

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3247

By Delegates Linville, Rohrbach, Summers,

Mazzocchi, Kump and Tully

[Originating in the Committee on Health and Human

Resources; Reported on February 21, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §9-5-31; to amend and reenact §16-2D-8, §16-2D-9, and §16-2D-11; to amend
3 said code by adding thereto a new article designated, §16-5W-1, §16-5W-2, §16-5W-3,
4 §16-5W-4, §16-5W-5, §16-5W-6 and §16-5W-7; to repeal §27-8-2b and §27-8-3 of said
5 code; to repeal §27-9-1 of said code; to repeal §27-13-1 and §27-13-2 of said code; and to
6 repeal §27-17-1, §27-17-2, §27-17-3, and §27-17-4 of said code; all relating to regulation
7 of behavioral health services; requiring the Bureau of Medical Services to development a
8 reimbursement model relating to in home services of Intellectually and Developmentally
9 Disabled Intermediate Care waivers; requiring the bureau to use a performance based
10 contract; defining terms; removing services from the moratorium; removing services from
11 certificate of need; adding services to certificate of need; providing exceptions from
12 certificate of need; permitting the Health Care Authority to redistribute bed capacity;
13 requiring access to consumers; requiring access to records; regulating behavioral health
14 centers; providing rulemaking authority; establishing a mental health ombudsman;
15 providing authority to the ombudsman; providing an exemption of consumer information
16 from the Freedom of Information Act; requiring reporting; and permitting a civil penalty.

Be it enacted by the Legislature of West Virginia:

§9-5-31. Medicaid - Intellectually and Developmentally Disabled Intermediate Care Facilities.

1 (a) The Bureau for Medical Services shall develop a tiered reimbursement model to ensure
2 adequate provider availability by county for in home services of Intellectually and Developmentally
3 Disabled waiver. The model shall be presented to LOCHHRA by December 1, 2023.

4 (b) The bureau shall contract with Intellectually and Developmentally Disabled
5 Intermediate Care Facilities placements regionally, which shall be performance based. The
6 bureau shall develop performance-based metrics and provide notice of the same for review and
7 comment at least 90 days prior to negotiating or entering any such contracts

CHAPTER 16. PUBLIC HEALTH.

ARTICLE	2D.	CERTIFICATE	OF	NEED.
§16-2D-2.				Definitions.

- 1 As used in this article:
- 2 (1) "Affected person" means:
 - 3 (A) The applicant;
 - 4 (B) An agency or organization representing consumers;
 - 5 (C) An individual residing within the geographic area but within this state served or to be
 - 6 served by the applicant;
 - 7 (D) An individual who regularly uses the health care facilities within that geographic area;
 - 8 (E) A health care facility located within this state which provide services similar to the
 - 9 services of the facility under review and which will be significantly affected by the proposed project;
 - 10 (F) A health care facility located within this state which, before receipt by the authority of
 - 11 the proposal being reviewed, has formally indicated an intention to provide similar services within
 - 12 this state in the future;
 - 13 (G) Third-party payors who reimburse health care facilities within this state; or
 - 14 (H) An organization representing health care providers;
 - 15 (2) "Ambulatory health care facility" means a facility that provides health services to
 - 16 noninstitutionalized and nonhomebound persons on an outpatient basis;
 - 17 (3) "Ambulatory surgical facility" means a facility not physically attached to a health care
 - 18 facility that provides surgical treatment to patients not requiring hospitalization;
 - 19 (4) "Applicant" means a person applying for a certificate of need, exemption or
 - 20 determination of review;
 - 21 (5) "Authority" means the West Virginia Health Care Authority as provided in article twenty-
 - 22 nine-b of this chapter;

23 (6) "Bed capacity" means the number of beds licensed to a health care facility or the
24 number of adult and pediatric beds permanently staffed and maintained for immediate use by
25 inpatients in patient rooms or wards in an unlicensed facility;

26 (7) "Behavioral health services" means services provided for the care and treatment of
27 persons with mental illness or developmental disabilities;

28 (8) "Birthing center" means a short-stay ambulatory health care facility designed for low-
29 risk births following normal uncomplicated pregnancy;

30 (9) "Campus" means the adjacent grounds and buildings, or grounds and buildings not
31 separated by more than a public right-of-way, of a health care facility;

32 (10) "Capital expenditure" means:

33 (A) (i) An expenditure made by or on behalf of a health care facility, which:

34 (I) Under generally accepted accounting principles is not properly chargeable as an
35 expense of operation and maintenance; or

36 (II) Is made to obtain either by lease or comparable arrangement any facility or part thereof
37 or any equipment for a facility or part; and

38 (ii) (I) Exceeds the expenditure minimum;

39 (II) Is a substantial change to the bed capacity of the facility with respect to which the
40 expenditure is made; or

41 (III) Is a substantial change to the services of such facility;

42 (B) The transfer of equipment or facilities for less than fair market value if the transfer of the
43 equipment or facilities at fair market value would be subject to review; or

44 (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if
45 determined by the authority to be a single capital expenditure subject to review. In making this
46 determination, the authority shall consider: Whether the expenditures are for components of a
47 system which is required to accomplish a single purpose; or whether the expenditures are to be

48 made within a two-year period within a single department such that they will constitute a significant
49 modernization of the department.

50 (11) "Charges" means the economic value established for accounting purposes of the
51 goods and services a hospital provides for all classes of purchasers;

52 (12) "Community mental health and intellectual disability facility" means a facility which
53 provides comprehensive services and continuity of care as emergency, outpatient, partial
54 hospitalization, inpatient or consultation and education for individuals with mental illness,
55 intellectual disability;

56 (13) "Diagnostic imaging" means the use of radiology, ultrasound, mammography;

57 (14) "Drug and Alcohol Rehabilitation Services" means a medically or
58 psychotherapeutically supervised process for assisting individuals through the processes of
59 withdrawal from dependency on psychoactive substances;

60 (15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any
61 facility, equipment, or services including the cost of any studies, surveys, designs, plans, working
62 drawings, specifications and other activities, including staff effort and consulting at and above \$5
63 million;

64 (16) "Health care facility" means a publicly or privately owned facility, agency or entity that
65 offers or provides health services, whether a for-profit or nonprofit entity and whether or not
66 licensed, or required to be licensed, in whole or in part;

67 (17) "Health care provider" means a person authorized by law to provide professional
68 health services in this state to an individual;

69 (18) "Health services" means clinically related preventive, diagnostic, treatment or
70 rehabilitative services;

71 (19) "Home health agency" means an organization primarily engaged in providing
72 professional nursing services either directly or through contract arrangements and at least one of
73 the following services:

- 74 (A) Home health aide services;
75 (B) Physical therapy;
76 (C) Speech therapy;
77 (D) Occupational therapy;
78 (E) Nutritional services; or
79 (F) Medical social services to persons in their place of residence on a part-time or
80 intermittent basis.

81 (20) "Hospice" means a coordinated program of home and inpatient care provided directly
82 or through an agreement under the direction of a licensed hospice program which provides
83 palliative and supportive medical and other health services to terminally ill individuals and their
84 families.

85 (21) "Hospital" means a facility licensed pursuant to the provisions of article five-b of this
86 chapter and any acute care facility operated by the state government, that primarily provides
87 inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under
88 the supervision of physicians.

89 (22) "Intermediate care facility" means an ~~institution~~ setting that provides health-related
90 services to individuals with conditions that require services above the level of room and board, but
91 do not require the degree of services provided in a hospital or skilled-nursing facility.

92 (23) "Like equipment" means medical equipment in which functional and technological
93 capabilities are similar to the equipment being replaced; and the replacement equipment is to be
94 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and
95 it does not constitute a substantial change in health service or a proposed health service.

96 (24) "Major medical equipment" means a single unit of medical equipment or a single
97 system of components with related functions which is used for the provision of medical and other
98 health services and costs in excess of the expenditure minimum. This term does not include
99 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory

100 services if the clinical laboratory is independent of a physician's office and a hospital and it has
101 been determined under Title XVIII of the Social Security Act to meet the requirements of
102 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining
103 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,
104 plans, working drawings, specifications and other activities essential to the acquisition of such
105 equipment shall be included. If the equipment is acquired for less than fair market value, the term
106 "cost" includes the fair market value.

107 (25) "Medically underserved population" means the population of an area designated by
108 the authority as having a shortage of a specific health service.

109 (26) "Nonhealth-related project" means a capital expenditure for the benefit of patients,
110 visitors, staff or employees of a health care facility and not directly related to health services
111 offered by the health care facility.

112 (27) "Offer" means the health care facility holds itself out as capable of providing, or as
113 having the means to provide, specified health services.

114 (28) "Opioid treatment program" means as that term is defined in article five-y of chapter
115 sixteen.

116 (29) "Person" means an individual, trust, estate, partnership, limited liability corporation,
117 committee, corporation, governing body, association and other organizations such as joint-stock
118 companies and insurance companies, a state or a political subdivision or instrumentality thereof or
119 any legal entity recognized by the state.

120 (30) "Personal care agency" means an entity that provides personal care services
121 approved by the Bureau of Medical Services.

122 (31) "Personal care services" means personal hygiene; dressing; feeding; nutrition;
123 environmental support and health-related tasks provided by a personal care agency.

124 (32) "Physician" means an individual who is licensed to practice allopathic medicine by the
125 board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathic
126 Medicine.

127 (33) "Proposed health service" means any service as described in section eight of this
128 article.

129 (34) "Purchaser" means an individual who is directly or indirectly responsible for payment
130 of patient care services rendered by a health care provider, but does not include third-party payers.

131 (35) "Rates" means charges imposed by a health care facility for health services.

132 (36) "Records" means accounts, books and other data related to health service costs at
133 health care facilities subject to the provisions of this article which do not include privileged medical
134 information, individual personal data, confidential information, the disclosure of which is prohibited
135 by other provisions of this code and the laws enacted by the federal government, and information,
136 the disclosure of which would be an invasion of privacy.

137 (37) "Rehabilitation facility" means an inpatient facility licensed in West Virginia operated
138 for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated
139 program of medical and other services.

140 (38) "Related organization" means an organization, whether publicly owned, nonprofit, tax-
141 exempt or for profit, related to a health care facility through common membership, governing
142 bodies, trustees, officers, stock ownership, family members, partners or limited partners,
143 including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For
144 the purposes of this subdivision "family members" means parents, children, brothers and sisters
145 whether by the whole or half blood, spouse, ancestors and lineal descendants.

146 (39) "Secretary" means the Secretary of the West Virginia Department of Health and
147 Human Resources;

148 (40) "Skilled nursing facility" means an institution, or a distinct part of an institution, that
149 primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to
150 injured, disabled or sick persons.

151 (41) "Specialized intermediate care facility" means a Centers for Medicare and Medicaid
152 Services approved intermediate care facility that is a transitional setting that provides health-
153 related services to individuals with conditions that require services above the level of room and
154 board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

155 (42) "Standard" means a health service guideline developed by the authority and instituted
156 under section six.

157 (42) (43) "State health plan" means a document prepared by the authority that sets forth a
158 strategy for future health service needs in this state.

159 (43) (44) "Substantial change to the bed capacity" of a health care facility means any
160 change, associated with a capital expenditure, that increases or decreases the bed capacity or
161 relocates beds from one physical facility or site to another, but does not include a change by which
162 a health care facility reassigns existing beds.

163 (44) (45) "Substantial change to the health services" means:

164 (A) The addition of a health service offered by or on behalf of the health care facility which
165 was not offered by or on behalf of the facility within the twelve-month period before the month in
166 which the service was first offered; or

167 (B) The termination of a health service offered by or on behalf of the facility but does not
168 include the termination of ambulance service, wellness centers or programs, adult day care or
169 respite care by acute care facilities.

170 (45) (46) "Telehealth" means the use of electronic information and telecommunications
171 technologies to support long-distance clinical health care, patient and professional health-related
172 education, public health and health administration.

173 ~~(46)~~ (47) “Third-party payor” means an individual, person, corporation or government entity
174 responsible for payment for patient care services rendered by health care providers.

175 ~~(47)~~ (48) “To develop” means to undertake those activities which upon their completion will
176 result in the offer of a proposed health service or the incurring of a financial obligation in relation to
177 the offering of such a service.

§16-2D-8. Proposed health services that require a certificate of need.

1 (a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following
2 proposed health services may not be acquired, offered, or developed within this state except upon
3 approval of and receipt of a certificate of need as provided by this article:

4 (1) The construction, development, acquisition, or other establishment of a health care
5 facility;

6 (2) The partial or total closure of a health care facility with which a capital expenditure is
7 associated;

8 (3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care
9 facility in excess of the expenditure minimum; or

10 (B) An obligation for a capital expenditure incurred by a person to acquire a health care
11 facility.

12 (4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a
13 health care facility:

14 (A) When a valid contract is entered into by or on behalf of the health care facility for the
15 construction, acquisition, lease, or financing of a capital asset;

16 (B) When the health care facility takes formal action to commit its own funds for a
17 construction project undertaken by the health care facility as its own contractor; or

18 (C) In the case of donated property, on the date on which the gift is completed under state
19 law.

20 (5) A substantial change to the bed capacity of a health care facility with which a capital
21 expenditure is associated;

22 (6) The addition of ventilator services by a hospital;

23 (7) The elimination of health services previously offered on a regular basis by or on behalf
24 of a health care facility which is associated with a capital expenditure;

25 (8) (A) A substantial change to the bed capacity or health services offered by or on behalf
26 of a health care facility, whether or not the change is associated with a proposed capital
27 expenditure;

28 (B) If the change is associated with a previous capital expenditure for which a certificate of
29 need was issued; and

30 (C) If the change will occur within two years after the date the activity which was associated
31 with the previously approved capital expenditure was undertaken.

32 (9) The acquisition of major medical equipment;

33 (10) A substantial change in an approved health service for which a certificate of need is in
34 effect;

35 (11) An expansion of the service area for hospice or home health agency regardless of the
36 time period in which the expansion is contemplated or made; and

37 (12) The addition of health services offered by or on behalf of a health care facility which
38 were not offered on a regular basis by or on behalf of the health care facility within the 12-month
39 period prior to the time the services would be offered.

40 (b) The following health services are required to obtain a certificate of need regardless of
41 the minimum expenditure:

42 (1) Constructing, developing, acquiring, or establishing a birthing center;

43 (2) Providing radiation therapy;

44 (3) Providing computed tomography;

45 (4) Providing positron emission tomography;

- 46 (5) Providing cardiac surgery;
- 47 (6) Providing fixed magnetic resonance imaging;
- 48 (7) Providing comprehensive medical rehabilitation;
- 49 (8) Establishing an ambulatory care center;
- 50 (9) Establishing an ambulatory surgical center;
- 51 (10) Providing diagnostic imaging;
- 52 (11) Providing cardiac catheterization services;
- 53 (12) Constructing, developing, acquiring, or establishing kidney disease treatment centers,
- 54 including freestanding hemodialysis units;
- 55 (13) Providing megavoltage radiation therapy;
- 56 (14) Providing surgical services;
- 57 (15) Establishing operating rooms;
- 58 (16) Adding acute care beds;
- 59 (17) Providing intellectual developmental disabilities services;
- 60 (18) Providing organ and tissue transplants;
- 61 (19) Establishing an intermediate care facility for individuals with intellectual disabilities:
- 62 Provided, That when an existing intermediate care facility for individuals with intellectual
- 63 disabilities voluntarily or involuntarily closes, reduction in bed capacity, those beds shall revert to
- 64 the Health Care Authority to be redistributed to another location or provider that has not received
- 65 any immediate jeopardy citations related to the health, safety, welfare, or clinical treatment of a
- 66 consumer in the past 12 months.
- 67 (20) Providing inpatient services;
- 68 (21) Providing hospice services;
- 69 (22) Establishing a home health agency; and
- 70 (23) Providing personal care services. ~~and~~

71 ~~(24) (A) Establishing no more than six four-bed transitional intermediate care facilities:~~
72 ~~Provided, That none of the four-bed sites shall be within five miles of another or adjacent to~~
73 ~~another behavioral health facility. This subdivision terminates upon the approval of the sixth four-~~
74 ~~bed intermediate care facility.~~

75 ~~(B) Only individuals living in more restrictive institutional settings, in similar settings~~
76 ~~covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,~~
77 ~~and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD)~~
78 ~~Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List~~
79 ~~who live in a hospital or are in an out-of-state placement will continue to progress toward home-~~
80 ~~and community-based waiver status and will also be considered for all other community-based~~
81 ~~options, including, but not limited to, specialized family care and personal care.~~

82 ~~(C) The department shall work to find the most integrated placement based upon an~~
83 ~~individualized assessment. Individuals already on the IDD waiver will not be considered for~~
84 ~~placement in the 24 new intermediate care beds.~~

85 ~~(D) A monitoring committee of not more than 10 members, including a designee of~~
86 ~~Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the~~
87 ~~statewide Independent Living Council, two members or family of members of the IDD waiver, the~~
88 ~~Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health~~
89 ~~Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the~~
90 ~~Bureau for Children and Families. The secretary of the department shall chair the first meeting of~~
91 ~~the committee at which time the members shall elect a chairperson. The monitoring committee~~
92 ~~shall provide guidance on the department's transitional plans for residents in the 24 intermediate~~
93 ~~care facility beds and monitor progress toward home- and community-based waiver status and/or~~
94 ~~utilizing other community-based options and securing the most integrated setting for each~~
95 ~~individual.~~

96 ~~(E) Any savings resulting from individuals moving from more expensive institutional care or~~
97 ~~out-of-state placements shall be reinvested into home and community-based services for~~
98 ~~individuals with intellectual developmental disabilities.~~

99 (c) A certificate of need previously approved under this article remains in effect unless
100 revoked by the authority.

§16-2D-9. Health services that cannot be developed.

1 Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a
2 certificate of need but the authority may not issue a certificate of need to:

3 (1) A health care facility adding intermediate care or skilled nursing beds to its current
4 licensed bed complement, except as provided in §16-2D-11(c)(23) of this code;

5 (2) A person developing, constructing, or replacing a skilled nursing facility except in the
6 case of facilities designed to replace existing beds in existing facilities that may soon be deemed
7 unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to
8 meet the changing health care delivery system; and

9 ~~(3) Add beds in an intermediate care facility for individuals with an intellectual disability,~~
10 ~~except that prohibition does not apply to an intermediate care facility for individuals with intellectual~~
11 ~~disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil~~
12 ~~action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232~~
13 ~~(1981) including the 24 beds provided in §16-2D-8(b)(24) of this code; and~~

14 (4) An opioid treatment program.

§16-2D-11. Exemptions from Certificate of Need which require the submission of information to the authority.

1 (a) To obtain an exemption under this section a person shall:

2 (1) File an exemption application; and

3 (2) Provide a statement detailing which exemption applies and the circumstances justifying
4 the exemption.

5 (b) Notwithstanding section eight and ten and except as provided in section nine of this
6 article, the Legislature finds that a need exists and these health services are exempt from the
7 certificate of need process:

8 (1) The acquisition and utilization of one computed tomography scanner with a purchase
9 price up to \$750,000 that is installed in a private office practice where at minimum seventy-five
10 percent of the scans are performed on the patients of the practice. The private office practice shall
11 obtain and maintain accreditation from the American College of Radiology prior to, and at all times
12 during, the offering of this service. The authority may at any time request from the private office
13 practice information relating to the number of patients who have been provided scans and proof of
14 active and continuous accreditation from the American College of Radiology. If a physician owns
15 or operates a private office practice in more than one location, this exemption shall only apply to
16 the physician's primary place of business and if a physician wants to expand the offering of this
17 service to include more than one computed topography scanner, he or she shall be required to
18 obtain a certificate of need prior to expanding this service. All current certificates of need issued
19 for computed tomography services, with a required percentage threshold of scans to be performed
20 on patients of the practice in excess of seventy-five percent, shall be reduced to seventy-five
21 percent: *Provided*, That these limitations on the exemption for a private office practice with more
22 than one location shall not apply to a private office practice with more than twenty locations in the
23 state on April 8, 2017.

24 (2) (A) A birthing center established by a nonprofit primary care center that has a
25 community board and provides primary care services to people in their community without regard
26 to ability to pay; or

27 (B) A birthing center established by a nonprofit hospital with less than one hundred
28 licensed acute care beds.

29 (i) To qualify for this exemption, an applicant shall be located in an area that is underserved
30 with respect to low-risk obstetrical services; and

31 (ii) Provide a proposed health service area.

32 (3) (A) A health care facility acquiring major medical equipment, adding health services or
33 obligating a capital expenditure to be used solely for research;

34 (B) To qualify for this exemption, the health care facility shall show that the acquisition,
35 offering or obligation will not:

36 (i) Affect the charges of the facility for the provision of medical or other patient care
37 services other than the services which are included in the research;

38 (ii) Result in a substantial change to the bed capacity of the facility; or

39 (iii) Result in a substantial change to the health services of the facility.

40 (C) For purposes of this subdivision, the term "solely for research" includes patient care
41 provided on an occasional and irregular basis and not as part of a research program;

42 (4) The obligation of a capital expenditure to acquire, either by purchase, lease or
43 comparable arrangement, the real property, equipment or operations of a skilled nursing facility:
44 *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and
45 subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled
46 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been
47 in operation for at least ten years.

48 (5) Shared health services between two or more hospitals licensed in West Virginia
49 providing health services made available through existing technology that can reasonably be
50 mobile. This exemption does not include providing mobile cardiac catheterization;

51 (6) The acquisition, development or establishment of a certified interoperable electronic
52 health record or electronic medical record system;

53 (7) The addition of forensic beds in a health care facility;

54 (8) A behavioral health service selected by the department of ~~Health and Human~~
55 ~~Resources~~ in response to its request for application for services intended to return children

56 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-
57 state facilities is not subject to a certificate of need;

58 (9) The replacement of major medical equipment with like equipment, only if the
59 replacement major medical equipment cost is more than the expenditure minimum;

60 (10) Renovations within a hospital, only if the renovation cost is more than the expenditure
61 minimum. The renovations may not expand the health care facility's current square footage, incur
62 a substantial change to the health services, or a substantial change to the bed capacity;

63 (11) Renovations to a skilled nursing facility;

64 (12) The donation of major medical equipment to replace like equipment for which a
65 certificate of need has been issued and the replacement does not result in a substantial change to
66 health services. This exemption does not include the donation of major medical equipment made
67 to a health care facility by a related organization;

68 (13) A person providing specialized foster care personal care services to one individual
69 and those services are delivered in the provider's home;

70 (14) A hospital converting the use of beds except a hospital may not convert a bed to a
71 skilled nursing home bed and conversion of beds may not result in a substantial change to health
72 services provided by the hospital;

73 (15) The construction, renovation, maintenance or operation of a state owned veterans
74 skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

75 (16) To develop and operate a skilled nursing facility with no more than thirty-six beds in a
76 county that currently is without a skilled nursing facility;

77 (17) A critical access hospital, designated by the state as a critical access hospital, after
78 meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it
79 reopens within ten years of its closure;

80 (18) The establishing of a health care facility or offering of health services for children under
81 one year of age suffering from Neonatal Abstinence Syndrome;

82 (19) The construction, development, acquisition or other establishment of community
83 mental health and intellectual disability facility;

84 (20) Providing behavioral health facilities and services;

85 (21) The construction, development, acquisition or other establishment of kidney disease
86 treatment centers, including freestanding hemodialysis units but only to a medically underserved
87 population;

88 (22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
89 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
90 providing intermediate care and skilled nursing services. The department of ~~Health and Human~~
91 ~~Resources~~ may not create a policy which limits the transfer, purchase or sale of intermediate care
92 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care
93 hospital. The transferred beds shall retain the same certification status that existed at the nursing
94 home or hospital skilled nursing unit from which they were acquired. If construction is required to
95 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
96 year from the date of purchase to commence construction;

97 (23) The construction, development, acquisition or other establishment by a health care
98 facility of a nonhealth related project, only if the nonhealth related project cost is more than the
99 expenditure minimum;

100 (24) The construction, development, acquisition or other establishment of an alcohol or
101 drug treatment facility and drug and alcohol treatment services unless the construction,
102 development, acquisition or other establishment is an opioid treatment facility or programs as set
103 forth in subdivision (4) of section nine of this article;

104 (25) Assisted living facilities and services;

105 (26) The creation, construction, acquisition or expansion of a community-based nonprofit
106 organization with a community board that provides or will provide primary care services to people

107 without regard to ability to pay and receives approval from the Health Resources and Services
108 Administration; and

109 (27) The acquisition and utilization of one computed tomography scanner and/or one
110 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital; and,

111 (28) The creation, construction, acquisition or expansion of a specialized intermediate care
112 facility.

ARTICLE 5W. REGULATION OF BEHAVIORAL HEALTH.

§16-5W-1.

Definitions.

1 The following terms are defined for this article:

2 “Abuse” means the willful infliction of injury, unreasonable confinement, intimidation, or
3 punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the
4 deprivation by an individual, including a caretaker, of goods or services that are necessary to attain
5 or maintain physical, mental, and psychosocial wellbeing. Instances of abuse of all residents,
6 irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It
7 includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including abuse
8 facilitated or enabled through the use of technology. Willful, as used in this definition of abuse,
9 means the individual must have acted deliberately, not that the individual must have intended to
10 inflict injury or harm.

11 “Addiction” means a disease characterized by the individual’s pursuing reward, relief, or
12 both, by substance use or other behaviors. Addiction is characterized by impairment in behavioral
13 control, craving, inability to consistently abstain, and diminished recognition of significant
14 problems with one’s behaviors and interpersonal relationships; likely to involve cycles of relapse
15 and remission.

16 “Advocate” means a person or entity who has the authority via contract with the
17 department or authority via state or federal statutory authority or court ruling to monitor and

18 redress the care and treatment of persons with developmental, behavioral, and/or intellectual
19 disabilities at behavioral health centers.

20 “Behavioral Health Center” means a provider, entity, or facility that provides behavioral
21 health services, supports, or both.

22 “Behavioral disability” means a disability of a person which: (1) Is attributable to severe or
23 persistent mental illness, emotional disorder or chemical dependency; and (2) results in
24 substantial functional limitations in self-direction, capacity for independent living or economic self-
25 sufficiency.

26 “Behavioral Health Services” means a direct service provided as an inpatient, residential or
27 outpatient service to an individual with mental health, addictive, behavioral, or adaptive challenges
28 that is intended to improve or maintain functioning in the community. The service is designed to
29 provide treatment, habilitation, or rehabilitation.

30 “Developmental disability” means a chronic disability of a person which: (1) Is attributable
31 to a mental or physical impairment or combination of mental and physical impairments; (2) is likely
32 to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for
33 independent living or economic self-sufficiency; and (4) reflects the person’s need for a
34 combination and sequence of special, interdisciplinary or generic care, treatment or other services
35 which are of lifelong or extended duration and are individually planned and coordinated.

36 “Group residential facility” means a facility which is owned, leased or operated by a
37 behavioral health service provider and which: (1) Provides residential services and supervision for
38 individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a
39 residence by not more than eight individuals who are developmentally disabled and not more than
40 three supervisors or is occupied as a residence by not more than twelve individuals who are
41 behaviorally disabled and not more than three supervisors; (3) is licensed by the Department of
42 Health and Human Resources; and (4) complies with the state Fire Commission for residential
43 facilities.

44 "Group residential home" means a building owned or leased by developmentally disabled
45 or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral
46 health service provider may not lease a building to such persons if the provider is providing
47 services to the persons without a license as provided for in this article.

48 "Intermediate care facility" means a setting for individuals with intellectual disabilities or
49 distinct part of that:

50 (1) Is primarily for the diagnosis, treatment, or rehabilitation of the intellectually disabled or
51 persons with related conditions; and

52 (2) Provides, in a protected residential setting, ongoing evaluation, planning, 24-hour
53 supervision, coordination, and integration of health or rehabilitative services to help each
54 individual function at his greatest ability.

55 "Neglect" means the failure of the facility, its employees, or service providers to provide
56 goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish,
57 or emotional distress.

58 "Office of Health Facility Licensure and Certification" or "OHFLAC" means the West
59 Virginia Office of Health Facility Licensure & Certification.

60 "Protection and advocacy system" or "P&A" means the agency designated to serve as the
61 protection and advocacy system for the State of West Virginia as provided in 29 U.S.C. § 794e, 42
62 U.S.C. § 15041 et seq., and 42 U.S.C. § 10801 et seq., that has the express federal statutory
63 authority to receive information regarding and to investigate complaints involving suspected abuse
64 and neglect.

65 "Specialized intermediate care facility" means a Centers for Medicare and Medicaid
66 Services approved transitional setting that provides health-related services to individuals with
67 conditions that require services above the level of room and board, but do not require the degree of
68 services provided in a hospital or skilled-nursing facility. A facility may not be located within one

69 mile of a residential area, a public or private licensed day care center, or a public or private K-12
70 school.

71 “Supportive Service” means a service provided exclusively to individuals with intellectual
72 disabilities, developmental disabilities, ongoing mental health or addictive challenged, or traumatic
73 brain injury. This service is designed to assist the individual to live in the community in a manner
74 that is socially inclusive, optimally independent, and self-directed while preserving his or her
75 health, safety, and quality of life. These services are not designed to change behavior or emotional
76 functioning to support the individual in his or her community-based settings. Supportive services
77 may include coaching or prompting of age appropriate living skills.

§16-5W-2. Regulation of Behavioral Health Centers – Residential Settings.

1 A behavioral health center, may not provide residential behavioral health services unless a
2 license is first obtained from the Office of Health Facility Licensure and Certification. The Inspector
3 General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1
4 et seq., in regard to the operation of behavioral health centers – residential settings. The Inspector
5 General, or any person authorized by the Inspector General, has authority to investigate and
6 inspect any licensed behavioral health center – residential setting. The Inspector General may
7 impose a civil money penalty, or limit, deny, suspend, or revoke the license of any center for good
8 cause after reasonable notice, including due process rights as provided in legislative rule. The
9 Inspector General shall promulgate a rule to ensure adequate care, treatment, health, safety,
10 welfare, and comfort of patients at these facilities including, but not limited to, the process to be
11 followed by applicants seeking a license; provision of treatment; development of treatment plans
12 and discharge plans; management, operation, staffing and equipping of these facilities; clinical,
13 medical, patient, and business records kept by these facilities; procedures for inspections and for
14 review of utilization and quality of patient care; standards and procedures for the general operation
15 of these facilities including facility operations, physical operations, infection control requirements,

15 health and safety requirements and quality assurance; and such other standards or requirements
16 as the Inspector General determines are appropriate.

§16-5W-3. Regulation of Behavioral Health Centers – NonResidential Settings.

1 A behavioral health center, may not provide community based, nonresidential behavioral
2 health services unless a license is first obtained from the Office of Health Facility Licensure and
3 Certification. The director shall propose rules for legislative approval in accordance with the
4 provisions of §29A-3-1 et seq., in regard to the operation of behavioral health centers –
5 nonresidential settings. The Inspector General, or a person authorized by the Inspector General,
6 has authority to investigate and inspect any licensed behavioral health center – nonresidential
7 setting. The Inspector General may impose a civil money penalty, or limit, deny, suspend, or
8 revoke the license of any center for good cause after reasonable notice, including due process
9 rights as provided in legislative rule. The Inspector General shall a rule to ensure adequate care,
10 treatment, health, safety, welfare, and comfort of patients at these facilities including, but not
11 limited to, the process to be followed by applicants seeking a license and licensure fees and types;
12 provision of treatment; development of treatment plans and discharge plans; management,
13 operation, staffing and equipping of these facilities; clinical, medical, patient, and business records
14 kept by these facilities; procedures for inspections and for review of utilization and quality of
15 patient care; standards and procedures for the general operation of these facilities including
16 facility operations, physical operations, infection control requirements, health and safety
17 requirements and quality assurance; and such other standards or requirements as the Inspector
18 General determines are appropriate.

§16-5W-4. Inspection; inspection warrant; penalty.

1 (a) The Office of Health Facility Licensure and Certification shall inspect each behavioral
2 health center – residential setting annually, or as necessary, including a review of patient records,
3 to ensure that the facility complies with this article and the applicable rules.

4 (b) The Office of Health Facility Licensure and Certification shall inspect each behavioral
5 health center – nonresidential setting every two years, or as necessary, including a review of the
6 patient records, to ensure that the facility complies with this article and applicable rules.

7 (c) The Office of Health Facility Licensure and Certification shall perform unannounced
8 complaint and verification inspections at behavioral health centers – residential settings and
9 behavioral health centers – nonresidential settings.

10 (d) The Office of Health Facility Licensure and Certification may assess a fine on
11 residential or nonresidential settings up to \$100,000 and/or reduce bed capacity, as that term is
12 defined in §16-2D-2. The provisions of the subsection shall be included in legislative rule by the
13 director, in accordance with §29A-3-1, including when such fines or bed capacity reduction would
14 be issued.

15 (e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
16 may, in the manner provided by law, maintain an action in the name of the state for an inspection
17 warrant against any person, partnership, association, or corporation to allow any inspection or
18 seizure of records in order to complete any inspection allowed by this article or the rules
19 promulgated pursuant to this article.

§16-5W-5. Access to Consumers.

1 (a) An individual for whom the state is the guardian shall receive a visit by his or her
2 assigned caseworker by the agency at least once a month. Case workers and advocates shall
3 have unlimited access to consumers. The P&A shall have access to consumers, case workers,
4 records, and complaints in accordance with federal law.

5 (b) The mental health, long-term care and foster care ombudsman may investigate and
6 resolve complaints filed on behalf of individuals with IDD in any setting.

§16-5W-6. Reporting.

1 (a) The Office of the Inspector General shall send to county prosecutors any findings that
2 may be subject to criminal prosecution in cases of abuse and neglect with IDD. The Office of the

3 Inspector General shall send to the P&A the findings of any cases involving instances of
4 substantiated abuse or neglect involving a person with a developmental disability.

5 (b) An annual report shall be submitted to the Legislative Oversight Commission on Health
6 and Human Resources Accountability including:

7 (1) All instances where abuse and neglect cases involving IDD at any location has been
8 substantiated by the Office of the Inspector General.

9 (2) The county or region where the substantiated abuse or neglect occurred;

10 (2) The descriptive category of the abuse and neglect;

11 (3) The type of setting where the abuse and neglect occurred;

12 (4) Whether the abuse and neglect information was turned over to the county prosecutor
13 and law enforcement;

14 (5) The name of the provider, if the provider is involved, who is charged with the care of the
15 individual; and

16 (6) The age range and gender of the individual.

17 (c) In instances where abuse and/or neglect leads to the death of an individual, the
18 department shall send a letter, within 30 days after the findings where substantiated, to the Senate
19 President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above
20 about the case.

§16-5W-7. Independent Mental Health Ombudsman.

1 (a) (1) The Office of the Inspector General shall continue an independent mental health
2 ombudsman;

3 (2) The duties of the mental health ombudsman shall include, but are not limited to, the
4 following:

5 (A) Advocating for the well-being, treatment, safety, and rights of consumers of mental
6 health care facilities or psychiatric hospital;

7 (B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a
8 consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or
9 decisions of providers of mental and behavioral health, of public agencies, or social service
10 agencies, which may adversely affect the health, safety, welfare, and rights of a consumer of a
11 mental health care facility or psychiatric hospital; and

12 (C) Monitoring the development and implementation of federal, state, and local legislation,
13 regulations, and policies with respect to mental and behavioral health care and services;

14 (3) The mental health ombudsman shall participate in ongoing training programs related to
15 his or her duties or responsibilities;

16 (4)(A) Information relating to any investigation of a complaint that contains the identity of
17 the complainant or consumer shall remain confidential except:

18 (i) Where imminent risk of serious harm is communicated directly to the mental health
19 ombudsman or his or her staff; or

20 (ii) Where disclosure is necessary to the Office of Health Facility Licensure and
21 Certification in order for such office to determine the appropriateness of initiating an investigation
22 to determine facility compliance with applicable rules of licensure, certification, or both;

23 (B) The mental health ombudsman shall maintain confidentiality with respect to all matters
24 including the identities of complainants, witnesses, or others from whom information is acquired,
25 except insofar as disclosures may be necessary to enable the mental health care ombudsman to
26 carry out duties of the office or to support recommendations;

27 (C) All information, records, and reports received by or developed by the mental health
28 ombudsman program which relate to a consumer of a mental health care facility or psychiatric
29 hospital, including written material identifying a consumer are confidential, and are not subject to
30 the provisions of §29-1-1, et seq. of this code, and may not be disclosed or released by the mental
31 health ombudsman program, except under the circumstances enumerated in this section;

32 (D) Nothing in this section prohibits the preparation and submission by the mental health
33 ombudsman of statistical data and reports, as required to implement the provisions of this section
34 or any applicable federal law, exclusive of any material that identifies any consumer or
35 complainant; and

36 (E) The Inspector General shall have access to the records and files of the mental health
37 ombudsman program to verify its effectiveness and quality.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 8. ~~MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.~~

§27-8-2b. Local mental health programs — Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.

1 [Repealed.]

§27-8-3. Care of patients in boarding homes.

1 [Repealed.]

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from Secretary of Health and Human Resources; regulations.

1 [Repealed.]

ARTICLE 13. ~~LAWS REPEALED; SEVERABILITY.~~

§27-13-1. Laws repealed.

1 [Repealed.]

§27-13-2. Severability.

1 [Repealed.]

ARTICLE 16. ~~STERILIZATION OF MENTAL DEFECTIVES.~~

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

1 [Repealed.]

§27-17-2. Permitted use of group residential facilities; restrictions.

1 [Repealed.]

§27-17-3. License from Secretary of Health and Human Resources; regulations; and penalties.

1 [Repealed]

§27-17-4. Exclusion by private agreement void.

[Repealed]