entities and funds associated with any agency or board, are transferred to, incorporated in and
28 administered as a part of the Department of Human Services:

29 (A) Bureau for Social Services;

30 (B) Bureau for Medical Services;

- 31 (C) Bureau for Child Support Enforcement;
- 32 (D) Bureau for Family Assistance;
- 33 (E) Bureau for Behavioral Health; and
- 34 (F) Any other agency or entity hereinafter established within the Department of Human
- 35 Services by an act of the Legislature.

36 (2) Beginning January 1, 2024, when, as used in this code, it appears from the context of
37 the terms “Department of Health and Human Resources” or “department” in lieu thereof that the
38 term refers to the entity exercising the powers or duties of the entities specified in subdivision (1) of
39 this subsection, those terms shall mean the Department of Human Services.

40 (c) (1) The Department of Health created under §5F-1-2 of this code, beginning January 1,
41 2024, is a separate and distinct department of the executive branch. Beginning January 1, 2024,
42 the following agencies and boards, including all of the allied, advisory, affiliated, or related entities
43 and funds associated with any agency or board, are transferred to, incorporated in and
44 administered as a part of the Department of Health:

- 45 (A) Bureau for Public Health;
- 46 (B) Office of Emergency Medical Services;
- 47 (C) Office of the Chief Medical Examiner;
- 48 (D) Center for Threat Preparedness;
- 49 (E) Health Care Authority;
- 50 (F) Office of the Inspector General, which shall include:
 - 51 (i) Office of Health Facility Licensure and Certification;
 - 52 (ii) Board of Review;
 - 53 (iii) Foster Care Ombudsman;
 - 54 (iv) Olmstead Office;
 - 55 (v) Investigations and Fraud Management;
 - 56 (vi) Quality Control;

57 (vii) Mental Health Ombudsman;
58 (viii) WV Clearance for Access: Registry and Employment Screening; and
59 (ix) Human Rights Commission; and
60 (G) Any other agency or entity hereinafter established within the Department of Health by
61 an act of the Legislature.

62 (2) Beginning January 1, 2024, when, as used in this code, it appears from the context of
63 the terms “Department of Health and Human Resources” or “department” in lieu thereof that the
64 term refers to the entity exercising the powers or duties of the entities specified in subdivision (1) of
65 this subsection, those terms shall mean the Department of Health.

66 (d) (1) The Department of Health Facilities created under §5F-1-2 of this code, beginning
67 January 1, 2024, is a separate and distinct department of the executive branch. Beginning January
68 1, 2024, the following state facilities, including all of the allied, advisory, affiliated, or related entities
69 and funds associated with any state facility, are transferred to, incorporated in and administered as
70 a part of the Department of Health Facilities:

71 (A) Hopemont Hospital;

72 (B) Jackie Withrow Hospital;

73 (C) John Manchin, Sr. Health Care Center;

74 (D) Lakin Hospital;

75 (E) Mildred Mitchell-Bateman Hospital;

76 (F) Welch Community Hospital;

77 (G) William R. Sharpe Jr. Hospital; and

78 (H) Any other agency or entity hereinafter established within the Department of Health
79 Facilities by an act of the Legislature.

80 (2) Beginning January 1, 2024, when, as used in this code, it appears from the context of
81 the terms “Department of Health and Human Resources” or “department” in lieu thereof that the

82 term refers to the entity exercising the powers or duties of the entities specified in subdivision (1) of
83 this subsection, those terms shall mean the Department of Health Facilities.

84 (3) Notwithstanding any other provision of this code to the contrary, before December 1,
85 2023, the Department of Health and Human Resources shall create and present to the Legislative
86 Oversight Commission on Health and Human Resources Accountability a long-term sustainability
87 plan for each state health facility.

88 (e) Any secretary may recommend that a bureau, office, board, commission or other state
89 entity be included or excluded from the organization of the departments created in this section to
90 the Joint Committee on Government and Finance and the Legislative Commission on Health and
91 Human Resources Accountability.

92 (f) Except for powers, authority, and duties that have been delegated to the secretaries of
93 the departments created under this section and §5F-2-2 of this code, the position of administrator
94 and the powers, authority, and duties of each administrator and agency are not affected by this act.

95 (g) Except for powers, authority, and duties that have been delegated to the secretaries of
96 the departments under this section and §5F-2-2 of this code, the existence, powers, authority, and
97 duties of boards, commissions and councils and the membership, terms, and qualifications of
98 members of the boards, commissions and councils are not affected by this act. All boards,
99 commissions and councils that are appellate bodies or are independent decision makers may not
100 have their appellate or independent decision-making status affected by this act.

101 (h) Nothing in this section extends the powers of department secretaries to any person
102 other than a department secretary and nothing limits or abridges the statutory powers and duties
103 of statutory commissioners or officers pursuant to this code.

104 (i) All programs, orders, determinations, rules, permits, grants, contracts, certificates,
105 bonds, authorizations and privileges which have been issued, promulgated, made, granted or
106 allowed to become pursuant to authority provided by this code to the Department of Health and
107 Human Resources or the Secretary of that Department that are in effect on the dates of the

108 creation of the new departments as provided in this section shall continue in effect according to
109 their terms until modified, terminated, superseded, set aside or revoked by the department or
110 secretary that assumes authority over the subject matter of the same under the provisions of this
111 Act.

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

1 (a) Notwithstanding any other provision of this code to the contrary, the secretary of each
2 department shall have plenary power and authority within and for the department to:

3 (1) Employ and discharge within the office of the secretary employees as may be
4 necessary to carry out the functions of the secretary, which employees shall serve at the will and
5 pleasure of the secretary;

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

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

11 (4) Transfer permanent state employees between departments in accordance with the
12 provisions of §5F-2-7 of this code;

13 (5) Delegate, assign, transfer, or combine responsibilities or duties to or among
14 employees, other than administrators or board members;

15 (6) Reorganize internal functions or operations;

16 (7) Formulate comprehensive budgets for consideration by the Governor; ~~and transfer~~
17 ~~within the department funds appropriated to the various agencies of the department which are not~~
18 ~~expended due to cost savings resulting from the implementation of the provisions of this chapter:~~

19 ~~Provided, That no more than 25 percent of the funds appropriated to any one agency or board may~~
20 ~~be transferred to other agencies or boards within the department: *Provided, however,* That no~~
21 ~~funds may be transferred from a special revenue account, dedicated account, capital expenditure~~

22 ~~account, or any other account or funds specifically exempted by the Legislature from transfer,~~
23 ~~except that the use of appropriations from the State Road Fund transferred to the office of the~~
24 ~~Secretary of the Department of Transportation is not a use other than the purpose for which the~~
25 ~~funds were dedicated and is permitted: *Provided further,* That if the Legislature by subsequent~~
26 ~~enactment consolidates agencies, boards, or functions, the appropriate secretary may transfer the~~
27 ~~funds formerly appropriated to the agency, board, or function in order to implement consolidation.~~
28 ~~The authority to transfer funds under this section shall expire on June 30, 2010~~

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

36 (9) Acquire by lease or purchase property of whatever kind or character and convey or
37 dispose of any property of whatever kind or character as authorized by law: *Provided,* That the
38 powers granted to the secretary to lease, purchase, convey, or dispose of such property shall be
39 exercised in accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code:
40 *Provided, however,* That the powers granted to the secretary to lease, purchase, convey, or
41 dispose of such property shall not exceed or be interpreted as authority to exceed the powers
42 granted by the Legislature to the various commissioners, directors, or board members of the
43 various departments, agencies, or boards that comprise and are incorporated into each
44 secretary's department under this chapter;

45 (10) Conduct internal audits;

46 (11) Supervise internal management;

47 (12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make
48 effective the powers, authority, and duties granted and imposed by the provisions of this chapter in
49 accordance with the provisions of chapter 29A of this code;

50 (13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2 of
51 this code, by any administrator, agency, or board within the department. Without written consent,
52 no proposal for a rule shall have any force or effect;

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

56 (15) Enter into memoranda of understanding; and

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

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

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

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

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

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

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

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

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

80 (d) The layoff and recall rights of employees within the classified service of the state as
81 provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit
82 within the agency or board and within the occupational group established by the classification and
83 compensation plan for the classified service of the agency or board in which the employee was
84 employed prior to the agency or board's transfer or incorporation into the department: *Provided,*
85 That the employee shall possess the qualifications established for the job class. The duration of
86 recall rights provided in this subsection shall be limited to two years or the length of tenure,
87 whichever is less. Except as provided in this subsection, nothing contained in this section shall be
88 construed to abridge the rights of employees within the classified service of the state as provided
89 in §29-6-10 and §29-6-10a of this code.

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

97 ~~colleges and universities, public hospitals, state or local institutions including nursing homes and~~
98 ~~veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau~~
99 ~~for Medical Services and other programs, which have an impact on the delivery of health care~~
100 ~~services or are payors for health care services or are payors for prescription drugs, in West~~
101 ~~Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning~~
102 ~~established pursuant to §16-29H-1 et seq. of this code for the purpose of improving the health care~~
103 ~~delivery services in West Virginia for any program over which they have authority~~

104 (f) Notwithstanding any other provision of this code to the contrary, the secretary of each
105 department shall cooperate with the State Resiliency Office to the fullest extent practicable to
106 assist that office in fulfilling its duties.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 1. DEFINITIONS.

§9-1-1. Legislative purpose.

1 [Repealed.]

§9-1-2.

Definitions.

1 The following words and terms when used in this chapter have the meanings indicated:
2 ~~unless the context clearly indicates a different meaning, and any amendment of this section~~
3 ~~applies to any verdict, settlement, compromise or judgment entered after the effective date of the~~
4 ~~amendments to this section enacted during the regular session of the Legislature, one thousand~~
5 ~~nine hundred ninety-five.~~

6 ~~(a) The term "Department" means the state division of human services: Provided, That~~
7 ~~beginning January 1, 2024, "department" means the Department of Human Services.~~

8 ~~(b) The term "Commissioner" means the commissioner of human services: Provided, That~~
9 ~~beginning January 1 2024, "commissioner" means the secretary of the Department of Human~~
10 ~~Services.~~

11 ~~(c) The term~~ "Federal-state assistance" means and includes: (1) All forms of aid, care,
12 assistance and services to or on behalf of persons, which are authorized by, and who are
13 authorized to receive the same under and by virtue of, subchapters one, four, five, ten, fourteen,
14 sixteen, eighteen and nineteen, chapter seven, Title 42, United States Code, as those
15 subchapters have heretofore been and may hereafter be amended, supplemented and revised by
16 acts of Congress, and as those subchapters so amended, supplemented and revised have
17 heretofore been and may hereafter be supplemented by valid rules and regulations promulgated
18 by authorized federal agents and agencies, and as those subchapters so amended,
19 supplemented and revised have heretofore been and may hereafter be supplemented by rules
20 promulgated by the state division of human services or by the Department of Human Services,
21 which ~~division~~ rules shall be consistent with federal laws, rules and regulations, but not
22 inconsistent with state law; and (2) all forms of aid, care, assistance and services to persons,
23 which are authorized by, and who are authorized to receive the same under and by virtue of, any
24 act of Congress, other than the federal social security act, as amended, for distribution through the
25 state division of human services or the Department of Human Services to recipients of any form of
26 aid, care, assistance and services to persons designated or referred to in (1) of this definition and
27 to recipients of state assistance, including by way of illustration, surplus food and food stamps,
28 which Congress has authorized the secretary of agriculture of the United States to distribute to
29 needy persons.

30 ~~(d) The term~~ "Federal assistance" means and includes all forms of aid, care, assistance
31 and services to or on behalf of persons, which are authorized by, and who are authorized to
32 receive the same under and by virtue of, any act of Congress for distribution through the state
33 division of human services or the Department of Human Services, the cost of which is paid entirely
34 out of federal appropriations.

35 ~~(e) The term~~ "State assistance" means and includes all forms of aid, care, assistance,
36 services and general relief made possible solely out of state, county and private appropriations to

37 or on behalf of indigent persons, which are authorized by, and who are authorized to receive the
38 same under and by virtue of, state division of human services' or Department of Human Services'
39 rules.

40 (f) ~~The term "Welfare Assistance" means the three classes of assistance administered by~~
41 ~~the state division of human services~~, namely: Federal-state assistance, federal assistance and
42 state assistance.

43 (g) ~~The term "Indigent person" means any person who is domiciled in this state and who is~~
44 actually in need as defined by division or department rules and has not sufficient income or other
45 resources to provide for such need as determined by the state division of human services or the
46 Department of Human Services.

47 (h) ~~The term "Domiciled in this state" means being physically present in West Virginia~~
48 accompanied by an intention to remain in West Virginia for an indefinite period of time, and to
49 make West Virginia his or her permanent home. The state division of human services or the
50 Department of Human Services may by rules supplement the foregoing definition of the term
51 "domiciled in this state", but not in a manner as would be inconsistent with federal laws, rules, and
52 regulations applicable to and governing federal-state assistance.

53 (i) ~~The term "Medical services" means medical, surgical, dental and nursing services, and~~
54 other remedial services recognized by law, in the home, office, hospital, clinic and any other
55 suitable place, provided or prescribed by persons permitted or authorized by law to give such
56 services; the services to include drugs and medical supplies, appliances, laboratory, diagnostic
57 and therapeutic services, nursing home and convalescent care and such other medical services
58 and supplies as may be prescribed by the persons.

59 (j) ~~The term "General relief" means cash or its equivalent in services or commodities~~
60 ~~expended for care and assistance to an indigent person other than for care in a county infirmary,~~
61 ~~child shelter or similar institution.~~

62 ~~(k) The term "Secretary" means the secretary of the Department of Health and Human~~
63 ~~Resources: Provided, That beginning January 1, 2024, "secretary" means the secretary of the~~
64 ~~Department of Human Services.~~

65 ~~(l) The term "Estate" means all real and personal property and other assets included within~~
66 ~~the individual's estate as defined in the state's probate law.~~

67 ~~(m) The term "Services" means nursing facility services, home and community-based~~
68 ~~services, and related hospital and prescription drug services for which an individual received~~
69 ~~Medicaid medical assistance.~~

70 ~~(n) The term "State Medicaid agency" means the division of the Department of Health and~~
71 ~~Human Resources Bureau for Medical Services that is the federally designated single state~~
72 ~~agency charged with administration and supervision of the state Medicaid program.~~

~~ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND~~
~~RESPONSIBILITIES GENERALLY SECRETARY OF HUMAN SERVICES.~~

~~§9-2-1. Continuation of department of welfare Department of Human Services.~~

1 ~~The state department of welfare, first created as the state department of public assistance~~
2 ~~by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred~~
3 ~~thirty-six, and later reconstituted as the state department of welfare by chapter one hundred ten,~~
4 ~~acts of the Legislature, regular session, one thousand nine hundred sixty-one, shall be continued~~
5 ~~and organized as provided and authorized by this chapter and Until January 1, 2024, the division~~
6 ~~of human services within the Department of Health and Human Resources shall have those~~
7 ~~powers and duties respecting the administration of the ~~welfare~~ assistance programs as~~
8 ~~authorized, granted and imposed by this chapter and elsewhere by law.~~

9 ~~Beginning January 1, 2024, the Department of Human Services is comprised of the~~
10 ~~agencies as provided in §5F-2-1a of this code, is charged with the administration of this chapter,~~

11 and shall have those powers and duties respecting the administration of the assistance programs
12 as authorized, granted and imposed by this chapter and elsewhere by law.

§9-2-1a. Department of Health and Human Resources.

1 [Repealed.]

§9-2-2. Commissioner Secretary to be administrative head of department; appointment qualifications, etc.; not to hold other office or engage in political activity.

1 ~~The chief executive officer and administrative head of the department shall be the~~
2 ~~commissioner of welfare, who shall be appointed and compensated, and shall serve, as provided~~
3 ~~by §6-7-2a of this code~~

4 The Secretary of the Department of Human Services is the chief executive officer of that
5 department and beginning January 1, 2024, is charged with the administration of this chapter. The
6 Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the
7 term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the
8 Governor. The Secretary shall be paid an annual salary not to exceed \$175,000. Upon his or her
9 initial appointment, which may be at any time after the effective date of this act, the Secretary shall
10 take the oath of office described in this section and commence his or her duties. If appointed
11 before January 1, 2024, the Secretary shall take the oath of office described in this section and
12 commence such duties as determined by the Secretary to be necessary to prepare for the
13 administration of this chapter.

14 ~~The commissioner shall be selected with special reference and consideration given to his~~
15 ~~or her training, experience, capacity and interest in or relating to the welfare assistance programs~~
16 ~~administered by the state department of welfare.~~

17 ~~Before entering upon the duties of his or her office, the commissioner secretary shall take~~
18 ~~and subscribe to the oath of office prescribed by section five, article four of the state Constitution.~~
19 ~~and shall execute a corporate surety bond in the sum of \$15,000 for the faithful performance of his~~
20 ~~duties. The bond shall be in the form prescribed by the Attorney General and approved by the~~

21 ~~Governor, and both the certificate of the oath and the bond shall be filed with the Secretary of~~
22 ~~State. Premiums upon the bond shall be paid out of the funds of the department~~

23 The ~~commissioner~~ secretary shall not be a candidate for, or hold, any other public office or
24 public employment under the federal government or under the government of this state or any of
25 its political subdivisions, or be a member or officer of any political party committee, or serve as an
26 election official, or engage in any political activity, other than to vote, in behalf of, or in opposition
27 to, any candidate, political party or public issue involved in an election. Any violation by the
28 ~~commissioner~~ secretary of the provisions of this ~~paragraph~~ section shall automatically vacate his
29 or her appointment as ~~commissioner~~ secretary.

**§9-2-5. Administering the state assistance programs; information and data to be supplied
by other agencies.**

1 ~~(a) The department is charged with the responsibility of administering~~ shall administer the
2 state ~~welfare~~ assistance programs, for which responsibility it shall have:

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

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

10 ~~(b) Notwithstanding any other provision of this code to the contrary, each department,~~
11 ~~agency, commission or board of state government shall make available to the department of~~
12 ~~welfare such information and data as each such department, agency, commission or board may~~
13 ~~collect~~ it collects about any applicant for or recipient of any type of federal or state assistance upon
14 such terms as may be prescribed by the ~~Governor, if such information and data would be relevant~~
15 ~~in determining whether such~~ to determine if an applicant or recipient is qualified or eligible for any

16 such assistance, and after such information and data have been obtained by the department of
17 welfare, the same shall be used only by such department of welfare in carrying out and
18 discharging its powers, duties and responsibilities

**§9-2-6. Powers of Secretary Secretary of Department of Human Services; powers and
duties.**

1 (a) ~~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, may:~~

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

8 In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

9 (1) Coordinate efforts with the Secretary of Health and the Secretary of Health Facilities,
10 including authority to share the expense of administrative services through a memorandum of
11 understanding established by agreement of the secretaries as required under §5F-2-1a of this
12 code;

13 (2) Promulgate, amend, revise, and rescind department legislative rules and regulations
14 policies respecting qualifications for receiving ~~the different classes of welfare assistance~~
15 consistent with or permitted by federal laws, rules, and policies, but not inconsistent with state law:
16 *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state
17 funds to pay for care rendered in any birthing center licensed under the provisions of §16-2E-1 *et*
18 *seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7
19 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife
20 as permitted by §30-15-7 of this code;

21 (3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment,
22 facilities, and services as may be necessary for the execution and administration of these the
23 secretary's powers: duties, and responsibilities granted and assigned by this chapter and
24 elsewhere by law to the department and the secretary Provided, That the provisions of §5A-10-1 et
25 seq. of this code are followed;

26 (4) ~~Sign and execute in the name of the state by the department of Health and Human~~
27 ~~Resources any contract~~ Contract or agreement with the federal government or its agencies, other
28 states, political subdivisions of this state, corporations, associations, partnerships, or individuals:
29 Provided, That the provisions of §5A-3-1 et seq. of this code are followed;

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

38 (6) ~~Establish such special funds as may be required by the federal Social Security Act, as~~
39 ~~amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of~~
40 ~~the benefits and provisions thereof relating to the federal state assistance and federal assistance~~
41 ~~programs administered by the department and to make payments into and disbursements out of~~
42 ~~any such special fund or funds in accordance with the requirements of the federal Social Security~~
43 ~~Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state~~
44 ~~law and the objects and purposes of this chapter. In addition, the Department of Health and~~
45 ~~Human Resources, through the secretary, is hereby authorized to accept~~ Accept any and all gifts
46 or grants, whether in money, land, services, or materials, which gift or gifts, if in the form of

47 moneys, shall be placed in a separate fund and expended solely for the purpose of public
48 assistance programs. No part of this special fund may revert to the general revenue funds of this
49 state. No expenses incurred pursuant to this special fund may be a charge against the general
50 funds of this state;

51 (7) Establish within the department an Office of Inspector General for the purpose of
52 conducting and supervising investigations, performing inspections, evaluations, and review, and
53 providing quality control for the programs of the department. The Office of Inspector General shall
54 be headed by the Inspector General who shall report directly to the secretary. Neither the
55 secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector
56 General or his or her employees from initiating, carrying out, or completing any investigation,
57 inspection, evaluation, review, or other activity oversight of public integrity by the Office of the
58 Inspector General. The secretary shall place within the Office of Inspector General any function he
59 or she deems necessary. Qualification, compensation, and personnel practice relating to the
60 employees of the Office of the Inspector General, including that of the position of Inspector
61 General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and
62 rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of
63 Inspector General: Provided, That beginning January 1, 2024, the provisions of this subdivision
64 expire and shall be superseded by the provisions of §16-1-22 of this code.

65 (8) Provide at department expense a program of continuing professional, technical, and
66 specialized instruction for the personnel of the department;

67 (9) Pay from available funds all or part of the reasonable expenses incurred by a person
68 newly employed by the department in moving his household furniture, effects, and immediate
69 family from his or her place of residence in this state to his or her place of employment in this state;
70 and to pay from available funds all or part of the reasonable expenses incurred by a department
71 employee in moving his or her household furniture, effects, and immediate family as a result of a
72 reassignment of the employee which is considered desirable, advantageous to and in the best

73 interests of the state, but no part of the moving expenses of any one such employee may be paid
74 more frequently than once in 12 months or for any movement other than from one place of
75 employment in this state to another place of employment in this state;

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

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

83 (12) (11) Prepare and submit state plans which will meet the requirements of federal laws,
84 rules governing federal-state assistance, and federal assistance, and which are not inconsistent
85 with state law;

86 (13) (12) Organize within the department a board of review, consisting of a chairman
87 appointed by the secretary and as many assistants or employees of the department as may be
88 determined by the secretary and as may be required by federal laws and rules respecting state
89 assistance, federal-state assistance, and federal assistance, the board of review to have such
90 powers of a shall review nature and such additional powers as may be granted to it by the
91 secretary and as may be required by federal laws and rules respecting federal-state assistance
92 and federal assistance: *Provided*, That beginning January 1, 2024, the provisions of this
93 subdivision expire and shall be superseded by the provisions of §16-1-22 of this code.

94 (14) (13) Provide by rules, review and appeal procedures within the department of Health
95 and Human Resources as may be required by applicable federal laws and rules respecting state
96 assistance, federal-state assistance, and federal assistance, and as will provide applicants for,
97 and recipients of, all classes of welfare assistance an opportunity to be heard by the board of
98 review, a member thereof, or individuals designated by the board, upon claims involving denial,

99 reduction, closure, delay, or other action or inaction pertaining to public assistance: Provided, That
100 beginning January 1, 2024, the provisions of this subdivision expire and shall be superseded by
101 the provisions of §16-1-22 of this code.

102 ~~(15)~~ (14) Provide by rules, consistent with requirements of applicable federal laws and
103 rules, application forms and application procedures for ~~the various classes of~~ public assistance;

104 ~~(16)~~ (15) Provide locations for making applications for ~~the various classes of~~ public
105 assistance;

106 ~~(17)~~ (16) Provide a citizen or group of citizens an opportunity to file objections and to be
107 heard upon objections to the grant of ~~any class of~~ public assistance;

108 ~~(18)~~ (17) Delegate to the personnel of the department all powers and duties vested in the
109 secretary; ~~except the power and authority to sign contracts and agreements.~~

110 ~~(19)~~ (18) Make ~~such reports in such form and containing such information as~~ may be
111 required by applicable federal laws and rules respecting ~~federal-state assistance and federal~~
112 assistance;

113 ~~(20)~~ (19) Invoke any legal, equitable, or special remedies for the enforcement of the
114 provisions of this chapter;

115 ~~(21)~~ (20) Require a provider, subgrantee, or other entity performing services on behalf of
116 the department to comply with all applicable laws, rules, and written procedures pertaining to the
117 program for which the entity is providing or coordinating services, including, but not limited to,
118 policy manuals, statements of work, program instructions, or other similar agreements. When
119 submitting a claim for payment, the entity shall certify that it has complied with all material
120 conditions for payment. Knowingly and intentionally submitting a claim or billing for services
121 performed in material violation of any law, rule, policy, or other written agreement shall constitute
122 fraud and the agreement for provision of services shall terminate. The entity shall be required to
123 repay the department for any payment under the program for which the provider was not entitled,
124 regardless of whether the incorrect payment was the result of department error, fraud, or other

125 cause. A demand for repayment or termination of agreement for provision of services shall be
126 subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions of
127 this ~~subsection~~ subdivision do not apply to fraud in the Medicaid program;

128 ~~(22)~~ (21) Develop a data analytics pilot program to identify potential fraud and help guide
129 policy objectives to eliminate future fraud; ~~The secretary shall submit a report containing the pilot~~
130 ~~program's results and recommendations to the Joint Committee on Government and Finance no~~
131 ~~later than December 31, 2020~~

132 (22) Cooperate with the Office of the Inspector General and take action on its findings; and

133 ~~(b)~~ The secretary shall (23) Annually allocate Child Protective Services workers by districts
134 of the Bureau for Social Services and report the allocation process to the Legislative Oversight
135 Commission on Health and Human Resources Accountability by July 1 each year.

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

1 [Repealed.]

§9-2-9a. Agreements between the Secretary and three higher education institutions.

1 Any contract, agreement or memorandum of understanding between the secretary and
2 West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for
3 services is exempt from the provisions of ~~article three, chapter five-a~~ §5A-3-1 *et seq.*, of this code:
4 *Provided*, That any contract entered into under the provisions of ~~subsection~~ subdivision five,
5 section six of this article, for the provision of Medicaid services by a risk-bearing entity, is not
6 exempt from the provisions of ~~article three, chapter five-a~~ §5A-3-1 *et seq.*, of this code.

§9-2-13. Judicial review of decisions of contested cases.

1 [Repealed.]

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-8. Authority to examine witnesses, administer oaths and take affidavits.

1 [Repealed.]

§9-5-8a. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

2 [Repealed.]

§9-5-8b. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

1 [Repealed.]

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. ~~STATE PUBLIC HEALTH SYSTEM~~ DEPARTMENT OF HEALTH.

§16-1-1. Purpose.

1 It is the policy of this state to promote the physical and mental health of all of its citizens and
2 to prevent disease, injury, and disability whenever possible. The state recognizes its responsibility
3 to assist in the provision of essential public health services and establishes by this article a state
4 public health system to work in conjunction with local boards of health to provide basic public
5 health services that encourage healthy people in healthy communities. Until January 1, 2024, the
6 Bureau for Public Health and the Department of Health and Human Resources shall have those
7 powers and duties respecting the administration of the state public health system-as authorized,
8 granted and imposed by this chapter and elsewhere by law.

9 Beginning January 1, 2024, the Department of Health is comprised of the agencies as
10 provided in §5F-2-1a of this code, is charged with the administration of this chapter, and shall have
11 those powers and duties respecting the administration of the state public health system as
12 authorized, granted and imposed by this chapter and elsewhere by law.

§16-1-2. Definitions.

1 As used in this article:

2 (1) "Basic public health services" means those services that are necessary to protect the
3 health of the public;

4 (2) "Bureau" means the Bureau for Public Health in the department;

5 (3) "Combined local board of health" means one form of organization for a local board of
6 health and means a board of health serving any two or more counties or any county or counties
7 and one or more municipalities within or partially within the county or counties;

8 (4) "Commissioner" means the commissioner of the bureau, who is may be designated as
9 the state health officer;

10 (5) "County board of health" means one form of organization for a local board of health and
11 means a local board of health serving a single county;

12 (6) "Department" means the West Virginia Department of Health and Human Resources;
13 Provided, That beginning January 1, 2024, as used in this chapter, "department" and "Department
14 of Health and Human Resources" means the Department of Health.

15 (7) "Director" or "director of health" means the state health officer. Administratively within
16 the department, the bureau through its commissioner carries out the public health functions of the
17 department, unless otherwise assigned by the secretary;

18 (8) "Essential public health services" means the core public health activities necessary to
19 promote health and prevent disease, injury, and disability for the citizens of the state. The services
20 include:

21 (A) Monitoring health status to identify community health problems;

22 (B) Diagnosing and investigating health problems and health hazards in the community;

23 (C) Informing, educating, and empowering people about health issues;

24 (D) Mobilizing community partnerships to identify and solve health problems;

25 (E) Developing policies and plans that support individual and community health efforts;

26 (F) Enforcing laws and rules that protect health and ensure safety;

27 (G) Uniting people with needed personal health services and assuring the provision of
28 health care when it is otherwise not available;

29 (H) Promoting a competent public health and personal health care workforce;

30 (I) Evaluating the effectiveness, accessibility, and quality of personal and population-based
31 health services; and

32 (J) Researching for new insights and innovative solutions to health problems;

33 (9) "Local board of health", "local board", or "board" means a board of health serving one or
34 more counties or one or more municipalities or a combination thereof;

35 (10) "Local health department" means the staff of the local board of health;

36 (11) "Local health officer" ~~means the physician with a current West Virginia license to~~
37 ~~practice medicine who supervises and directs the activities, services, staff, and facilities of the~~
38 ~~local health department and is appointed by the local board of health with approval by the~~
39 ~~commissioner; has the meaning ascribed in §16-2-2 of this code.~~

40 (12) "Municipal board of health" means one form of organization for a local board of health
41 and means a board of health serving a single municipality;

42 (13) "Performance-based standards" means generally accepted, objective standards such
43 as rules or guidelines against which public health performance can be measured;

44 (14) "Potential source of significant contamination" means a facility or activity that stores,
45 uses, or produces substances or compounds with potential for significant contaminating impact if
46 released into the source water of a public water supply;

47 (15) "Public groundwater supply source" means a primary source of water supply for a
48 public water system which is directly drawn from a well, underground stream, underground
49 reservoir, underground mine, or other primary source of water supplies which is found underneath
50 the surface of the state;

51 (16) "Public surface water supply source" means a primary source of water supply for a
52 public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments, or
53 other primary sources of water supplies which are found on the surface of the state;

54 (17) "Public surface water influenced groundwater supply source" means a source of water
55 supply for a public water system which is directly drawn from an underground well, underground

56 river or stream, underground reservoir, or underground mine, and the quantity and quality of the
57 water in that underground supply source is heavily influenced, directly or indirectly, by the quantity
58 and quality of surface water in the immediate area;

59 (18) "Public water system" means:

60 (A) Any water supply or system which regularly supplies or offers to supply water for
61 human consumption through pipes or other constructed conveyances, if serving at least an
62 average of 25 individuals per day for at least 60 days per year, or which has at least 15 service
63 connections, and shall include:

64 (i) Any collection, treatment, storage, and distribution facilities under the control of the
65 owner or operator of the system and used primarily in connection with the system; and

66 (ii) Any collection or pretreatment storage facilities not under such control which are used
67 primarily in connection with the system;

68 (B) A public water system does not include a system which meets all of the following
69 conditions:

70 (i) Consists only of distribution and storage facilities and does not have any collection and
71 treatment facilities;

72 (ii) Obtains all of its water from, but is not owned or operated by, a public water system
73 which otherwise meets the definition;

74 (iii) Does not sell water to any person; and

75 (iv) Is not a carrier conveying passengers in interstate commerce;

76 (19) "Public water utility" means a public water system which is regulated by the West
77 Virginia Public Service Commission pursuant to the provisions of §24-1-1 *et seq.* of this code;

78 (20) "Secretary" means the secretary of the Department of Health and Human Resources:
79 Provided, That beginning January 1, 2024, as used in this chapter, "secretary" means the
80 secretary of the Department of Health;

81 (21) "Service area" means the territorial jurisdiction of a local board of health; and

82 (22) "Zone of critical concern" for a public surface water supply is a corridor along streams
83 within a watershed that warrant more detailed scrutiny due to its proximity to the surface water
84 intake and the intake's susceptibility to potential contaminants within that corridor. The zone of
85 critical concern is determined using a mathematical model that accounts for stream flows,
86 gradient, and area topography. The length of the zone of critical concern is based on a five-hour
87 time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below
88 the water intake. The width of the zone of critical concern is 1000 feet measured horizontally from
89 each bank of the principal stream and 500 feet measured horizontally from each bank of the
90 tributaries draining into the principal stream.

§16-1-3. Powers and duties of the Secretary.

1 (a) The secretary may establish a state public health system.

2 (b) As necessary for the effective, efficient, and economical operation of the system, the
3 secretary may from time to time delegate, assign, transfer, or combine responsibilities or duties to
4 or among employees of the department.

5 (c) Within the limits of applicable federal law, the secretary may require every applicant for
6 a license, permit, certificate of registration, or registration under this chapter to place his or her
7 social security number on the application.

8 (d) The secretary may appoint advisory councils.

9 (e) (1) The Secretary of the Department of Health is the chief executive officer of that
10 department and beginning January 1, 2024, is charged with the administration of this chapter. The
11 Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the
12 term for which the Governor is elected, and the secretary shall serve at the will and pleasure of the
13 Governor. The Secretary shall be paid an annual salary not to exceed \$175,000. Upon his or her
14 initial appointment, which may be at any time after the effective date of this act, the Secretary shall
15 take the oath of office described in this section and commence his or her duties. If appointed
16 before January 1, 2024, the Secretary shall take the oath of office described in this section and

17 commence such duties as determined by the Secretary to be necessary to prepare for the
18 administration of this chapter.

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

21 (3) The secretary shall not be a candidate for, or hold, any other public office or public
22 employment under the federal government or under the government of this state or any of its
23 political subdivisions, or be a member or officer of any political party committee, or serve as an
24 election official, or engage in any political activity, other than to vote, in behalf of, or in opposition
25 to, any candidate, political party or public issue involved in an election. Any violation by the
26 secretary of the provisions of this section shall automatically vacate his or her appointment as
27 secretary.

28 (4) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

29 (A) Coordinate efforts with the Secretary of Human Services and the Secretary of Health
30 Facilities, including authority to share the expense of administrative services through a
31 memorandum of understanding established by agreement of the secretaries as required under
32 §5F-2-1a of this code;

33 (B) Establish a state public health system; and

34 (C) Cooperate with the Office of the Inspector General and take action on its findings;

35 (5) The secretary may:

36 (1) Within the limits of applicable federal law, the secretary may require every applicant for
37 a license, permit, certificate of registration, or registration under this chapter to place his or her
38 social security number on the application; and

39 (2) Appoint advisory councils.

40 (f) Any contract, agreement or memorandum of understanding between the secretary and
41 West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for
42 services is exempt from the provisions of §5A-3-1 et seq., of this code.

§16-1-5. State health officer; Commissioner of the Bureau for Public Health; appointment; qualifications; term.

1 The Commissioner of the Bureau for Public Health is may be designated the state health
2 officer ~~and~~. The commissioner and the state health officer shall be appointed by the secretary. The
3 commissioner shall be ~~licensed under the laws of this state to practice medicine~~ or a person
4 holding a doctorate degree in public health administration unless designated the state health
5 officer. The state health officer shall be licensed under the laws of this state to practice medicine.
6 The commissioner ~~serves~~ and the state health officer serve at the will and pleasure of the
7 secretary and shall not be actively engaged or employed in any other business, vocation, or
8 employment, serving full-time in the duties of the office as prescribed by this article.

**§16-1-6. ~~Powers and duties of the commissioner~~ Commissioner of the Bureau for Public
Health; powers and duties.**

1 (a) The commissioner is the chief executive, administrative and fiscal officer of the Bureau
2 for Public Health and has the following powers and duties:

3 (1) To supervise and direct the fiscal and administrative matters of the bureau, and in that
4 regard and in accordance with law, employ, fix the compensation of, and discharge all persons
5 necessary for the proper execution of the public health laws of this state and the efficient and
6 proper discharge of the duties imposed upon, and execution of powers vested in the commissioner
7 by law and as directed by the secretary;

8 (2) To enforce all laws of this state concerning public health.

9 (3) To investigate the cause of disease, especially of epidemics and endemic conditions,
10 and the means of prevention, suppression, or control of those conditions; the source of sickness
11 and mortality, the effects of environment, employment, habits, and circumstances of life on the
12 public health.

13 (4) To inspect and examine food, drink, and drugs offered for sale or public consumption in
14 the manner the commissioner considers necessary to protect the public health and shall report all

15 violations of laws and rules relating to the law to the prosecuting attorney of the county in which the
16 violations occur;

17 (5) To make complaint or cause proceedings to be instituted against any person,
18 corporation, or other entity for the violation of any public health law before any court or agency,
19 without being required to give security for costs; the action may be taken without the sanction of
20 the prosecuting attorney of the county in which the proceedings are instituted or to which the
21 proceedings relate;

22 (6) To promote the provision of essential public health services to citizens of this state;

23 (7) To monitor the operation and coordination of the local boards of health and local health
24 officers;

25 (8) To develop and maintain a state plan of operation that sets forth the needs of the state
26 in the areas of public health; goals and objectives for meeting those needs; methods for achieving
27 the stated goals and objectives; and needed personnel, funds, and authority for achieving the
28 goals and objectives;

29 (9) To collect data as may be required to foster knowledge on the citizenry's health status,
30 the health system, and costs of health care;

31 (10) To delegate to any appointee, assistant, or employee any and all powers and duties
32 vested in the commissioner, including, but not limited to, the power to execute contracts and
33 agreements in the name of the bureau: *Provided*, That the commissioner is responsible for the
34 acts of his or her appointees, assistants, and employees;

35 (11) To transfer any patient or resident between hospitals and facilities and, by agreement
36 with the state Commissioner of Corrections and Rehabilitation and otherwise in accord with law,
37 accept a transfer of a resident of a facility under the jurisdiction of the state Commissioner of
38 Corrections and Rehabilitation;

39 (12) To make periodic reports to the Governor and to the Legislature relative to specific
40 subject areas of public health, or other matters affecting the public health of the people of the state;

41 (13) To accept and use for the benefit of the health of the people of this state, any gift or
42 devise of any property or thing which is lawfully given: *Provided*, That if any gift is for a specific
43 purpose shall be used as specified. Any profit which may arise from any gift or devise of any
44 property or thing shall be deposited in a special revenue fund with the State Treasurer and shall be
45 used only as specified by the donor or donors;

46 ~~(14) To acquire by condemnation or otherwise any interest, right, privilege, land, or~~
47 ~~improvement and hold title to the land or improvement, for the use or benefit of the state or a state~~
48 ~~hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or~~
49 ~~improvement acquired or held by the state, state hospital, or state facility Any condemnation~~
50 ~~proceedings shall be conducted pursuant to §54-1-1 et seq. of this code~~

51 (14) To inspect and enforce rules to control the sanitary conditions of and license all
52 institutions and health facilities as set forth in this chapter, including, but not limited to, schools,
53 whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories,
54 labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the
55 general public and inviting public patronage or public assembly, or tendering to the public any item
56 for human consumption and places where trades or industries are conducted;

57 ~~(16)~~ (15) To make inspections, conduct hearings, and to enforce the legislative rules
58 concerning occupational and industrial health hazards, the sanitary condition of streams, sources
59 of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel
60 connected with the supplies, facilities or systems without regard to whether they are publicly or
61 privately owned; and to make inspections, conduct hearings and enforce the legislative rules
62 concerning the design of chlorination and filtration facilities and swimming pools;

63 ~~(17)~~ (16) To provide in accordance with this subdivision for a program for the care,
64 treatment, and rehabilitation of the parents of sudden infant death syndrome victims; for the
65 training and employment of personnel to provide the requisite rehabilitation of parents of sudden
66 infant death syndrome victims; for the education of the public concerning sudden infant death

67 syndrome; for the education of police, employees, and volunteers of all emergency services
68 concerning sudden infant death syndrome; and for requesting appropriation of funds in both
69 federal and state budgets to fund the sudden infant death syndrome program;

70 ~~(18)~~ (17) To establish and maintain a state hygienic laboratory as an aid in performing the
71 duties imposed upon the commissioner, and to employ employees that may be necessary to
72 properly operate the laboratory. The commissioner may establish branches of the state laboratory
73 within the state that are necessary in the interest of the public health;

74 ~~(19)~~ (18) To expend, for the purpose of performing the public health duties imposed on the
75 bureau, or authorized by law, any sums appropriated by the Legislature. The commissioner may
76 make advance payments to public and nonprofit health services providers when the commissioner
77 determines it is necessary for the initiation or continuation of public health services. The advance
78 payments, being in derogation of the principle of payment only after receipt of goods or services,
79 shall be authorized only after serious consideration by the commissioner of the necessity of the
80 advance payments and shall be for a period no greater than 90 days in advance of rendition of
81 service or receipt of goods and continuation of health services; and

82 ~~(20)~~ (19) To exercise all other powers delegated to the commissioner by the secretary or by
83 this chapter or otherwise in this code, to enforce all health laws, and to pursue all other activities
84 necessary and incident to the authority and area of concern entrusted to the bureau or the
85 commissioner.

86 (b) The commissioner shall establish within the Bureau for Public Health, a Center for
87 Local Public Health. The center shall:

88 (1) Enhance the quality and availability of essential public health services throughout the
89 state provided by local boards of health;

90 (2) Provide technical assistance and consultation to a local board of health agency;

91 (3) Allocate and distribute funding based upon performance based standards;

92 (4) Provide technical assistance to the local public health workforce;

- 93 (5) Facilitate bi-directional communication;
- 94 (6) Establish a uniform state-wide computer system for the reporting of public health data;
- 95 (7) Inventory the services provided by a local boards of health;
- 96 (8) Support sharing of services between local boards of health;
- 97 (9) Create a performance-based evaluation system based on standards established by
- 98 legislative rule;
- 99 (10) Provide a quarterly training to ensure consistency in the application of state laws,
- 100 legislative rules, and local health department rules; and
- 101 (11) Enforce compliance with performance standards.

§16-1-22. Office of the Inspector General.

1 (a) Beginning January 1, 2024, the Office of the Inspector General is continued within the
2 Department of Health. The Office of Inspector General shall be headed by the Inspector General
3 and is comprised of the offices as provided in §5F-2-1a of this code.

4 (b) (1) The Inspector General shall be appointed by the Governor, subject to the advice and
5 consent of the Senate.

6 (A) The term of the Inspector General is 5 years.

7 (B) At the end of a term, the Inspector General is eligible to be reappointed for one
8 additional term. The Inspector General shall continue to serve until a successor is appointed.

9 (C) If a vacancy occurs in the office, an interim Inspector General may be appointed as
10 successor to serve for the remainder of the unexpired term.

11 (2) The Inspector General may be removed by the Governor only for:

12 (A) Misconduct in office;

13 (B) Persistent failure to perform the duties of the Office; or

14 (C) Conduct prejudicial to the proper administration of justice.

15 (c) The Inspector General shall be professionally qualified through experience or
16 education in at least two of the following areas:

17 (1) Law;

18 (2) Auditing;

19 (3) Government operations;

20 (4) Financial management; or

21 (5) Health policy.

22 (d) The Inspector General shall be paid an annual salary not to exceed \$175,000.

23 (e) Funding for the office shall be as provided in the state budget.

24 (f) The Inspector General:

25 (1) Shall conduct and supervise investigations, perform inspections, evaluations, and
26 review, and provide quality control for the programs of the Department of Human Services, the
27 Department of Health and the Department of Health Facilities.

28 (2) Shall investigate fraud, waste, abuse of departmental funds, and behavior in the
29 Department of Human Services, the Department of Health and the Department of Health Facilities
30 that threatens public safety or demonstrates negligence, incompetence, or malfeasance;

31 (3) Shall cooperate with and coordinate investigative efforts with the Medicaid Fraud
32 Control Unit, and where a preliminary investigation establishes a sufficient basis to warrant
33 referral, shall refer such matters to the Medicaid Fraud Control Unit;

34 (4) Shall cooperate with and coordinate investigative efforts with departmental programs
35 and other state and federal agencies to ensure a provider is not subject to duplicative audits; and

36 (5) Shall be empowered to consult with the Legislature for policy development;

37 (6) (A) Organize a board of review, consisting of a chairman appointed by the Inspector
38 General and as many assistants or employees of the department as may be determined by the
39 Inspector General and as may be required by federal laws and rules respecting assistance, the
40 board of review to have such powers of a review nature and such additional powers as may be
41 granted to it by the Inspector General and as may be required by federal laws and rules respecting
42 assistance.

43 (B) Provide by rules, review and appeal procedures within the office as may be required by
44 applicable federal laws and rules respecting assistance, and as will provide applicants for, and
45 recipients of, all classes of assistance an opportunity to be heard by the board of review, a member
46 thereof, or individuals designated by the board, upon claims involving denial, reduction, closure,
47 delay, or other action or inaction pertaining to public assistance.

48 (7) (A) May subpoena any person or evidence, administer oaths, take and certify affidavits,
49 and take depositions and other testimony for the purpose of investigating fraud, waste, abuse of
50 departmental funds, or behavior in the departments that threatens public safety or demonstrates
51 negligence, incompetence, or malfeasance.

52 (B) If a person fails to comply with a lawful order or subpoena issued under this subsection,
53 on petition of the Inspector General or a designated Assistant Inspector General, a court of
54 competent jurisdiction may compel:

55 (i) Compliance with the order or subpoena; or

56 (ii) Testimony or the production of evidence.

57 (C) Within 30 business days after receiving a complaint or allegation, the Inspector
58 General shall respond to the individual who filed the complaint or allegation with:

59 (i) A preliminary indication of whether the Office of the Inspector General is able to
60 investigate the complaint or allegation; and

61 (ii) If the Office of the Inspector General is unable to investigate the complaint or allegation
62 because of a conflict of interest, the Office of the Inspector General shall refer the complaint or
63 allegation to another unit of government or law enforcement.

64 (g) Neither the secretary nor any employee of the Department of Human Services,
65 Department of Health or the Department of Health Facilities may prevent, inhibit, or prohibit the
66 Inspector General or his or her employees from initiating, carrying out, or completing any
67 investigation, inspection, evaluation, review, or other activity oversight of public integrity by the
68 Office of the Inspector General.

69 (h) The Inspector General approves and submits his or her budget.

70 (i) The Inspector General shall supervise all personnel of the Office of the Inspector
71 General. Qualification, compensation, and personnel practice relating to the employees of the
72 Office of the Inspector General, shall be governed by the classified service.

§16-1-22a. Judicial review of decisions of contested cases.

1 (a) For purposes of this section:

2 (1) "Agency" means the Board of Review or the Bureau for Medical Services, as the case
3 may be, that has been named as a party to any proceeding on appeal made pursuant to the
4 provisions of this section.

5 (2) "Board of Review" or "Board" means the Board of Review operating pursuant to the
6 provisions of §16-1-22 of this code.

7 (3) "Bureau" means the Bureau for Medical Services.

8 (b) The board shall provide a fair, impartial and expeditious grievance and appeal process
9 to applicants or recipients of assistance as defined in §9-1-1 et seq. of this code. The bureau shall
10 provide a fair, impartial and expeditious grievance and appeal process to providers of Medicaid
11 services.

12 (c) Any party adversely affected or aggrieved by a final decision or order of the agency may
13 seek judicial review of that decision by filing an appeal to the Intermediate Court of Appeals as
14 provided in §29A-5-4 et seq., of this code.

15 (d) The process established by this section is the exclusive remedy for judicial review of
16 final decisions of the Board of Review and the Bureau for Medical Services.

§16-1-22b. Authority to subpoena witnesses and documents when investigating the
provision of medical assistance programs.

1 The Inspector General and every duly appointed hearing examiner shall have the power to
2 apply, on behalf of any party, to the circuit court of the county in which the hearing is to be held, or
3 the circuit court in which the subpoena or subpoena duces tecum is to be served, or the judge of
4 either such court in vacation, for the issuance of a subpoena or subpoena duces tecum to compel

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5 the attendance of witnesses or the production of documents, before any hearing or administrative
6 tribunal convened to consider suspension or termination of any person or corporation from
7 providing services under the medical assistance programs. The application for a subpoena duces
8 tecum shall state with particularity any papers or documents requested and upon hearing, the
9 applicant or party shall notify the court or judge, as the case may be, of the necessity therefor in
10 such hearing. The court or judge thereof, prior to issuing the requested subpoena or subpoena
11 duces tecum, may make any order which justice requires to protect a party or person from
12 annoyance, embarrassment, oppression or undue burden or expense. The party who applies for
13 the subpoena or subpoena duces tecum shall pay the sheriff's fees required for service of these
14 documents.

§16-1-22c. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

1 (a) When the Investigations and Fraud Management Division of the Office of the Inspector
2 General, which is charged with investigating welfare fraud and intra-agency employee
3 misconduct, has credible information that indicates a person has engaged in an act or activity
4 related to the Department of Human Services, the Department of Health and the Department of
5 Health Facilities programs, benefits or intra-agency employee misconduct which is subject to
6 prosecution, it may conduct an investigation to determine if the act has been committed. To the
7 extent necessary to the investigation, the Inspector General or an employee of the Office of the
8 Inspector General may administer oaths or affirmations and issue subpoenas for witnesses and
9 documents relevant to the investigation, including information concerning the existence,
10 description, nature, custody, condition and location of any book, record, documents or other
11 tangible thing and the identity and location of persons having knowledge of relevant facts or any
12 matter reasonably calculated to lead to the discovery of admissible evidence.

13 When the Investigations and Fraud Management Division has probable cause to believe
14 that a person has engaged in an act or activity which is subject to prosecution relating to the
15 Department of Human Services, the Department of Health and the Department of Health Facilities
16 programs, benefits or intra-agency employee misconduct, the Inspector General or an employee
17 of the Office of the Inspector General may request search warrants and present and swear or
18 affirm criminal complaints.

19 (b) If documents necessary to an investigation of the Investigations and Fraud
20 Management Division appear to be located outside the state, the documents shall be made
21 available by the person or entity within the jurisdiction of the state having control over such
22 documents either at a convenient location within the state or, upon payment of necessary
23 expenses to the division for transportation and inspection, at the place outside the state where
24 these documents are maintained.

25 (c) Upon failure of a person to comply with a subpoena or a subpoena for the production of
26 evidence or failure of a person to give testimony without lawful excuse and upon reasonable notice
27 to all persons affected thereby, the Investigations and Fraud Management Division may apply to
28 the circuit court of the county in which compliance is sought for appropriate orders to compel
29 obedience with the provisions of this section.

30 (d) The Investigations and Fraud Management Division may not make public the name or
31 identity of a person whose acts or conduct is investigated pursuant to this section or the facts
32 disclosed in an investigation except as the same may be used in any legal action or enforcement
33 proceeding brought pursuant to this code or federal law.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-4. Creation of authority and board; status and members of board.

1 The West Virginia hospital finance authority is ~~hereby created~~ continued. The authority is a
2 body corporate and a governmental instrumentality of the state. The exercise by the authority of
3 the powers conferred by this article and the carrying out of its purposes and duties shall be

4 deemed and held to be, and are hereby determined to be, essential governmental functions and
5 for a public purpose.

6 The authority shall be controlled, managed and operated by the seven-member board
7 known as the West Virginia Hospital Finance Board, which is hereby ~~created~~ continued. The board
8 shall consist of the ~~director of the state department of health~~ secretary and the State Treasurer as
9 members ex officio of the board. The other five members of the board shall be appointed by the
10 Governor, by and with the advice and consent of the Senate, and shall serve terms of two, three,
11 four, five and six years, respectively. The successor of each such appointed member shall be
12 appointed for a term of six years in the same manner as the original appointments were made,
13 except that any person appointed to fill a vacancy occurring prior to the expiration of the term for
14 which his or her predecessor was appointed shall be appointed only for the remainder of such
15 term. No more than three of the appointed board members shall at any one time belong to the
16 same political party. Appointed board members may be reappointed to serve additional terms.

17 All members of the board shall be citizens of the state. Each appointed member of the
18 board, before entering upon his or her duties, shall comply with the requirements of article one,
19 chapter six of this code and give bond in the sum of \$25,000 in the manner provided in article two,
20 chapter six of this code. The Governor may remove any board member for cause as provided in
21 article six, chapter six of this code. The ~~director of the state department of health~~ secretary and the
22 State Treasurer may each appoint a deputy to serve as a member of the board in their respective
23 absences. Such deputy shall ~~be a person in the office of the director of the state department of~~
24 ~~health or the State Treasurer, as the case may be, and shall serve at his~~ or her pleasure.

25 Four members of the board shall constitute a quorum, and the affirmative vote of four
26 members shall be necessary for any action taken by vote of the board. No vacancy in the
27 membership of the board shall impair the rights of a quorum by such vote to exercise all the rights
28 and perform all the duties of the board and the authority.

29 Annually, the board shall elect one of its appointed members as chairman and another as
30 vice chairman and shall appoint a secretary-treasurer, who need not be a member of the board.
31 The person appointed as secretary-treasurer, including a board member if he or she is so
32 appointed, shall give bond in the sum of \$50,000 in the manner provided in ~~article two, chapter six~~
33 §6-2-1 et seq., of this code.

34 Members of the board shall not receive compensation for services but shall be entitled to
35 the necessary expenses, including traveling expenses, incurred in the discharge of their duties.
36 Any payments for compensation and expenses shall be paid from the funds of the authority, after
37 appropriations and authorization by the Legislature, and no liability or obligation shall be incurred
38 by the authority beyond the extent to which moneys are available from funds of the authority.

39 There shall also be a director of the authority appointed by the board.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS STATE HEALTH

FACILITIES.

ARTICLE 1. CHILDREN'S HOME DEPARTMENT OF HEALTH FACILITIES.

§26-1-1. ~~West Virginia Children's Home~~ Department of Health Facilities.

1 ~~The West Virginia Children's Home, heretofore established, shall be continued, and shall~~
2 ~~be managed, directed and controlled by the state department of welfare~~

3 (a) Beginning January 1, 2024, the Department of Health Facilities is comprised of the
4 agencies as provided in §5F-2-1a of this code, is charged with the administration of this chapter,
5 and shall have those powers and duties respecting the administration of the assistance programs
6 as authorized, granted and imposed by this chapter and elsewhere by law.

7 (b) The department is not subject to the requirements of §5A-3-1 et seq. and §5A-10-1 et
8 seq. of this code.

9 (c) Employees hired on or after January 1, 2024, are not eligible for civil service as
10 provided in §29-6-1 et seq., of this code.

11 (d) Beginning January 1, 2024, as used in this chapter, “department” and “Department of
12 Health and Human Resources” means the Department of Health Facilities.

§26-1-2. Admission of children Secretary to be administrative head of department;
appointment, qualifications, etc.; not to hold other office or engage in political
activity.

1 ~~The state department of welfare shall admit to the home children surrendered or otherwise~~
2 ~~placed in its custody in any manner authorized by law; and the children shall be kept, maintained~~
3 ~~and educated therein until they can be placed by legal authority in suitable homes elsewhere~~

4 (a) (1)The Secretary of the Department of Health Facilities is the chief executive officer of
5 that department and beginning January 1, 2024, is charged with the administration of this chapter.
6 The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for
7 the term for which the Governor is elected, and the secretary shall serve at the will and pleasure of
8 the Governor. The Secretary shall be paid an annual salary not to exceed \$175,000. Upon his or
9 her initial appointment, which may be at any time after the effective date of this act, the Secretary
10 shall take the oath of office described in this section and commence his or her duties. If appointed
11 before January 1, 2024, the Secretary shall take the oath of office described in this section and
12 commence such duties as determined by the Secretary to be necessary to prepare for the
13 administration of this chapter.

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

16 (3) The secretary shall not be a candidate for, or hold, any other public office or public
17 employment under the federal government or under the government of this state or any of its
18 political subdivisions, or be a member or officer of any political party committee, or serve as an
19 election official, or engage in any political activity, other than to vote, in behalf of, or in opposition
20 to, any candidate, political party or public issue involved in an election. Any violation by the

21 secretary of the provisions of this section shall automatically vacate his or her appointment as
22 secretary.

23 (b) Beginning January 1, 2024, as used in this chapter, "secretary" means the secretary of
24 the Department of Health Facilities.

§26-1-3. Superintendent; establishment of rules Secretary of Department of Health
Facilities; powers and duties.

1 ~~The commissioner of welfare shall appoint a superintendent of the children's home. The~~
2 ~~superintendent shall establish and post rules for operation of the home, subject to approval of the~~
3 ~~commissioner~~

4 (a) In addition to the authority provided in §5F-2-2 of this code, the secretary shall:

5 (1) Coordinate efforts with the Secretary of Human Services and the Secretary of Health,
6 including authority to share the expense of administrative services through a memorandum of
7 understanding established by agreement of the secretaries as required under §5F-2-1a of this
8 code;

9 (2) Manage, direct, control, and govern state owned health facilities;

10 (3) Operate state health facilities and adopt rules pertaining to their operation;

11 (4) Protect the rights of clients served by state health facilities;

12 (5) Develop and implement critical performance indicators to be used to hold state
13 hospitals accountable. The performance system indicators shall be implemented no later than
14 January 1, 2025; and

15 (6) Cooperate with the Office of the Inspector General and take action on its findings.

16 (b) The Secretary may:

17 (1) Acquire by condemnation or otherwise any interest, right, privilege, land, or
18 improvement and hold title to the land or improvement, for the use or benefit of the state or a state
19 hospital or facility, to sell, exchange or otherwise convey any interest, right, privilege, land, or

20 improvement acquired or held by the state, state hospital, or state facility Any condemnation
21 proceedings shall be conducted pursuant to §54-1-1 et seq. of this code;

22 (2) Receive donations;

23 (3) Accept, allocate, and spend any federal funds that may be made available to the state
24 by the federal government; and

25 (4) Transfer residents between the facilities. The clinical director may accept transfer of
26 residents from correctional institutions, subject to the provisions of §28-1-1 et seq. of this code.

27 (c) Any contract, agreement or memorandum of understanding between the secretary and
28 West Virginia University, West Virginia School of Osteopathic Medicine or Marshall University for
29 services is exempt from the provisions of §5A-3-1 et seq., of this code.

§26-1-4. Supervision of each facility by administrator and clinical director.

1 Each facility shall have a chief executive officer denominated an "administrator." The
2 administrator shall have the fiscal responsibility for the facility and the authority to manage and
3 administer the financial, business, and personnel affairs of the facility under the direction of the
4 secretary.

5 Each facility shall have a clinical director who shall have the responsibility for decisions
6 involving clinical and medical treatment of patients.

ARTICLE 3. HOME FOR AGED AND INFIRM MEN AND WOMEN.

§26-3-1. Establishment; name; management; superintendent.

1 [Repealed.]

§26-3-2. Admission of inmates.

1 [Repealed.]

§26-3-3. Transfer of inmates of state hospitals.

1 [Repealed.]

§26-3-4. Transfer of inmates from the industrial school for boys.

1 [Repealed.]

§26-3-5. How expenses to be paid.

1 [Repealed.]

ARTICLE 5. JACKIE WITHROW HOSPITAL.

§26-5-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 [Repealed.]

ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-5a. Return of escapees from state tuberculosis institutions.

1 [Repealed.]

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 [Repealed.]

§26-8-2. Patients; expenses; disposition of receipts.

1 [Repealed.]

§26-8-3. Admission of deformed, crippled or defective children.

1 [Repealed.]

ARTICLE 9. HOPEMONT STATE HOSPITAL.

§26-9-1. Establishment and continuation; name and location; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

1 [Repealed.]

§26-9-2. Eligibility for admission of patients.

1 [Repealed.]

ARTICLE 10. HOSPITALS, HOMES AND SANITARIA FEES.

§26-10-1. Authority of commissioner of public institutions to establish; exonerating persons from payment.

1 [Repealed.]

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

1 [Repealed.]

§26-11-2. Supervision of each facility by administrator; qualifications of administrator; clinical director.

1 [Repealed.]

§26-11-3. Guidelines for admissions; fees for the maintenance of persons.

1 [Repealed.]

§26-11-4. Transfer of residents; rules and regulations for maintenance of patients.

1 [Repealed.]

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART 4. WITHHOLDING FROM INCOME OF AMOUNTS PAYABLE AS SUPPORT.

§48-14-401. Support orders to provide for withholding from income.

1 (a) Every order entered or modified under the provisions of this article that requires the
2 payment of child support or spousal support must include a provision for automatic withholding
3 from income of the obligor in order to facilitate income withholding as a means of collecting
4 support.

5 (b) Every support order heretofore or hereafter entered by a court of competent jurisdiction
6 is considered to provide for an order of income withholding, notwithstanding the fact that the

7 support order does not in fact provide for an order of withholding. Income withholding may be
8 instituted under this part for any arrearage without the necessity of additional judicial or legal
9 action.

10 (c) Every such order as described in subsection (a) of this section shall contain language
11 authorizing income withholding for both current support and for any arrearages to commence
12 without further court action as follows:

13 The order shall provide that income withholding shall begin immediately, without regard to
14 whether there is an arrearage;

15 (A) When a child for whom support is ordered is included or becomes included in a grant of
16 assistance from the division of human services, its successor the Department of Human Services
17 beginning January 1, 2024, or a similar agency of a sister state for temporary assistance for needy
18 families benefits, medical assistance only benefits or foster care benefits and is referred to the
19 Bureau for Child Support Enforcement; or

20 (B) When the support obligee has applied for services from the Bureau for Child Support
21 Enforcement created pursuant to ~~section 18-101, et seq., of this chapter~~ §48-18-101 et seq., of
22 this code, or the support enforcement agency of another state or is otherwise receiving services
23 from the Bureau for Child Support Enforcement as provided for in this chapter. In any case where
24 one of the parties demonstrates, and the court finds, that there is good cause not to require
25 immediate income withholding, or in any case where there is filed with the court a written
26 agreement between the parties which provides for an alternative arrangement, such order shall
27 not provide for income withholding to begin immediately, pursuant to ~~section four hundred three,~~
28 ~~article fourteen of this chapter~~ §48-14-403 of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

**§48-18-101. Establishment Continuation of the bureau for child support enforcement;
cooperation with the division of human services.**

1 (a) ~~Effective July 1, 1995~~ There is ~~hereby established~~ continued in the Department of
2 Health and Human Resources the Bureau for Child Support Enforcement: Provided, That
3 beginning January 1, 2024, for purposes of this article, the bureau is continued in the Department
4 of Human Services, and the terms “department” and “Department of Health and Human
5 Resources” means Department of Human Services. The bureau is under the immediate
6 supervision of the commissioner, who is responsible for the exercise of the duties and powers
7 assigned to the bureau under the provisions of this chapter. The bureau is designated as the single
8 and separate organizational unit within this state to administer the state plan for child and spousal
9 support according to 42 U.S.C. §654(3).

10 (b) The ~~division of human services~~ department shall cooperate with the Bureau for Child
11 Support Enforcement. At a minimum, such cooperation shall require that the ~~division of human~~
12 ~~services~~ department:

13 (1) Notify the Bureau for Child Support Enforcement when the ~~division of human services~~
14 department proposes to terminate or provide public assistance payable to any obligee;

15 (2) Receive support payments made on behalf of a former or current recipient to the extent
16 permitted by Title IV-D, Part D of the Social Security Act; and

17 (3) Accept the assignment of the right, title or interest in support payments and forward a
18 copy of the assignment to the Bureau for Child Support Enforcement.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services.

1 (a) The child welfare service of the state shall be located within and administered by the
2 Bureau for Social Services ~~of Department of Health and Human Resources.~~ The Division of
3 ~~Juvenile Services~~ Corrections and Rehabilitation of the Department of ~~Military Affairs and Public~~

4 ~~Safety~~ Homeland Security shall administer the secure predispositional juvenile detention and
5 juvenile correctional facilities of the state. Notwithstanding any other provision of this code to the
6 contrary, the administrative authority of the Division of ~~Juvenile Services~~ Corrections and
7 Rehabilitation over any child or juvenile in this state extends only to those detained or committed to
8 a secure detention facility or secure correctional facility operated and maintained by the division by
9 an order of a court of competent jurisdiction during the period of actual detention or confinement in
10 the facility.

11 (b) The Department of Health and Human Resources is designated as the state entity to
12 cooperate with the United States Department of Health and Human Services and United States
13 Department of Justice in extending and improving child welfare services, to comply with federal
14 regulations, and to receive and expend federal funds for these services: Provided, That beginning
15 January 1, 2024, the Department of Human Services is designated as the state entity to cooperate
16 with the United States Department of Health and Human Services and United States Department
17 of Justice in extending and improving child welfare services, to comply with federal regulations,
18 and to receive and expend federal funds for these services. The Division of ~~Juvenile Services~~
19 Corrections and Rehabilitation of the Department of ~~Military Affairs and Public Safety~~ Homeland
20 Security is designated as the state entity to cooperate with the United States Department of Health
21 and Human Services and United States Department of Justice in operating, maintaining and
22 improving juvenile correction facilities and centers for the predispositional detention of children, to
23 comply with federal regulations, and to receive and expend federal funds for these services.

24 (c) The Division of ~~Juvenile Services~~ Corrections and Rehabilitation of the Department of
25 ~~Military Affairs and Public Safety~~ Homeland Security is authorized to operate and maintain centers
26 for juveniles needing detention pending disposition by a court having juvenile jurisdiction or
27 temporary care following that court action.