

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 664

By Senator Taylor

[Introduced February 16, 2023; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to repeal §5-16-7e of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §5-16-1, §5-16-2, §5-16-3, §5-16-4, §5-16-5, §5-16-7, §5-16-7a, §5-16-7c, §5-16-7d, §5-
3 16-8, §5-16-9, §5-16-10, §5-16-11, §5-16-12, §5-16-12a, §5-16-13, §5-16-15, §5-16-16,
4 §5-16-17, §5-16-18, and §5-16-24 of said code; and to amend said code by adding thereto
5 a new article, designated §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6,
6 §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10, §5-16A-11, §5-16A-12, §5-16A-13, §5-16A-14,
7 §5-16A-15, §5-16A-16, §5-16A-17, §5-16A-18, §5-16A-19, and §5-16A-20, all relating
8 generally to the Public Employees Insurance Agency; providing for dissolution of the
9 Public Employees Insurance Agency; converting state agency to employer-owned mutual
10 insurance company; setting forth a short title; defining terms; clarifying the duties of the
11 director; providing for private carriers to insure public employees; providing for employees
12 of the agency to be exempt from provisions of civil service coverage; providing for
13 personnel provisions for employees laid off in first year of operation; providing for retraining
14 benefits for laid-off employees; providing for transfer of certain Public Employees
15 Insurance Agency functions, rights, responsibilities, employees and assets to the
16 Insurance Commissioner and the Public Employees Insurance Council; providing certain
17 civil remedies to commission, mutual company and private carriers; providing for transfer
18 of authority over certain funds to the Insurance Commissioner; providing for capital and
19 surplus requirements of employers' mutual insurance company; providing for election of a
20 board of directors of employers' mutual insurance company; providing for governance and
21 organization of the new mutual insurance company; providing for establishment of claims
22 index to assist insurers; providing for establishment and administration of certain funds
23 and accounts in the State Treasury; providing for adverse risk assignment plan; providing,
24 upon meeting of certain criteria, for issuance of proclamation by the Governor; providing
25 for preferential placement of any employee laid off after transfer of functions; providing
26 certain retraining and other benefits; providing for novation of policies to new employers

27 mutual insurance company; providing for requirements of a basic policy of public
 28 employees insurance; providing for setting of insurance rates; providing for collection of
 29 premiums; providing for transfer of rules to be applicable to the public employees
 30 insurance market; providing for transfer of certain assets to new mutual insurance
 31 company; providing for selection of finance board members by Governor; providing for a
 32 Public Employees Insurance Council; making technical corrections throughout; providing
 33 internal effective dates; providing for civil administrative and criminal penalties; and
 34 making conforming changes throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE PRIVATIZATION
ACT.

§5-16-1. Short title.; legislative intent.

1 ~~The short title by which this article may be referred to is "West Virginia Public Employees~~
 2 ~~Insurance Act" and it is the express intent of the Legislature to encourage and promote a uniform~~
 3 ~~partnership relation between all employers and employees participating in the insurance plan or~~
 4 ~~plans formulated under the provisions of this article and constituting the insurance program, and~~
 5 ~~to hereby declare such insurance program to be for a public purpose~~

6 This article shall be referred to as the West Virginia Public Employees Insurance
 7 Privatization Act.

§5-16-2. Definitions.

1 As used in this article:

2 "Agency" means the Public Employees Insurance Agency created by this article.

3 "Applied behavior analysis" means the design, implementation and evaluation of
 4 environmental modifications using behavioral stimuli and consequences in order to produce
 5 socially significant improvement in human behavior and includes the use of direct observation,

6 measurement and functional analysis of the relationship between environment and behavior.

7 "Autism spectrum disorder" means any pervasive developmental disorder including
8 autistic disorder, Asperger's Syndrome, Rett Syndrome, childhood disintegrative disorder or
9 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
10 Statistical Manual of Mental Disorders of the American Psychiatric Association.

11 "Certified behavior analyst" means an individual who is certified by the Behavior Analyst
12 Certification Board or certified by a similar nationally recognized organization.

13 "Clinical Trial" means a study that determines whether new drugs, treatments or medical
14 procedures are safe and effective on humans. To determine the efficacy of experimental drugs,
15 treatments or procedures, a study is conducted in four phases including the following:

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

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

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

24 "Cooperative group" means a formal network of facilities that collaborate on research
25 projects and have an established National Institute of Health (NIH)-approved peer review program
26 operating within the group. A cooperative group includes:

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

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

29 (C) The AIDS clinical trial group; and

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

31 (7) "Director" means the Director of the Public Employees Insurance Agency created by

32 this article.

33 "Emergency medical condition" means a condition that manifests itself by acute symptoms
34 of sufficient severity including severe pain such that the absence of immediate medical attention
35 could reasonably be expected to result in serious jeopardy to the individual's health or with respect
36 to a pregnant woman the health of the unborn child, serious impairment to bodily functions or
37 serious dysfunction of any bodily part or organ.

38 "Emergency medical condition for the prudent layperson" means one that manifests itself
39 by acute symptoms of sufficient severity, including severe pain, such that the person could
40 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the
41 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious
42 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

43 "Emergency services" means those services required to screen for or treat an emergency
44 medical condition until the condition is stabilized, including prehospital care;

45 "Employee" means any person, including an elected officer, who works regularly full time in
46 the service of the State of West Virginia and, for the purpose of this article only, the term
47 "employee" also means any person, including an elected officer, who works regularly full time in
48 the service of a county board of education; a county, city or town in the state; any separate
49 corporation or instrumentality established by one or more counties, cities or towns, as permitted by
50 law; any corporation or instrumentality supported in most part by counties, cities or towns; any
51 public corporation charged by law with the performance of a governmental function and whose
52 jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive
53 community mental health center or comprehensive mental retardation facility established,
54 operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of
55 this code and which is supported in part by state, county or municipal funds; any person who works
56 regularly full time in the service of the Higher Education Policy Commission, the West Virginia
57 Council for Community and Technical College Education or a governing board, as defined in §18B-

58 1-2 of this code; any person who works regularly full time in the service of a combined city-county
59 health department created pursuant to §16-2-1 et seq. of this code; any person designated as a
60 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a
61 long-term substitute as defined in §18A-1-1 of this code in the service of a county board of
62 education: *Provided*, That a long-term substitute who is continuously employed for at least 133
63 instructional days during an instructional term, and until the end of that instructional term, is eligible
64 for the benefits provided in this article until September 1, following that instructional term:
65 *Provided, however*, That a long-term substitute employed fewer than one 133 instructional days
66 during an instructional term is eligible for the benefits provided in this article only during such time
67 as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and
68 upon election by a county board of education to allow elected board members to participate in the
69 Public Employees Insurance Program pursuant to this article, any person elected to a county
70 board of education is considered to be an "employee" during the term of office of the elected
71 member. Upon election by the state Board of Education to allow appointed board members to
72 participate in the Public Employees Insurance Program pursuant to this article, any person
73 appointed to the state Board of Education is considered an "employee" during the term of office of
74 the appointed member: *Provided further*, That the elected member of a county board of education
75 and the appointed member of the state Board of Education shall pay the entire cost of the premium
76 if he or she elects to be covered under this article. Any matters of doubt as to who is an employee
77 within the meaning of this article shall be decided by the director.

78 On or after July 1, 1997, a person is considered an "employee" if that person meets the
79 following criteria:

- 80 (i) Participates in a job-sharing arrangement as defined in §18A-11 of this code;
81 (ii) Has been designated, in writing, by all other participants in that job-sharing
82 arrangement as the "employee" for purposes of this section; and
83 (iii) Works at least one third of the time required for a full-time employee.

84 "Employer" means the State of West Virginia, its boards, agencies, commissions,
85 departments, institutions or spending units; a county board of education; a county, city or town in
86 the state; any separate corporation or instrumentality established by one or more counties, cities
87 or towns, as permitted by law; any corporation or instrumentality supported in most part by
88 counties, cities or towns; any public corporation charged by law with the performance of a
89 governmental function and whose jurisdiction is coextensive with one or more counties, cities or
90 towns; any comprehensive community mental health center or comprehensive mental retardation
91 facility established, operated or licensed by the Secretary of Health and Human Resources
92 pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal
93 funds; a combined city-county health department created pursuant to §16-2-1 et seq. of this code;
94 and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a
95 21st Century Learner Fellow pursuant to §18-3-11 of this code but the corporation is not
96 considered an employer with respect to any employee other than a 21st Century Learner Fellow.
97 Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided
98 by the director. The term "employer" does not include within its meaning the National Guard.

99 "FDA" means the federal food and drug administration.

100 "Finance board" means the Public Employees Insurance Agency finance board created by
101 this article.

102 "Life-threatening condition" means that the member has a terminal condition or illness that
103 according to current diagnosis has a high probability of death within two years, even with treatment
104 with an existing generally accepted treatment protocol.

105 Medical screening examination" means an appropriate examination within the capability of
106 the hospital's emergency department, including ancillary services routinely available to the
107 emergency department, to determine whether or not an emergency medical condition exists; and

108 "Member" means a policyholder, subscriber, insured, certificate holder or a covered
109 dependent of a policyholder, subscriber, insured or certificate holder.

110 "Multiple project assurance contract" means a contract between an institution and the
111 federal Department of Health and Human Services that defines the relationship of the institution to
112 the federal Department of Health and Human Services and sets out the responsibilities of the
113 institution and the procedures that shall be used by the institution to protect human subjects.

114 "NIH" means the national institutes of health.

115 "Objective evidence" means standardized patient assessment instruments, outcome
116 measurements tools or measurable assessments of functional outcome. Use of objective
117 measures at the beginning of treatment, during and after treatment is recommended to quantify
118 progress and support justifications for continued treatment. The tools are not required but their
119 use will enhance the justification for continued treatment.

120 "Patient cost" means the routine costs of a medically necessary health care service that is
121 incurred by a member as a result of the treatment being provided pursuant to the protocols of the
122 clinical trial. Routine costs of a clinical trial include all items or services that are otherwise
123 generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

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

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

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

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

132 (E) Costs that would not be covered under the participant's policy, plan, or contract for
133 noninvestigational treatments;

134 (F) Adverse events during treatment are divided into those that reflect the natural history of
135 the disease, or its progression, and those that are unique in the experimental treatment. Costs for

136 the former are the responsibility of the payor as provided in §5-16-2 of this code, and costs for the
137 later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any
138 losses and injuries sustained by any member as a result of his or her participation in the clinical
139 trial.

140 "Person" means any individual, company, association, organization, corporation or other
141 legal entity, including, but not limited to, hospital, medical or dental service corporations; health
142 maintenance organizations or similar organization providing prepaid health benefits; or individuals
143 entitled to benefits under the provisions of this article.

144 "Plan", unless the context indicates otherwise, means the medical indemnity plan, the
145 managed care plan option or the group life insurance plan offered by the agency.

146 "Preexisting Condition" means an injury, or sickness, or any condition relating to that injury,
147 or sickness, for which a participant is diagnosed, receives treatment, or incurs expenses prior to
148 the effective date of coverage.

149 "Primary Coverage" means individual or group hospital and surgical insurance coverage or
150 individual or group major medical insurance coverage or group prescription drug coverage in
151 which the spouse or dependent is the named insured or certificate holder. For the purposes of this
152 section, "dependent" includes an eligible employee's unmarried child or stepchild under the age of
153 25 if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in
154 Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and
155 dependent primary coverage and shall adopt rules governing the nature, discontinuance and
156 resumption of any employee's coverage for his or her spouse and dependents.

157 "Prudent layperson" means a person who is without medical training and who draws on his
158 or her practical experience when making a decision regarding whether an emergency medical
159 condition exists for which emergency treatment should be sought;

160 "Retired employee" means an employee of the state who retired after April 29, 1971, and
161 an employee of the Higher Education Policy Commission, the Council for Community and

162 Technical College Education, a state institution of higher education or a county board of education
163 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after
164 the effective date of this article, meet the minimum eligibility requirements for their respective state
165 retirement system and whose last employer immediately prior to retirement under the state
166 retirement system is a participating employer in the state retirement system and in the Public
167 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who
168 are not covered by a state retirement system, but who are covered by a state-approved or state-
169 contracted retirement program or a system approved by the director, shall, in the case of education
170 employees, meet the minimum eligibility requirements of the state Teachers Retirement System
171 and in all other cases, meet the minimum eligibility requirements of the Public Employees
172 Retirement System and may participate in the Public Employees Insurance Agency as retired
173 employees upon terms as the director sets by rule as authorized in this article. Employers with
174 employees who are, or who are eligible to become, retired employees under this article shall be
175 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et*
176 *seq.* Nonstate employers may opt out of the West Virginia other post-employment benefits plan of
177 the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public
178 Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the
179 written certification, under oath, of an authorized officer of the employer that the employer has no
180 employees who are, or who are eligible to become, retired employees and that the employer will
181 defend and hold harmless the Public Employees Insurance Agency from any claim by one of the
182 employer's past, present or future employees for eligibility to participate in the Public Employees
183 Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance
184 Agency may not be liable in any respect to provide plan benefits to a retired employee of a
185 nonstate employer which has opted out of the West Virginia other post-employment benefits plan
186 of the Retiree Health Benefit Trust Fund pursuant to this section.

187 "Stabilize" means with respect to an emergency medical condition, to provide medical

188 treatment of the condition necessary to assure, with reasonable medical probability that no
189 medical deterioration of the condition is likely to result from or occur during the transfer of the
190 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or
191 otherwise delay the transportation required for a higher level of care than that possible at the
192 treating _____ facility.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage.

1 (a) The Public Employees Insurance Agency consists of the director, the Finance Board,
2 the Advisory Board and any employees who may be authorized by law. The director shall be
3 appointed by the Governor, with the advice and consent of the Senate, and serves at the will and
4 pleasure of the Governor. The director shall have at least three years' experience in health or
5 governmental health benefit administration as his or her primary employment duty prior to
6 appointment as director. The director shall receive actual expenses incurred in the performance of
7 official business. The director shall employ any administrative, technical and clerical employees
8 required for the proper administration of the programs provided in this article. The director shall
9 perform the duties that are required of him or her under the provisions of this article and is the
10 Chief Administrative Officer of the Public Employees Insurance Agency. The director may employ
11 a deputy director.

12 (b) Except for the director, his or her personal secretary, the deputy director and the chief
13 financial officer, all positions in the agency shall be included in the classified service of the civil
14 service system pursuant to §29-6-1 *et seq.* of this code except as provided in subsection (h) of this
15 section.

16 (c) The director is responsible for the administration and management of the Public
17 Employees Insurance Agency as provided in this article and in connection with his or her
18 responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in
19 section four or five of this article limits the director's ability to manage on a day-to-day basis the

20 group insurance plans required or authorized by this article, including, but not limited to,
21 administrative contracting, studies, analyses and audits, eligibility determinations, utilization
22 management provisions and incentives, provider negotiations, provider contracting and payment,
23 designation of covered and noncovered services, offering of additional coverage options or cost
24 containment incentives, pursuit of coordination of benefits and subrogation or any other actions
25 which would serve to implement the plan or plans designed by the Finance Board. The director is
26 to function as a benefits management professional and should avoid political involvement in
27 managing the affairs of the Public Employees Insurance Agency.

28 (d) The director may, if it is financially advantageous to the state, operate the Medicare
29 retiree health benefit plan offered by the agency based on a plan year that runs concurrent with the
30 calendar year. Financial plans as addressed in §5-16-5 this code article shall continue to be on a
31 fiscal-year basis.

32 (e) The director should make every effort to evaluate and administer programs to improve
33 quality, improve health status of members, develop innovative payment methodologies, manage
34 health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit-
35 based programs and adopt effective industry programs that can manage the long-term
36 effectiveness and costs for the programs at the Public Employees Insurance Agency to include,
37 but not be limited to:

38 (1) Increasing generic fill rates;

39 (2) Managing specialty pharmacy costs;

40 (3) Implementing and evaluating medical home models and health care delivery;

41 (4) Coordinating with providers, private insurance carriers and to the extent possible
42 Medicare to encourage the establishment of cost-effective accountable care organizations;

43 (5) Exploring and developing advanced payment methodologies for care delivery such as
44 case rates, capitation and other potential risk-sharing models and partial risk-sharing models for
45 accountable care organizations and/or medical homes;

46 (6) Adopting measures identified by the Centers for Medicare and Medicaid Services to
47 reduce cost and enhance quality;

48 (7) Evaluating the expenditures to reduce excessive use of emergency room visits,
49 imaging services and other drivers of the agency's medical rate of inflation;

50 (8) Recommending cutting-edge benefit designs to the Finance Board to drive behavior
51 and control costs for the plans;

52 (9) Implementing programs to encourage the use of the most efficient and high-quality
53 providers by employees and retired employees;

54 (10) Identifying employees and retired employees who have multiple chronic illnesses and
55 initiating programs to coordinate the care of these patients;

56 (11) Initiating steps by the agency to adjust payment by the agency for the treatment of
57 hospital acquired infections and related events consistent with the payment policies, operational
58 guidelines and implementation timetable established by the Centers of Medicare and Medicaid
59 Services. The agency shall protect employees and retired employees from any adjustment in
60 payment for hospital acquired infections; and

61 (12) Initiating steps by the agency to reduce the number of employees and retired
62 employees who experience avoidable readmissions to a hospital for the same diagnosis related
63 group illness within thirty days of being discharged by a hospital in this state or another state
64 consistent with the payment policies, operational guidelines and implementation timetable
65 established by the Centers of Medicare and Medicaid Services.

66 (f) The director shall issue an annual progress report to the Joint Committee on
67 Government and Finance on the implementation of any reforms initiated pursuant to this section
68 and other initiatives developed by the agency.

69 (g) Perform all of the duties set forth in §5-16A-1 et seq. of this code.

70 (h) Notwithstanding any provision of this code to the contrary, effective July 1, 2024, if the
71 agency has not been terminated or otherwise discontinued, all employees of the agency are

72 exempt and otherwise not under the jurisdiction of the provisions of the statutes and rules of the
 73 classified service set forth in §29A-6-1 et seq. of this code and §29-6A-1 et seq., and §5-16A-1 et
 74 seq. of this code and are afforded no protections, rights or access to procedures set forth in those
 75 provisions; instead, all agency employees are at-will employees unless that status is altered by an
 76 express, written employment contract executed on behalf of the agency and the employee. The
 77 agency and its employees also are exempt and otherwise not under the jurisdiction of the state
 78 personnel board, the Department of Personnel, or any other successor agency and their statutes
 79 and _____ rules.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

1 (a) If the company created in §5-16A-1 et seq. of this code is created and is operational,
 2 the ~~The Public Employees Insurance Agency Finance Board is continued~~ shall continue and
 3 consists of the Secretary of the Department of Administration or his or her designee, as a voting
 4 member, and 10 members appointed by the Governor, with the advice and consent of the Senate,
 5 for terms of four years and each may serve until his or her successor is appointed and qualified.
 6 Members may be reappointed for successive terms. No more than six members, including the
 7 Secretary of the Department of Administration, may be of the same political party. Effective July 1,
 8 ~~2017~~ 2024, members of the board shall satisfy the qualification requirements provided for by
 9 subsection (b) of this section: *Provided*, That any member serving upon the effective date of this
 10 section who does not satisfy a requirement of subsection (b) of this section may continue to serve
 11 until his or her successor has been appointed and qualified. The Governor shall make
 12 appointments necessary to satisfy the requirements of subsection (b) of this section to staggered
 13 terms as determined by the Governor.

14 (b) (1) Of the 10 members appointed by the Governor with advice and consent of the
 15 Senate:

16 (A) One member shall represent the interests of education employees. The member shall
17 hold a bachelor's degree, shall have obtained teacher certification, shall be employed as a teacher
18 for a period of at least three years prior to his or her appointment, and shall remain a teacher for
19 the duration of his or her appointment to remain eligible to serve on the board.

20 (B) One member shall represent the interests of public employees. The member shall be
21 employed to perform full- or part-time service for wages, salary, or remuneration for a public body
22 for a period of at least three years prior to his or her appointment and shall remain an employee of
23 a public body for the duration of his or her appointment to remain eligible to serve on the board.

24 (C) One member shall represent the interests of retired employees. The member shall
25 meet the definition of retired employee as provided in §5-16-2 of this code.

26 (D) One member shall represent the interests of a participating political subdivision. The
27 member shall have been employed by a political subdivision for a period of at least three years
28 prior to his or her appointment and shall remain an employee of a political subdivision for the
29 duration of his or her appointment to remain eligible to serve on the board. The member may not
30 be an elected official.

31 (E) One member shall represent the interests of hospitals. The member shall have been
32 employed by a hospital for a period of at least three years prior to his or her appointment and shall
33 remain an employee of a hospital for the duration of his or her appointment to remain eligible to
34 serve on the board.

35 (F) One member shall represent the interests of nonhospital health care providers. The
36 member shall have owned his or her nonhospital health care provider business for a period of at
37 least three years prior to his or her appointment and shall maintain ownership of his or her non-
38 hospital health care provider business for the duration of his or her appointment to remain eligible
39 to serve on the board.

40 (G) Four members shall be selected from the public at large, meeting the following
41 requirements:

42 (i) One member selected from the public at large shall generally have knowledge and
43 expertise relating to the financing, development, or management of employee benefit programs;

44 (ii) One member selected from the public at large shall have at least three years of
45 experience in the insurance benefits business;

46 (iii) One member selected from the public at large shall be a certified public accountant with
47 at least three years of experience with financial management and employee benefits program
48 experience; and

49 (iv) One member selected from the public at large shall be a health care actuary or certified
50 public accountant with at least three years of financial experience with the health care
51 marketplace.

52 (2) No member of the board may be a registered lobbyist.

53 (3) All appointments shall be selected to represent the different geographical areas within
54 the state and all members shall be residents of West Virginia. No member may be removed from
55 office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of
56 fiduciary duty, or other specific responsibility imposed by this article or gross immorality.

57 (c) The Secretary of the Department of Administration shall serve as chair of the finance
58 board, which shall meet at times and places specified by the call of the chair or upon the written
59 request to the chair by at least two members. The Director of the Public Employees Insurance
60 Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each
61 member by the director at least three days in advance of the meeting. Six members shall
62 constitute a quorum. The board shall pay each member the same compensation and expense
63 reimbursement that is paid to members of the Legislature for their interim duties for each day or
64 portion of a day engaged in the discharge of official duties.

65 (d) Upon termination of the board and notwithstanding any provisions of this article to the
66 contrary, the director is authorized to assess monthly employee premium contributions and to
67 change the types and levels of costs to employees only in accordance with this subsection. Any

68 assessments or changes in costs imposed pursuant to this subsection shall be implemented by
69 legislative rule proposed by the director for promulgation pursuant to §29A-3-1 *et seq.* of this code.
70 Any employee assessments or costs previously authorized by the finance board shall then remain
71 in effect until amended by rule of the director promulgated pursuant to this subsection.

72 (e) If the company set forth in §5-16A-1 *et seq.* of this code is created and operational then
73 the current agency shall continue to exist through June 30, 2024, at which time all powers and
74 duties to enforce any rules adopted by the agency are transferred to the Insurance Commissioner
75 or any other applicable state agency or division. If the company created in §5-16A-1 *et seq.* of this
76 code is not created or is not operational then the agency shall retain all powers and duties to
77 enforce the rules adopted by the agency until such time as the company created in §5-16A-1 *et*
78 *seq.* of this code is created and is operational.

**§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial
plan for following year; and annual financial plans.**

1 (a) The purpose of the finance board created by this article is to bring fiscal stability to the
2 Public Employees Insurance Agency through development of annual financial plans and long-
3 range plans designed to meet the agency's estimated total financial requirements, taking into
4 account all revenues projected to be made available to the agency and apportioning necessary
5 costs equitably among participating employers, employees and retired employees and providers
6 of health care services.

7 (b) The finance board shall retain the services of an impartial, professional actuary, with
8 demonstrated experience in analysis of large group health insurance plans, to estimate the total
9 financial requirements of the Public Employees Insurance Agency for each fiscal year and to
10 review and render written professional opinions as to financial plans proposed by the finance
11 board. The actuary shall also assist in the development of alternative financing options and
12 perform any other services requested by the finance board or the director. All reasonable fees and
13 expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any

14 financial plan or modifications to a financial plan approved or proposed by the finance board
15 pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally
16 approved and submitted to the Governor and to the Legislature without the actuary's written
17 professional opinion that the plan may be reasonably expected to generate sufficient revenues to
18 meet all estimated program and administrative costs of the agency, including incurred but
19 unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the
20 financial plan for each fiscal year shall allow for no more than 30 days of accounts payable to be
21 carried over into the next fiscal year. The actuary's opinion for any fiscal year shall may not include
22 a requirement for establishment of a reserve fund.

23 (c) All financial plans required by this section shall establish:

24 (1) Maximum levels of reimbursement which the Public Employees Insurance Agency
25 makes to categories of health care providers;

26 (2) Any necessary cost-containment measures for implementation by the director;

27 (3) The levels of premium costs to participating employers; and

28 (4) The types and levels of cost to participating employees and retired employees.

29 The financial plans may provide for different levels of costs based on the insureds' ability to
30 pay. The finance board may establish different levels of costs to retired employees based upon
31 length of employment with a participating employer, ability to pay or other relevant factors. The
32 financial plans may also include optional alternative benefit plans with alternative types and levels
33 of cost. The finance board may develop policies which encourage the use of West Virginia health
34 care providers.

35 In addition, the finance board may allocate a portion of the premium costs charged to
36 participating employers to subsidize the cost of coverage for participating retired employees, on
37 such terms as the finance board determines are equitable and financially responsible.

38 (d)(1) The finance board shall prepare an annual financial plan for each fiscal year during
39 which the finance board remains in existence. The finance board chairman shall request the

40 actuary to estimate the total financial requirements of the Public Employees Insurance Agency for
41 the fiscal year.

42 (2) The finance board shall prepare a proposed financial plan designed to generate
43 revenues sufficient to meet all estimated program and administrative costs of the Public
44 Employees Insurance Agency for the fiscal year. The proposed financial plan shall allow for no
45 more than thirty days of accounts payable to be carried over into the next fiscal year. Before final
46 adoption of the proposed financial plan, the finance board shall request the actuary to review the
47 plan and to render a written professional opinion stating whether the plan will generate sufficient
48 revenues to meet all estimated program and administrative costs of the Public Employees
49 Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If
50 the actuary concludes that the proposed financial plan will not generate sufficient revenues to
51 meet all anticipated costs, then the finance board shall make necessary modifications to the
52 proposed plan to ensure that all actuarially determined financial requirements of the agency will be
53 met.

54 (3) Upon obtaining the actuary's opinion, the finance board shall conduct one or more
55 public hearings in each congressional district to receive public comment on the proposed financial
56 plan, shall review the comments and shall finalize and approve the financial plan.

57 (4) Any financial plan shall be designed to allow 30 days or less of accounts payable to be
58 carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or her
59 estimate of total revenues to the finance board no later than October 15, of the preceding fiscal
60 year: *Provided*, That, for the prospective financial plans required by this section, the Governor
61 shall estimate the revenues available for each fiscal year of the plans based on the estimated
62 percentage of growth in general fund revenues. The finance board shall submit its final, approved
63 financial plan, after obtaining the necessary actuary's opinion and conducting one or more public
64 hearings in each congressional district, to the Governor and to the Legislature no later than
65 January 1, preceding the fiscal year. The financial plan for a fiscal year becomes effective and

66 shall be implemented by the director on July 1, of the fiscal year. In addition to each final,
67 approved financial plan required under this section, the finance board shall also simultaneously
68 submit financial statements based on generally accepted accounting practices (GAAP) and the
69 final, approved plan restated on an accrual basis of accounting, which shall include allowances for
70 incurred but not reported claims: *Provided, however,* That the financial statements and the
71 accrual-based financial plan restatement ~~shall~~ may not affect the approved financial plan.

72 (e) The provisions of chapter 29A of this code ~~shall not apply~~ are not applicable to the
73 preparation, approval and implementation of the financial plans required by this section.

74 (f) By January 1, of each year the finance board shall submit to the Governor and the
75 Legislature a prospective financial plan, for a period not to exceed five years, for the programs
76 provided in this article. Factors that the board shall consider include, but are not limited to, the
77 trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of
78 services; and specific information such as average age of employee population, active to retiree
79 ratios, the service delivery system and health status of the population.

80 (g) The prospective financial plans shall be based on the estimated revenues submitted in
81 accordance with subdivision (4), subsection (d) of this section and shall include an average of the
82 projected cost-sharing percentages of premiums and an average of the projected deductibles and
83 copays for the various programs. Beginning in the plan year which commences on July 1, 2002,
84 and in each plan year thereafter, until and including the plan year which commences on July 1,
85 2006, the prospective plans shall include incremental adjustments toward the ultimate level
86 required in this subsection, in the aggregate cost-sharing percentages of premium between
87 employers and employees, including the amounts of any subsidization of retired employee
88 benefits. Effective in the plan year commencing on July 1, 2006, and in each plan year thereafter,
89 the aggregate premium cost-sharing percentages between employers and employees, including
90 the amounts of any subsidization of retired employee benefits, shall be at a level of 80 percent for
91 the employer and 20 percent for employees, except for the employers provided in §5-16-18 (d) of

92 this code whose premium cost-sharing percentages shall be governed by that subsection. After
93 the submission of the initial prospective plan, the board may not increase costs to the participating
94 employers or change the average of the premiums, deductibles and copays for employees, except
95 in the event of a true emergency as provided in this section: *Provided*, That if the board invokes
96 the emergency provisions, the cost shall be borne between the employers and employees in
97 proportion to the cost-sharing ratio for that plan year: *Provided, however*, That for purposes of this
98 section, "emergency" means that the most recent projections demonstrate that plan expenses will
99 exceed plan revenues by more than one percent in any plan year: *Provided further*, That the
100 aggregate premium cost-sharing percentages between employers and employees, including the
101 amounts of any subsidization of retired employee benefits, may be offset, in part, by a legislative
102 appropriation for that purpose.

103 (h) The finance board shall meet on at least a quarterly basis to review implementation of
104 its current financial plan in light of the actual experience of the Public Employees Insurance
105 Agency. The board shall review actual costs incurred, any revised cost estimates provided by the
106 actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make
107 any additional modifications to the plan necessary to ensure that the total financial requirements of
108 the agency for the current fiscal year are met. The finance board may not increase the types and
109 levels of cost to employees during its quarterly review except in the event of a true emergency.

110 (i) For any fiscal year in which legislative appropriations differ from the Governor's estimate
111 of general and special revenues available to the agency, the finance board shall, within thirty days
112 after passage of the budget bill, make any modifications to the plan necessary to ensure that the
113 total financial requirements of the agency for the current fiscal year are met.

114 (j) Notwithstanding any provision of this code to the contrary on or after July 2024, the
115 finance board shall develop a plan to allow the insurance plans authorized pursuant to this article
116 to be sold and compete on the open insurance market. These plans shall continue to be sold on
117 the open insurance market until such time as the company created in §5-16A-1 et seq. of this

118 coder is created. The finance board shall submit an annual report on the financial soundness of
 119 continuing to compete on the open insurance market to the Joint Committee on Government and
 120 Finance by December 31 each year starting with December 2024. Any insurance plans sold
 121 pursuant to the authority of this section are subject to oversight of the Insurance Commission.

122 (k) If the company created in §5-16A-1 et seq. of this code is created and operational then
 123 the current agency shall continue to exist through June 30, 2024, at which time all powers and
 124 duties of to enforce rules are transferred to the Insurance Commissioner or any other applicable
 125 state agency or division. If the company created in §5-16A-1 et seq. of this code is not created or is
 126 not operational then the agency shall retain all powers and duties to enforce the rules adopted by
 127 the agency until such time as the company created in §5-16A-1 et seq. of this code is created and
 128 is _____ operational.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

1 (a) The agency or the company created pursuant to §5-16A-1 et seq. of this code shall
 2 establish a group hospital and surgical insurance plan or plans, a group prescription drug
 3 insurance plan or plans, a group major medical insurance plan or plans and a group life and
 4 accidental death insurance plan or plans for those employees herein made eligible and establish
 5 and promulgate rules for the administration of these plans subject to the limitations contained in
 6 this article. If the company created in §5-16A-1 et seq. of this code is created and operational then
 7 the current agency shall continue to exist through June 30, 2024, at which time all powers and
 8 duties to enforce rules are transferred to the insurance commissioner or any other applicable state
 9 agency or division. If the company created in §5-16A-1 et seq. of this code is not created or is not
 10 operational then the agency shall retain all powers and duties to enforce the rules adopted by the

11 agency until such time as the company created in §5-16A-1 et seq. of this code is created and is
12 operational. These plans shall include:

13 (1) Coverages and benefits for x-ray and laboratory services in connection with
14 mammograms when medically appropriate and consistent with current guidelines from the United
15 States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology,
16 whichever is medically appropriate, and consistent with the current guidelines from either the
17 United States Preventive Services Task Force or The American College of Obstetricians and
18 Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and
19 consistent with current guidelines from either the United States Preventive Services Task Force or
20 The American College of Obstetricians and Gynecologists, when performed for cancer screening
21 or diagnostic services on a woman age 18 or over;

22 (2) Annual checkups for prostate cancer in men age 50 and over;

23 (3) Annual screening for kidney disease as determined to be medically necessary by a
24 physician using any combination of blood pressure testing, urine albumin or urine protein testing
25 and serum creatinine testing as recommended by the National Kidney Foundation;

26 (4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed
27 health care facility for a mother and her newly born infant for the length of time which the attending
28 physician considers medically necessary for the mother or her newly born child. No plan may
29 deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or
30 prior to 96 hours following a caesarean section delivery if the attending physician considers
31 discharge medically inappropriate;

32 (5) For plans which provide coverages for post-delivery care to a mother and her newly
33 born child in the home, coverage for inpatient care following childbirth as provided in subdivision
34 (4) of this subsection if inpatient care is determined to be medically necessary by the attending
35 physician. These plans may include, among other things, medicines, medical equipment,
36 prosthetic appliances and any other inpatient and outpatient services and expenses considered

37 appropriate and desirable by the agency; and

38 (6) Coverage for treatment of serious mental illness:

39 (A) The coverage does not include custodial care, residential care or schooling. For
40 purposes of this section, "serious mental illness" means an illness included in the American
41 Psychiatric Association's diagnostic and statistical manual of mental disorders, as periodically
42 revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other
43 psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related
44 disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v)
45 anxiety disorders; and (vi) anorexia and bulimia. With regard to a covered individual who has not
46 yet attained the age of 19 years, "serious mental illness" also includes attention deficit
47 hyperactivity disorder, separation anxiety disorder and conduct disorder.

48 (B) Notwithstanding any other provision in this section to the contrary, if the agency or the
49 company created pursuant to §5-16A-1 et seq. of this code demonstrates that its total costs for the
50 treatment of mental illness for any plan exceeds two percent of the total costs for such plan in any
51 experience period, then the agency or the company created pursuant to §5-16A-1 et seq. of this
52 code may apply whatever additional cost-containment measures may be necessary in order to
53 maintain costs below two percent of the total costs for the plan for the next experience period.
54 These measures may include, but are not limited to, limitations on inpatient and outpatient
55 benefits.

56 (B)(C) The agency or the company created pursuant to §5-16A-1 et seq. of this code shall
57 may not discriminate between medical-surgical benefits and mental health benefits in the
58 administration of its plan. With regard to both medical-surgical and mental health benefits, it may
59 make determinations of medical necessity and appropriateness and it may use recognized health
60 care quality and cost management tools including, but not limited to, limitations on inpatient and
61 outpatient benefits, utilization review, implementation of cost-containment measures,
62 preauthorization for certain treatments, setting coverage levels, setting maximum number of visits

63 within certain time periods, using capitated benefit arrangements, using fee-for-service
64 arrangements, using third-party administrators, using provider networks and using patient cost
65 sharing in the form of copayments, deductibles and coinsurance. Additionally, the agency shall
66 comply with the financial requirements and quantitative treatment limitations specified in 45 CFR
67 146.136(c)(2) and (c)(3), or any successor regulation. The agency may not apply any
68 nonquantitative treatment limitations to benefits for behavioral health, mental health, and
69 substance use disorders that are not applied to medical and surgical benefits within the same
70 classification of benefits: *Provided*, That any service, even if it is related to the behavioral health,
71 mental health, or substance use diagnosis if medical in nature, shall be reviewed as a medical
72 claim and undergo all utilization review as applicable

73 (7) Coverage for general anesthesia for dental procedures and associated outpatient
74 hospital or ambulatory facility charges provided by appropriately licensed health care individuals in
75 conjunction with dental care if the covered person is:

76 (A) Seven years of age or younger or is developmentally disabled and is an individual for
77 whom a successful result cannot be expected from dental care provided under local anesthesia
78 because of a physical, intellectual or other medically compromising condition of the individual and
79 for whom a superior result can be expected from dental care provided under general anesthesia;

80 (B) A child who is 12 years of age or younger with documented phobias or with
81 documented mental illness and with dental needs of such magnitude that treatment should not be
82 delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of
83 teeth or other increased oral or dental morbidity and for whom a successful result cannot be
84 expected from dental care provided under local anesthesia because of such condition and for
85 whom a superior result can be expected from dental care provided under general anesthesia.

86 (8) (A) Any plan issued or renewed on or after January 1, 2012, shall include coverage for
87 diagnosis, evaluation and treatment of autism spectrum disorder in individuals ages 18 months to
88 18 years. To be eligible for coverage and benefits under this subdivision, the individual must be

89 diagnosed with autism spectrum disorder at age eight or younger. ~~Such~~ The plan shall provide
90 coverage for treatments that are medically necessary and ordered or prescribed by a licensed
91 physician or licensed psychologist and in accordance with a treatment plan developed from a
92 comprehensive evaluation by a certified behavior analyst for an individual diagnosed with autism
93 spectrum disorder.

94 (B) The coverage shall include, but not be limited to, applied behavior analysis which shall
95 be provided or supervised by a certified behavior analyst. The annual maximum benefit for
96 applied behavior analysis required by this subdivision shall be in an amount not to exceed \$30,000
97 per individual for three consecutive years from the date treatment commences. At the conclusion
98 of the third year, coverage for applied behavior analysis required by this subdivision shall be in an
99 amount not to exceed \$2,000 per month, until the individual reaches eighteen years of age, as
100 long as the treatment is medically necessary and in accordance with a treatment plan developed
101 by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the
102 individual. This subdivision does not limit, replace or affect any obligation to provide services to an
103 individual under the Individuals with Disabilities Education Act, 20 U. S. C. 1400 et seq., as
104 amended from time to time or other publicly funded programs. Nothing in this subdivision requires
105 reimbursement for services provided by public school personnel.

106 (C) The certified behavior analyst shall file progress reports with the agency semiannually.
107 In order for treatment to continue, the agency must receive objective evidence or a clinically
108 supportable statement of expectation that:

- 109 (i) The individual's condition is improving in response to treatment;
110 (ii) A maximum improvement is yet to be attained; and
111 (iii) There is an expectation that the anticipated improvement is attainable in a reasonable
112 and generally predictable period of time.

113 (D) On or before January 1 each year, the agency or the company created pursuant to §5-
114 16A-1 et seq. of this code shall file an annual report with the Joint Committee on Government and

115 Finance describing its implementation of the coverage provided pursuant to this subdivision. The
116 report shall include, but not be limited to, the number of individuals in the plan utilizing the
117 coverage required by this subdivision, the fiscal and administrative impact of the implementation
118 and any recommendations the agency may have as to changes in law or policy related to the
119 coverage provided under this subdivision. In addition, the agency or the company created
120 pursuant to §5-16A-1 et seq. of this code shall provide such other information as required by the
121 Joint Committee on Government and Finance as it may request.

122 (E) For purposes of this subdivision, the term:

123 (i) "Applied behavior analysis" means the design, implementation and evaluation of
124 environmental modifications using behavioral stimuli and consequences in order to produce
125 socially significant improvement in human behavior and includes the use of direct observation,
126 measurement and functional analysis of the relationship between environment and behavior.

127 (ii) "Autism spectrum disorder" means any pervasive developmental disorder including
128 autistic disorder, Asperger's Syndrome, Rett Syndrome, childhood disintegrative disorder or
129 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
130 Statistical Manual of Mental Disorders of the American Psychiatric Association.

131 (iii) "Certified behavior analyst" means an individual who is certified by the Behavior
132 Analyst Certification Board or certified by a similar nationally recognized organization.

133 (iv) "Objective evidence" means standardized patient assessment instruments, outcome
134 measurements tools or measurable assessments of functional outcome. Use of objective
135 measures at the beginning of treatment, during and after treatment is recommended to quantify
136 progress and support justifications for continued treatment. The tools are not required but their
137 use will enhance the justification for continued treatment.

138 (F) To the extent that the application of this subdivision for autism spectrum disorder
139 causes an increase of at least one percent of actual total costs of coverage for the plan year, the
140 agency may apply additional cost containment measures.

141 ~~(F)~~ (G) To the extent that the provisions of this subdivision require benefits that exceed the
142 essential health benefits specified under section 1302(b) of the Patient Protection and Affordable
143 Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified
144 essential health benefits may not be required of insurance plans offered by the Public Employees
145 Insurance Agency or the company created pursuant to §5-16A-1 et seq. of this code.

146 (9) For plans that include maternity benefits, coverage for the same maternity benefits for
147 all individuals participating in or receiving coverage under plans that are issued or renewed on or
148 after January 1, 2014: *Provided*, That to the extent that the provisions of this subdivision require
149 benefits that exceed the essential health benefits specified under section 1302(b) of the Patient
150 Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that
151 exceed the specified essential health benefits shall may not be required of a health benefit plan
152 when the plan is offered in this state.

153 (10) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019,
154 and that is subject to this section, shall provide coverage, through the age of 20, for amino acid-
155 based formula for the treatment of severe protein-allergic conditions or impaired absorption of
156 nutrients caused by disorders affecting the absorptive surface, function, length, and motility of the
157 gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder
158 by a physician licensed to practice in this state pursuant to either §30-3-1 et seq. or §30-14-1 et
159 seq. of this code:

160 (i) Immunoglobulin E and nonimmunoglobulin E-medicated allergies to multiple food
161 proteins;

162 (ii) Severe food protein-induced enterocolitis syndrome;

163 (iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

164 (iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface,
165 function, length, and motility of the gastrointestinal tract (short bowel).

166 (B) The coverage required by paragraph (A) of this subdivision shall include medical foods

167 for home use for which a physician has issued a prescription and has declared them to be
168 medically necessary, regardless of methodology of delivery.

169 (C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall
170 mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided*,
171 That these foods are specifically designated and manufactured for the treatment of severe allergic
172 conditions or short bowel.

173 (D) The provisions of this subdivision shall may not apply to persons with an intolerance for
174 lactose or soy.

175 (b) The agency or the company created pursuant to §5-16A-1 et seq. of this code shall,
176 with full authorization, make available to each eligible employee, at full cost to the employee, the
177 opportunity to purchase optional group life and accidental death insurance as established under
178 the rules of the agency. In addition, each employee is entitled to have his or her spouse and
179 dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to
180 the employee, for each eligible dependent.

181 (c) The finance board or the company created pursuant to §5-16A-1 et seq. of this code
182 may cause to be separately rated for claims experience purposes:

183 (1) All employees of the State of West Virginia;

184 (2) All teaching and professional employees of state public institutions of higher education
185 and county boards of education;

186 (3) All nonteaching employees of the Higher Education Policy Commission, West Virginia
187 Council for Community and Technical College Education and county boards of education; or

188 (4) Any other categorization which would ensure the stability of the overall program.

189 (d) The agency or the company created pursuant to §5-16A-1 et seq. of this code shall
190 maintain the medical and prescription drug coverage for Medicare eligible retirees by providing
191 coverage through one of the existing plans or by enrolling the Medicare eligible retired employees
192 into a Medicare specific plan, including, but not limited to, the Medicare/Advantage Prescription

193 Drug Plan. If a Medicare specific plan is no longer available or advantageous for the agency and
194 the retirees, the retirees remain eligible for coverage through the agency or the company created
195 pursuant to §5-16A-1 et seq. of this code.

196 (e) If the company created in §5-16A-1 et seq. of this code is created and operational any
197 group plan offered by the company shall be required to contain and provide coverage for all of the
198 provisions set forth in this section.

199 (e) (f) The agency shall establish procedures to authorize treatment with a nonparticipating
200 provider if a covered service is not available within established time and distance standards and
201 within a reasonable period after service is requested, and with the same coinsurance, deductible,
202 or copayment requirements as would apply if the service were provided at a participating provider,
203 and at no greater cost to the covered person than if the services were obtained at or from a
204 participating provider.

205 (f) (g) If the Public Employees Insurance Agency offers a plan that does not cover services
206 provided by an out-of-network provider, it may provide the benefits required in paragraph (A),
207 subdivision (6), subsection (a) of this section if the services are rendered by a provider who is
208 designated by and affiliated with the Public Employees Insurance Agency, and only if the same
209 requirements apply for services for a physical illness.

210 (g) (h) ~~In the event of~~ If there is a concurrent review for a claim for coverage of services for
211 the prevention of, screening for, and treatment of behavioral health, mental health, and substance
212 use disorders, the service continues to be a covered service until the Public Employees Insurance
213 Agency notifies the covered person of the determination of the claim.

214 (h) (i) Unless denied for nonpayment of premium, a denial of reimbursement for services
215 for the prevention of, screening for, or treatment of behavioral health, mental health, and
216 substance use disorders by the Public Employees Insurance Agency shall include the following
217 language:

218 (1) A statement explaining that covered persons are protected under this section, which

219 provides that limitations placed on the access to mental health and substance use disorder
220 benefits may be no greater than any limitations placed on access to medical and surgical benefits;

221 (2) A statement providing information about the internal appeals process if the covered
222 person believes his or her rights under this section have been violated; and

223 (3) A statement specifying that covered persons are entitled, upon request to the Public
224 Employees Insurance Agency, to a copy of the medical necessity criteria for any behavioral health,
225 mental health, and substance use disorder benefit.

226 (†) (j) On or after June 1, ~~2024~~ 2024, and annually thereafter, the Public Employees
227 Insurance Agency shall submit a written report to the Joint Committee on Government and
228 Finance that contains the following information regarding plans offered pursuant to this section:

229 (1) Data that demonstrates parity compliance for adverse determination regarding claims
230 for behavioral health, mental health, or substance use disorder services and includes the total
231 number of adverse determinations for such claims;

232 (2) A description of the process used to develop and select:

233 (A) The medical necessity criteria used in determining benefits for behavioral health,
234 mental health, and substance use disorders; and

235 (B) The medical necessity criteria used in determining medical and surgical benefits;

236 (3) Identification of all nonquantitative treatment limitations that are applied to benefits for
237 behavioral health, mental health, and substance use disorders and to medical and surgical
238 benefits within each classification of benefits; and

239 (4) The results of analyses demonstrating that, for medical necessity criteria described in
240 subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in
241 subdivision (3) of this subsection, as written and in operation, the processes, strategies,
242 evidentiary standards, or other factors used in applying the medical necessity criteria and each
243 nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance
244 use disorders within each classification of benefits are comparable to, and are applied no more

245 stringently than, the processes, strategies, evidentiary standards, or other factors used in applying
246 the medical necessity criteria and each nonquantitative treatment limitation to medical and
247 surgical benefits within the corresponding classification of benefits.

248 (5) The Public Employees Insurance Agency's report of the analyses regarding
249 nonquantitative treatment limitations shall include at a minimum:

250 (A) Identify factors used to determine whether a nonquantitative treatment limitation will
251 apply to a benefit, including factors that were considered but rejected;

252 (B) Identify and define the specific evidentiary standards used to define the factors and any
253 other evidence relied on in designing each nonquantitative treatment limitation;

254 (C) Provide the comparative analyses, including the results of the analyses, performed to
255 determine that the processes and strategies used to design each nonquantitative treatment
256 limitation, as written, and the written processes and strategies used to apply each nonquantitative
257 treatment limitation for benefits for behavioral health, mental health, and substance use disorders
258 are comparable to, and are applied no more stringently than, the processes and strategies used to
259 design and apply each nonquantitative treatment limitation, as written, and the written processes
260 and strategies used to apply each nonquantitative treatment limitation for medical and surgical
261 benefits;

262 (D) Provide the comparative analysis, including the results of the analyses, performed to
263 determine that the processes and strategies used to apply each nonquantitative treatment
264 limitation, in operation, for benefits for behavioral health, mental health, and substance use
265 disorders are comparable to, and are applied no more stringently than, the processes and
266 strategies used to apply each nonquantitative treatment limitation, in operation, for medical and
267 surgical benefits; and

268 (E) Disclose the specific findings and conclusions reached by the Public Employees
269 Insurance Agency that the results of the analyses indicate that each health benefit plan offered by
270 the Public Employees Insurance Agency complies with paragraph (B), subdivision (6), subsection

271 (a) of this section.

272 (6) After the initial report required by this subsection, annual reports are only required for
273 any year thereafter during which the Public Employees Insurance Agency makes significant
274 changes to how it designs and applies medical management protocols.

275 (j) (k) The Public Employees Insurance Agency shall update its annual plan document to
276 reflect its comprehensive parity compliance. An annual report shall also be filed with the Joint
277 Committee on Government and Finance and the Public Employees Insurance Agency Finance
278 Board.

279 (k) (l) This section is effective for policies, contracts, plans or agreements, beginning on or
280 after January 1, 2021. This section applies to all policies, contracts, plans, or agreements, subject
281 to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on
282 or after the effective date of this section.

**§5-16-7a. Additional mandated benefits; third party reimbursement for colorectal cancer
examination and laboratory testing.**

1 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement
2 applicable to this article, reimbursement or indemnification for colorectal cancer examinations and
3 laboratory testing may not be denied for any nonsymptomatic person 50 years of age or older, or a
4 symptomatic person under 50 years of age, when reimbursement or indemnity for laboratory or X
5 ray services are covered under the policy and are performed for colorectal cancer screening or
6 diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the
7 board of Medicine. The tests are as follows: An annual fecal occult blood test, a flexible
8 sigmoidoscopy repeated every five years, a colonoscopy repeated every 10 years and a double
9 contrast barium enema repeated every five years.

10 (b) A symptomatic person is defined as: (1) An individual who experiences a change in
11 bowel habits, rectal bleeding or stomach cramps that are persistent; or (2) an individual who poses
12 a higher than average risk for colorectal cancer because he or she has had colorectal cancer or

13 polyps, inflammatory bowel disease, or an immediate family history of such conditions.

14 (c) The same deductibles, coinsurance, network restrictions and other limitations for
 15 covered services found in the policy, provision, contract, plan or agreement of the covered person
 16 may apply to colorectal cancer examinations and laboratory testing.

17 (d) If the company created in §5-16A-1 et seq. of this code is created and operational any
 18 group plan offered by the company shall be required to contain and provide coverage for all of the
 19 provisions set forth in this section.

§5-16-7c. Required coverage for reconstruction surgery following mastectomies.

1 (a) The plan shall provide, in a case of a participant or beneficiary who is receiving benefits
 2 in connection with a mastectomy and who elects breast reconstruction in connection with such
 3 mastectomy, coverage for:

4 (1) All stages of reconstruction of the breast on which the mastectomy has been
 5 performed;

6 (2) Surgery and reconstruction of the other breast to produce a symmetrical appearance;
 7 and

8 (3) Prostheses and physical complications of mastectomy, including lymphedemas in a
 9 manner determined in consultation with the attending physician and the patient. Coverage shall be
 10 provided for a minimum stay in the hospital of not less than 48 hours for a patient following a
 11 radical or modified mastectomy and not less than 24 hours of inpatient care following a total
 12 mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer.

13 Nothing in this section shall may be construed as requiring inpatient coverage where inpatient
 14 coverage is not medically necessary or where the attending physician in consultation with the
 15 patient determines that a shorter period of hospital stay is appropriate. ~~Such~~ The coverage may
 16 be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and
 17 as are consistent with those established for other benefits under the plan. Written notice of the
 18 availability of such coverage shall be delivered to the participant upon enrollment and annually

19 thereafter in the summary plan description or similar document.

20 (b) The plan may not:

21 (1) Deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under
22 the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

23 (2) Penalize or otherwise reduce or limit the reimbursement of an attending provider, or
24 provide incentives (monetary or otherwise) to an attending provider, to induce such provider to
25 provide care to an individual participant or beneficiary in a manner inconsistent with this section.

26 (c) Nothing in this section shall may be construed to prevent a health benefit plan policy or
27 a health insurer offering health insurance coverage from negotiating the level and type of
28 reimbursement with a provider for care provided in accordance with this section.

29 (d) The provisions of this section shall be included under any policy, contract or plan
30 delivered after July 1, 2002.

31 (e) If the company created in §5-16A-1 et seq. of this code is created and operational any
32 group plan offered by the company shall be required to contain and provide coverage for all of the
33 provisions set forth in this section.

§5-16-7d. Coverage for patient cost of clinical trials.

1 (a) The provisions of this section and §5-16-7e of this code apply to the health plans
2 regulated by this article.

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

5 (c) A policy, plan or contract subject to this section shall provide coverage for patient cost to
6 a member in a clinical trial, as a result of:

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

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

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

10 (1)(A) The treatment is being provided or the studies are being conducted in a Phase II,

11 Phase III or Phase IV clinical trial for cancer and has therapeutic intent; or

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

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

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

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

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

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

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

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

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

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

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

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

33 (8) Reimbursement for treatment by an out of network or noncontracting provider shall be
34 reimbursed at a rate which is no greater than that provided by an in network or contracting
35 provider. Coverage ~~shall not be~~ is not required if the out of network or noncontracting provider will
36 not accept this level of reimbursement.

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

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

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

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

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

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

51 (h) If the company created in §5-16A-1 et seq. of this code is created and operational any
52 group plan offered by the company shall be required to contain and provide coverage for all of the
53 provisions set forth in this section.

§5-16-8. Conditions of insurance program.

1 The insurance plans provided for in this article shall be designed by the ~~Public Employees~~
2 ~~Insurance~~ agency or the company created pursuant to §5-16A-1 et seq. of this code:

3 (1) To provide a reasonable relationship between the hospital, surgical, medical and
4 prescription drug benefits to be included and the expected reasonable and customary hospital,
5 surgical, medical and prescription drug expenses as established by the director to be incurred by
6 the affected employee, his or her spouse and his or her dependents. The establishment of
7 reasonable and customary expenses by the ~~Public Employees Insurance agency~~ or the company
8 created pursuant to §5-16A-1 et seq. of this code pursuant to the preceding sentence is not

9 subject to the state administrative procedures act in chapter 29A of this code;

10 (2) To include reasonable controls which may include deductible and coinsurance
11 provisions applicable to some or all of the benefits, and shall include other provisions, including,
12 but not limited to, copayments, preadmission certification, case management programs and
13 preferred provider arrangements;

14 (3) To prevent unnecessary utilization of the various hospital, surgical, medical and
15 prescription drug services available;

16 (4) To provide reasonable assurance of stability in future years for the plans;

17 (5) To provide major medical insurance for the employees covered under this article;

18 (6) To provide certain group life and accidental death insurance for the employees covered
19 under this article;

20 (7) To include provisions for the coordination of benefits payable by the terms of the plans
21 with the benefits to which the employee, or his or her spouse or his or her dependents may be
22 entitled by the provisions of any other group hospital, surgical, medical, major medical, or
23 prescription drug insurance or any combination thereof;

24 (8) To provide a cash incentive plan for employees, spouses and dependents to increase
25 utilization of, and to encourage the use of, lower cost alternative health care facilities, health care
26 providers and generic drugs. The plan shall be reviewed annually by the director and the advisory
27 board or the company created pursuant to §5-16A-1 et seq. of this code;

28 (9) To provide "wellness" programs and activities which will include, but not be limited to,
29 benefit plan incentives to discourage tobacco, alcohol and chemical abuse and an educational
30 program to encourage proper diet and exercise. In establishing "wellness" programs, the Division
31 of Vocational Rehabilitation shall cooperate with the ~~Public Employees Insurance~~ agency in
32 establishing statewide wellness programs and the Division of Vocational Rehabilitation shall
33 continue to provide cooperation with the agency in connection with the "wellness" program until
34 the company established in §5-16A-1 et seq. of this code becomes operational. The director of the

35 ~~Public Employees Insurance~~ agency shall contract with county boards of education for the use of
36 facilities, equipment or any service related to that purpose. Boards of education may charge only
37 the cost of janitorial service and increased utilities for the use of the gymnasium and related
38 equipment. The cost of the exercise program shall be paid by county boards of education, the
39 ~~Public Employees Insurance~~ agency, or participating employees, their spouses or dependents. All
40 exercise programs shall be made available to all employees, their spouses or dependents and
41 ~~shall~~ may not be limited to employees of county boards of education;

42 (10) To provide a program, to be administered by the director or the company created
43 pursuant to §5-16A-1 et seq. of this code, for a patient audit plan with reimbursement up to a
44 maximum of \$1,000 annually, to employees for discovery of health care provider or hospital
45 overcharges when the affected employee brings the overcharge to the attention of the plan. The
46 hospital or health care provider shall certify to the director that it has provided, prior to or
47 simultaneously with the submission of the statement of charges for payments, an itemized
48 statement of the charges to the employee participant for which payment is requested of the plan;

49 (11) To require that all employers give written notice to each covered employee prior to
50 institution of any changes in benefits to employees, and to include appropriate penalty for any
51 employer not providing the required information to any employee; and

52 (12) (a) To provide coverage for emergency services under offered plans. For the
53 purposes of this subsection, "emergency services" means services provided in or by a hospital
54 emergency facility, an ambulance providing related services under the provisions of §16-4C-1 *et*
55 *seq.* of this code or the private office of a dentist to evaluate and treat a medical condition
56 manifesting itself by the sudden, and at the time, unexpected onset of symptoms that require
57 immediate medical attention and for which failure to provide medical attention would result in
58 serious impairment to bodily function, serious dysfunction to any bodily organ or part, or would
59 place the person's health in jeopardy.

60 (b) From July 1, 1998, plans shall provide coverage for emergency services, including any

61 prehospital services, to the extent necessary to screen and stabilize the covered person. The
62 plans shall reimburse, less any applicable copayments, deductibles, or coinsurance, for
63 emergency services rendered and related to the condition for which the covered person
64 presented. Prior authorization of coverage shall may not be required for the screening services if a
65 prudent layperson acting reasonably would have believed that an emergency medical condition
66 existed. Prior authorization of coverage shall may not be required for stabilization if an emergency
67 medical condition exists. ~~In the event that~~ If prior authorization was obtained, the authorization
68 may not be retracted after the services have been provided except when the authorization was
69 based on a material misrepresentation about the medical condition by the provider of the services
70 or the insured person. The provider of the emergency services and the plan representative shall
71 make a good faith effort to communicate with each other in a timely fashion to expedite
72 postevaluation or poststabilization services. Payment of claims for emergency services shall be
73 based on the retrospective review of the presenting history and symptoms of the covered person.

74 ~~(c) For purposes of this subdivision:~~

75 ~~(A) "Emergency services" means those services required to screen for or treat an~~
76 ~~emergency medical condition until the condition is stabilized, including prehospital care;~~

77 ~~(B) "Prudent layperson" means a person who is without medical training and who draws on~~
78 ~~his or her practical experience when making a decision regarding whether an emergency medical~~
79 ~~condition exists for which emergency treatment should be sought;~~

80 ~~(C) "Emergency medical condition for the prudent layperson" means one that manifests~~
81 ~~itself by acute symptoms of sufficient severity, including severe pain, such that the person could~~
82 ~~reasonably expect the absence of immediate medical attention to result in serious jeopardy to the~~
83 ~~individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious~~
84 ~~impairment to bodily functions; or serious dysfunction of any bodily organ or part;~~

85 ~~(D) "Stabilize" means with respect to an emergency medical condition, to provide medical~~
86 ~~treatment of the condition necessary to assure, with reasonable medical probability that no~~

87 ~~medical deterioration of the condition is likely to result from or occur during the transfer of the~~
 88 ~~individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or~~
 89 ~~otherwise delay the transportation required for a higher level of care than that possible at the~~
 90 ~~treating facility;~~

91 ~~(E) "Medical screening examination" means an appropriate examination within the~~
 92 ~~capability of the hospital's emergency department, including ancillary services routinely available~~
 93 ~~to the emergency department, to determine whether or not an emergency medical condition~~
 94 ~~exists; and~~

95 ~~(F) "Emergency medical condition" means a condition that manifests itself by acute~~
 96 ~~symptoms of sufficient severity including severe pain such that the absence of immediate medical~~
 97 ~~attention could reasonably be expected to result in serious jeopardy to the individual's health or~~
 98 ~~with respect to a pregnant woman the health of the unborn child, serious impairment to bodily~~
 99 ~~functions or serious dysfunction of any bodily part or organ~~

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

1 ~~(a) The director is hereby given exclusive authorization to may execute such contract or~~
 2 ~~contracts as are necessary to carry out the provisions of this article and to provide the plan or plans~~
 3 ~~of group hospital and surgical insurance coverage, group major medical insurance coverage,~~
 4 ~~group prescription drug insurance coverage and group life and accidental death insurance~~
 5 ~~coverage selected in accordance with the provisions of this article, such contract or contracts to be~~
 6 ~~executed with one or more agencies, corporations, insurance companies or service organizations~~
 7 ~~licensed to sell group hospital and surgical insurance, group major medical insurance, group~~
 8 ~~prescription drug insurance and group life and accidental death insurance in this state.~~

9 (b) The group hospital or surgical insurance coverage and group major medical insurance
10 coverage herein provided shall include coverages and benefits for X ray and laboratory services in
11 connection with mammogram and pap smears when performed for cancer screening or diagnostic
12 services and annual checkups for prostate cancer in men age fifty and over. ~~Such~~ The benefits
13 shall include, but not be limited to, the following:

14 (1) Mammograms when medically appropriate and consistent with the current guidelines
15 from the United States Preventive Services Task Force;

16 (2) A pap smear, either conventional or liquid-based cytology, whichever is medically
17 appropriate and consistent with the current guidelines from the United States Preventive Services
18 Task Force or The American College of Obstetricians and Gynecologists, for women age 18 and
19 over;

20 (3) A test for the human papilloma virus (HPV) for women age eighteen or over, when
21 medically appropriate and consistent with the current guidelines from either the United States
22 Preventive Services Task Force or The American College of Obstetricians and Gynecologists for
23 women age eighteen and over;

24 (4) A checkup for prostate cancer annually for men age 50 or over; and

25 (5) Annual screening for kidney disease as determined to be medically necessary by a
26 physician using any combination of blood pressure testing, urine albumin or urine protein testing
27 and serum creatinine testing as recommended by the National Kidney Foundation.

28 (6) Coverage for general anesthesia for dental procedures and associated outpatient
29 hospital or ambulatory facility charges provided by appropriately licensed healthcare individuals in
30 conjunction with dental care if the covered person is:

31 (A) Seven years of age or younger or is developmentally disabled and is either an
32 individual for whom a successful result cannot be expected from dental care provided under local
33 anesthesia because of a physical, intellectual or other medically compromising condition of the
34 individual and for whom a superior result can be expected from dental care provided under general

35 anesthesia; or

36 (B) A child who is 12 years of age or younger with documented phobias, or with
37 documented mental illness, and with dental needs of such magnitude that treatment should not be
38 delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of
39 teeth or other increased oral or dental morbidity and for whom a successful result cannot be
40 expected from dental care provided under local anesthesia because of such condition and for
41 whom a superior result can be expected from dental care provided under general anesthesia.

42 (7) (A) A policy, plan, or contract that is issued or renewed on or after January 1, 2019, and
43 that is subject to this section, shall provide coverage, through the age of 20, for amino acid-based
44 formula for the treatment of severe protein-allergic conditions or impaired absorption of nutrients
45 caused by disorders affecting the absorptive surface, function, length, and motility of the
46 gastrointestinal tract. This includes the following conditions, if diagnosed as related to the disorder
47 by a physician licensed to practice in this state pursuant to either §30-3-1 *et seq.* or §30-14-1 *et*
48 *seq.* of this code:

49 (i) Immunoglobulin E and Nonimmunoglobulin E-medicated allergies to multiple food
50 proteins;

51 (ii) Severe food protein-induced enterocolitis syndrome;

52 (iii) Eosinophilic disorders as evidenced by the results of a biopsy; and

53 (iv) Impaired absorption of nutrients caused by disorders affecting the absorptive surface,
54 function, length, and motility of the gastrointestinal tract (short bowel).

55 (B) The coverage required by §5-16-9(b)(7)(A) of this code shall include medical foods for
56 home use for which a physician has issued a prescription and has declared them to be medically
57 necessary, regardless of methodology of delivery.

58 (C) For purposes of this subdivision, "medically necessary foods" or "medical foods" shall
59 mean prescription amino acid-based elemental formulas obtained through a pharmacy: *Provided,*
60 That these foods are specifically designated and manufactured for the treatment of severe allergic

61 conditions or short bowel.

62 (D) The provisions of this subdivision shall may not apply to persons with an intolerance for
63 lactose or soy.

64 (c) The group life and accidental death insurance herein provided shall be in the amount of
65 \$10,000 for every employee. The amount of the group life and accidental death insurance to
66 which an employee would otherwise be entitled shall be reduced to \$5,000 upon such employee
67 attaining age 65.

68 (d) All of the insurance coverage to be provided for under this article may be included in
69 one or more similar contracts issued by the same or different carriers.

70 (e) The provisions of §5A-3-1 *et seq.* of this code, relating to the Division of Purchasing of
71 the Department of Finance and Administration, shall may not apply to any contracts for any
72 insurance coverage or professional services authorized to be executed under the provisions of
73 this article. Before entering into any contract for any insurance coverage, as authorized in this
74 article, the director shall invite competent bids from all qualified and licensed insurance companies
75 or carriers, who may wish to offer plans for the insurance coverage desired: *Provided*, That the
76 director shall negotiate and contract directly with health care providers and other entities,
77 organizations and vendors in order to secure competitive premiums, prices and other financial
78 advantages. The director shall deal directly with insurers or health care providers and other
79 entities, organizations and vendors in presenting specifications and receiving quotations for bid
80 purposes. No commission or finder's fee, or any combination thereof, shall may be paid to any
81 individual or agent; but this shall may not preclude an underwriting insurance company or
82 companies, at their own expense, from appointing a licensed resident agent, within this state, to
83 service the companies' contracts awarded under the provisions of this article. Commissions
84 reasonably related to actual service rendered for the agent or agents may be paid by the
85 underwriting company or companies: *Provided, however*, That in no event shall may payment be
86 made to any agent or agents when no actual services are rendered or performed. The director

87 shall award the contract or contracts on a competitive basis. In awarding the contract or contracts
88 the director shall take into account the experience of the offering agency, corporation, insurance
89 company or service organization in the group hospital and surgical insurance field, group major
90 medical insurance field, group prescription drug field and group life and accidental death
91 insurance field, and its facilities for the handling of claims. In evaluating these factors, the director
92 may employ the services of impartial, professional insurance analysts or actuaries or both. Any
93 contract executed by the director with a selected carrier shall be a contract to govern all eligible
94 employees subject to the provisions of this article. Nothing contained in this article shall may
95 prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional
96 hospital and surgical, major medical or life and accidental death insurance coverage.

97 (f) The director may authorize the carrier with whom a primary contract is executed to
98 reinsure portions of the contract with other carriers which elect to be a reinsurer and who are
99 legally qualified to enter into a reinsurance agreement under the laws of this state.

100 (g) Each employee who is covered under any contract or contracts shall receive a
101 statement of benefits to which the employee, his or her spouse and his or her dependents are
102 entitled under the contract, setting forth the information as to whom the benefits are payable, to
103 whom claims shall be submitted and a summary of the provisions of the contract or contracts as
104 they affect the employee, his or her spouse and his or her dependents.

105 (h) The director may at the end of any contract period discontinue any contract or contracts
106 it has executed with any carrier and replace the same with a contract or contracts with any other
107 carrier or carriers meeting the requirements of this article.

108 (i) The director shall provide by contract or contracts entered into under the provisions of
109 this article the cost for coverage of children's immunization services from birth through age 16
110 years to provide immunization against the following illnesses: Diphtheria, polio, mumps, measles,
111 rubella, tetanus, hepatitis-b, hemophilia influenzae-b and whooping cough. Additional
112 immunizations may be required by the Commissioner of the Bureau for Public Health for public

113 health purposes. Any contract entered into to cover these services shall require that all costs
114 associated with immunization, including the cost of the vaccine, if incurred by the health care
115 provider, and all costs of vaccine administration be exempt from any deductible, per visit charge
116 and/or copayment provisions which may be in force in these policies or contracts. This section
117 does not require that other health care services provided at the time of immunization be exempt
118 from any deductible and/or copayment provisions.

119 (j) The director shall include language in all contracts for pharmacy benefits management,
120 as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to
121 the agency the following:

122 (1) The overall total amount charged to the agency for all claims processed by the
123 pharmacy benefit manager during the quarter;

124 (2) The overall total amount of reimbursements paid to pharmacy providers during the
125 quarter;

126 (3) The overall total number of claims in which the pharmacy benefits manager reimbursed
127 a pharmacy provider for less than the amount charged to the agency for all claims processed by
128 the pharmacy benefit manager during the quarter; and

129 (4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim,
130 including, but not limited to, the following:

131 (A) The cost of drug reimbursement;

132 (B) Dispensing fees;

133 (C) Copayments; and

134 (D) The amount charged to the agency for each claim by the pharmacy benefit manager.

135 In the event there is a difference between the amount for any pharmacy claim paid to the
136 pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall
137 report an itemization of all administrative fees, rebates, or processing charges associated with the
138 claim. All data and information provided by the pharmacy benefit manager shall be kept secure,

139 and notwithstanding any other provision of this code to the contrary, the agency shall maintain the
140 confidentiality of the proprietary information and not share or disclose the proprietary information
141 contained in the report or data collected with persons outside the agency. All data and information
142 provided by the pharmacy benefit manager shall be considered proprietary and confidential and
143 exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-
144 4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing
145 the data for the purpose of preparing the report provided for herein shall have access to the
146 proprietary data. The director shall provide a quarterly report to the Joint Committee on
147 Government and Finance and the Joint Committee on Health detailing the information required by
148 this section, including any difference or spread between the overall amount paid by pharmacy
149 benefit managers to the pharmacy providers and the overall amount charged to the agency for
150 each claim by the pharmacy benefit manager. To the extent necessary, the director shall use
151 aggregated, nonproprietary data only: *Provided*, That the director must provide a clear and
152 concise summary of the total amounts charged to the agency and reimbursed to pharmacy
153 providers on a quarterly basis.

154 (k) If the information required herein is not provided, the agency may terminate the contract
155 with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline
156 the pharmacy benefit manager as provided in §33-51-8(e) of this code.

**§5-16-10. Contract provisions for group hospital and surgical, group major medical, group
prescription drug and group life and accidental death insurance for retired
employees, their spouses and dependents.**

1 Any contract or contracts entered into hereunder may provide for group hospital and
2 surgical, group major medical, group prescription drug and group life and accidental death
3 insurance for retired employees and their spouses and dependents as defined by rules and
4 regulations of the ~~Public Employees Insurance~~ agency, and on such terms as the director may
5 deem appropriate.

6 ~~In the event~~ If the ~~Public Employees Insurance~~ agency provides the above benefits for
 7 retired employees, their spouses and dependents, the ~~Public Employees Insurance~~ agency shall
 8 adopt rules ~~and regulations~~ prescribing the conditions under which retired employees may elect to
 9 participate in or withdraw from the plan or plans. Any contract or contracts herein provided for
 10 shall be secondary to any hospital, surgical, major medical, prescription drug or other health
 11 insurance plan administered by the United States Department of Health and Human Services to
 12 which the retired employee, spouse or dependent may be eligible under any law or regulation of
 13 the United States. If an employee, eligible to participate in the ~~Public Employees Insurance~~
 14 agency plans, is also eligible to participate in the state Medicaid program, and chooses to do so,
 15 then the ~~Public Employees Insurance~~ agency may transfer to the Medicaid program funds to pay
 16 the required state share of such employee's participation in Medicaid except that the amount
 17 transferred may not exceed the amount that would be allocated by the agency to subsidize the
 18 cost of coverage for the retired employee if he or she were enrolled in the public employee
 19 insurance agency's plans.

§5-16-11. To whom benefits paid.

1 Any benefits payable under any group hospital and surgical, group major medical and
 2 group prescription drug plan or plans may be paid either directly to the attending physician,
 3 hospital, medical group, or other person, firm, association or corporation furnishing the service
 4 upon which the claim is based, or to the insured upon presentation of valid bills for such service,
 5 subject to such provisions designed to facilitate payments as may be made by the director or the
 6 company created pursuant to §5-16A-1 et seq. of this code.

§5-16-12. Misrepresentation by employer, employee or provider; penalty.

- 1 (a) It ~~shall be~~ is a violation of this article for any person to:
- 2 (1) Knowingly secure or attempt to secure benefits payable under this article to which they
 3 are not entitled;
- 4 (2) Knowingly secure or attempt to secure greater benefits than those to which the person

5 is entitled;

6 (3) Willfully misrepresent the presence or extent of benefits to which the person is entitled
7 under a collateral insurance source;

8 (4) Willfully misrepresent any material fact relating to any other information requested by
9 the director or the company created pursuant to §5-16A-1 et seq. of this code;

10 (5) Willfully overcharge for services provided; or

11 (6) Willfully misrepresent a diagnosis or nature of the service provided.

12 Any person who has violated any of the foregoing provisions shall be civilly liable for the
13 amount of benefits, overpayment or other sums improperly received in addition to any other relief
14 available in a court of competent jurisdiction.

15 (b) If, after notice and an administrative proceeding, it is determined the person has
16 violated the article, the person is liable for any overpayment received. The director or the company
17 created pursuant to §5-16A-1 et seq. of this code shall withhold and set off any payment of any
18 benefits or other payment due to that person until any overpayment is recovered.

19 (c) In addition to any civil liability for a violation pursuant to subsection (a) of this section,
20 any person who knowingly secures or attempts to secure benefits payable under this article, or
21 knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully
22 misrepresenting or aiding in the misrepresentation of any material fact relating to employment,
23 diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not
24 more than \$1,000, imprisoned in a state correctional facility for not less than one nor more than
25 five years, or both. Errors in coding for billing purposes ~~shall~~ may not be considered a violation of
26 this subsection absent other evidence of willful wrongdoing.

27 (d) Any person who violates any provision of this article which results in a loss to, or
28 overpayment from, the plan, or to the State of West Virginia of less than \$1,000, and for which no
29 other penalty is specifically provided, is guilty of a misdemeanor and, upon conviction thereof, is
30 subject to a fine of not less than \$100 but not more than \$500, or ~~imprisonment~~ confinement in jail

31 for a period of not less than 24 hours but not more than 15 days, or both fined and confined. Any
 32 person who violates any provision of this article which results in a loss to, or overpayment from, the
 33 plan or the State of West Virginia of \$1,000 or more, and for which no other penalty is specifically
 34 provided, is guilty of a felony and, upon conviction thereof, is subject to a fine of not less than
 35 \$1,000 but not more than \$5,000, or imprisonment in a state correctional facility for a period of not
 36 less than one nor more than five years, or both fined and imprisoned.

§5-16-12a. Inspections; violations and penalties.

1 (a) Employers and employees participating in any of the ~~Public Employees Insurance~~
 2 agency plans shall provide, to the director or the company created pursuant to §5-16A-1 et seq. of
 3 this code, upon request, all documentation reasonably required for the director or the company
 4 created pursuant to §5-16A-1 et seq. of this code to discharge the responsibilities under this
 5 article. This documentation includes, but is not limited to, employment or eligibility records
 6 sufficient to verify actual full-time employment and eligibility of employees who participate in the
 7 ~~Public Employees Insurance~~ agency plans.

8 (b) Upon a determination of the director or his or her designated representative, or the
 9 company created pursuant to §5-16A-1 et seq. of this code that there is probable cause to believe
 10 that fraud, abuse or other illegal activities involving transactions with the agency has occurred, the
 11 director or his or her designated representative, or the company created pursuant to §5-16A-1 et
 12 seq. of this code ~~is authorized to~~ may refer the alleged violations to the Insurance Commissioner
 13 for investigation and, if appropriate, prosecution, pursuant to §33-41-1 et seq. of this code. For
 14 purposes of this section, "transactions with the agency" includes, but is not limited to, application
 15 by any insured or dependent, any employer or any type of health care provider for payment to be
 16 made to that person or any third party by the agency.

17 (c) The ~~Public Employees Insurance~~ agency ~~is authorized~~ may through administrative
 18 proceeding to recover any benefits or claims paid to or for any employee, or their dependents, who
 19 obtained or received benefits through fraud. The ~~Public Employees Insurance~~ agency is also

20 authorized through administrative proceeding to recover any funds due from an employer that
21 knowingly allowed or provided benefits or claims to be fraudulently paid to an employee or
22 dependents.

23 (d) For the purpose of any investigation or proceeding under this article, the director or any
24 officer designated by him or her, or the company created pursuant to §5-16A-1 et seq. of this code
25 may administer oaths and affirmations, issue administrative subpoenas, take evidence, and
26 require the production of any books, papers, correspondences, memoranda, agreements or other
27 documents or records which may be relevant or material to the inquiry.

28 (1) Administrative subpoenas shall be served by personal service by a person over the age
29 of 18, or by registered or certified mail addressed to the entity or person to be served at his or her
30 residence, principal office or place of business. Proof of service, when necessary, shall be made
31 by a return completed by the person making service, or in the case of registered or certified mail,
32 ~~such~~ the return shall be accompanied by the post office receipt of delivery of the subpoena. A party
33 requesting the administrative subpoena is responsible for service and payment of any fees for
34 service. Any person who serves the administrative subpoena pursuant to this section is entitled to
35 the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

36 (2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for
37 witnesses before the circuit courts of this state. All such fees related to any administrative
38 subpoena issued at the request of a party to an administrative proceeding shall be paid by the
39 requesting party. All requests by parties for administrative subpoenas shall be in writing and shall
40 contain a statement acknowledging that the requesting party agrees to pay such fees.

41 (3) In case of disobedience or neglect of any administrative subpoena served, or the
42 refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or to
43 produce documents subpoenaed, the circuit court of the county in which the hearing is being held,
44 or the judge thereof in vacation, upon application by the director, may compel obedience by
45 attachment proceedings for contempt as in the case of disobedience of the requirements of a

46 subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.
 47 Witnesses at such hearings shall testify under oath or affirmation.

48 (e) Only authorized employees or agents shall have access to confidential data or systems
 49 and applications containing confidential data within the Public Employees Insurance Agency.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

1 (a) *Cost-sharing*. -- The director or the company created pursuant to §5-16A-1 et seq. of
 2 this code shall provide under any contract or contracts entered into under the provisions of this
 3 article or §5-16A-1 et seq. of this code, that the costs of any group hospital and surgical insurance,
 4 group major medical insurance, group prescription drug insurance, group life and accidental death
 5 insurance benefit plan or plans shall be paid by the employer and employee.

6 (b) *Spouse and dependent coverage*. -- Each employee is entitled to have his or her
 7 spouse and dependents included in any group hospital and surgical insurance, group major
 8 medical insurance or group prescription drug insurance coverage to which the employee is
 9 entitled to participate: *Provided*, That the spouse and dependent coverage is limited to excess or
 10 secondary coverage for each spouse and dependent who has primary coverage from any other
 11 source. ~~For purposes of this section, the term "primary coverage" means individual or group~~
 12 ~~hospital and surgical insurance coverage or individual or group major medical insurance coverage~~
 13 ~~or group prescription drug coverage in which the spouse or dependent is the named insured or~~
 14 ~~certificate holder. For the purposes of this section, "dependent" includes an eligible employee's~~
 15 ~~unmarried child or stepchild under the age of twenty five if that child or stepchild meets the~~
 16 ~~definition of a "qualifying child" or a "qualifying relative" in Section 152 of the Internal Revenue~~

17 ~~Code. The director may require proof regarding spouse and dependent primary coverage and~~
18 ~~shall adopt rules governing the nature, discontinuance and resumption of any employee's~~
19 ~~coverage for his or her spouse and dependents~~

20 (c) *Continuation after termination.* -- If an employee participating in the plan is terminated
21 from employment involuntarily or in reduction of work force, the employee's insurance coverage
22 provided under this article shall continue for a period of three months at no additional cost to the
23 employee and the employer shall continue to contribute the employer's share of plan premiums for
24 the coverage. An employee discharged for misconduct shall may not be eligible for extended
25 benefits under this section. Coverage may be extended up to the maximum period of three
26 months, while administrative remedies contesting the charge of misconduct are pursued. If the
27 discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by
28 the employee. If the employee is again employed or recalled to active employment within twelve
29 months of his or her prior termination, he or she shall may not be considered a new enrollee and
30 may not be required to again contribute his or her share of the premium cost, if he or she had
31 already fully contributed such share during the prior period of employment.

32 (d) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
33 *retirement for employees who elected to participate in the plan before July, 1988.* -- Except as
34 otherwise provided in subsection (g) of this section, when an employee participating in the plan,
35 who elected to participate in the plan before July 1, 1988, is compelled or required by law to retire
36 before reaching the age of 65, or when a participating employee voluntarily retires as provided by
37 law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an
38 extension of the insurance coverage provided by this article, according to the following formulae:
39 The insurance coverage for a retired employee shall continue one additional month for every two
40 days of annual leave or sick leave, or both, which the employee had accrued as of the effective
41 date of his or her retirement. For a retired employee, his or her spouse and dependents, the
42 insurance coverage shall continue one additional month for every three days of annual leave or

43 sick leave, or both, which the employee had accrued as of the effective date of his or her
44 retirement.

45 *(e) Conversion of accrued annual and sick leave for extended insurance coverage upon*
46 *retirement for employees who elected to participate in the plan after June, 1988. --*

47 Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections
48 (g) and (l) of this section, when an employee participating in the plan who elected to participate in
49 the plan on and after July 1, 1988, is compelled or required by law to retire before reaching the age
50 of 65, or when the participating employee voluntarily retires as provided by law, that employee's
51 annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the
52 insurance provided by this article, for periods and scope of coverage determined according to the
53 following formulae: (1) One additional month of single retiree coverage for every two days of
54 annual leave or sick leave, or both, which the employee had accrued as of the effective date of his
55 or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and
56 dependents for every three days of annual leave or sick leave, or both, which the employee had
57 accrued as of the effective date of his or her retirement. The remaining premium cost shall be
58 borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an
59 employee who has been a participant under spouse or dependent coverage and who reenters the
60 plan within 12 months after termination of his or her prior coverage shall be considered to have
61 elected to participate in the plan as of the date of commencement of the prior coverage. For
62 purposes of this subsection, an employee ~~shall~~ may not be considered a new employee after
63 returning from extended authorized leave on or after July 1, 1988.

64 *(f) Increased retirement benefits for retired employees with accrued annual and sick leave.*

65 -- In the alternative to the extension of insurance coverage through premium payment provided in
66 subsections (d) and (e) of this section, the accrued annual leave and sick leave of an employee
67 participating in the plan may be applied, on the basis of two days' retirement service credit for each
68 one day of accrued annual and sick leave, toward an increase in the employee's retirement

69 benefits with those days constituting additional credited service in computation of the benefits
70 under any state retirement system: *Provided*, That for a person who first becomes a member of the
71 Teachers Retirement System as provided in §18-7A-1 *et seq.* of this code on or after July 1, 2015,
72 accrued annual and sick leave of an employee participating in the plan may not be applied for
73 retirement service credit. However, the additional credited service shall may not be used in
74 meeting initial eligibility for retirement criteria, but only as additional service credited in excess
75 thereof.

76 (g) *Conversion of accrued annual and sick leave for extended insurance coverage upon*
77 *retirement for certain higher education employees.* – Except as otherwise provided in subsection
78 (l) of this section, when an employee, who is a higher education full-time faculty member employed
79 on an annual contract basis other than for 12 months, is compelled or required by law to retire
80 before reaching the age of 65, or when such a participating employee voluntarily retires as
81 provided by law, that employee's insurance coverage, as provided by this article, shall be
82 extended according to the following formulae: The insurance coverage for a retired higher
83 education full-time faculty member, formerly employed on an annual contract basis other than for
84 12 months, shall continue beyond the effective date of his or her retirement one additional year for
85 each three and one-third years of teaching service, as determined by uniform guidelines
86 established by the University of West Virginia Board of Trustees and the board of directors of the
87 state college system, for individual coverage, or one additional year for each five years of teaching
88 service for family coverage.

89 (h) Any employee who retired prior to April 21, 1972, and who also otherwise meets the
90 conditions of the "retired employee" definition in §5-16-2 of this code, shall be eligible for insurance
91 coverage under the same terms and provisions of this article. The retired employee's premium
92 contribution for any such coverage shall be established by the finance board.

93 (i) *Retiree participation.* -- All retirees under the provisions of this article, including those
94 defined in section two of this article; those retiring prior to April 21, 1972; and those hereafter

95 retiring are eligible to obtain health insurance coverage. The retired employee's premium
96 contribution for the coverage shall be established by the finance board.

97 (j) *Surviving spouse and dependent participation.* -- A surviving spouse and dependents of
98 a deceased employee, who was either an active or retired employee participating in the plan just
99 prior to his or her death, are entitled to be included in any comprehensive group health insurance
100 coverage provided under this article to which the deceased employee was entitled, and the
101 spouse and dependents shall bear the premium cost of the insurance coverage. The finance
102 board shall establish the premium cost of the coverage.

103 (k) *Elected officials.* -- In construing the provisions of this section or any other provisions of
104 this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent
105 that elected public officials be provided any sick leave, annual leave or personal leave, and the
106 enactment of this section is based upon the fact and assumption that no statutory or inherent
107 authority exists extending sick leave, annual leave or personal leave to elected public officials and
108 the very nature of those positions preclude the arising or accumulation of any leave, so as to be
109 thereafter usable as premium paying credits for which the officials may claim extended insurance
110 benefits.

111 (l) *Participation of certain former employees.* -- An employee, eligible for coverage under
112 the provisions of this article who has 20 years of service with any agency or entity participating in
113 the public employees insurance program or who has been covered by the public employees
114 insurance program for 20 years may, upon leaving employment with a participating agency or
115 entity, continue to be covered by the program if the employee pays 105 percent of the cost of
116 retiree coverage: *Provided*, That the employee shall elect to continue coverage under this
117 subsection within two years of the date the employment with a participating agency or entity is
118 terminated.

119 (m) *Prohibition on conversion of accrued annual and sick leave for extended coverage*
120 *upon retirement for new employees who elect to participate in the plan after June, 2001.* -- Any

121 employee hired on or after July 1, 2001, who elects to participate in the plan may not apply accrued
 122 annual or sick leave toward the cost of premiums for extended insurance coverage upon his or her
 123 retirement. This prohibition does not apply to the conversion of accrued annual or sick leave for
 124 increased retirement benefits, as authorized by this section: *Provided*, That any person who has
 125 participated in the plan prior to July 1, 2001, is not a new employee for purposes of this subsection
 126 if he or she becomes reemployed with an employer participating in the plan within two years
 127 following his or her separation from employment and he or she elects to participate in the plan
 128 upon his or her reemployment.

129 (n) *Prohibition on conversion of accrued years of teaching service for extended coverage*
 130 *upon retirement for new employees who elect to participate in the plan July, 2009.* -- Any employee
 131 hired on or after July 1, 2009, who elects to participate in the plan may not apply accrued years of
 132 teaching service toward the cost of premiums for extended insurance coverage upon his or her
 133 retirement.

**§5-16-15. Optional dental, optical, disability and prepaid retirement plan and audiology
 and hearing-aid service plan.**

1 (a) ~~On and after July 1, 1989~~ The director or the company created pursuant to §5-16A-1 et
 2 seq. of this code shall make available to participants in the public employees insurance system: (1)
 3 A dental insurance plan; (2) an optical insurance plan; (3) a disability insurance plan; (4) a prepaid
 4 retirement insurance plan; and (5) an audiology and hearing-aid services insurance plan. Public
 5 employees insurance participants may elect to participate in any one of these plans separately or
 6 in combination. All actuarial and administrative costs of each plan shall be totally borne by the
 7 premium payments of the participants or local governing bodies electing to participate in that plan.
 8 The director or the company created pursuant to §5-16A-1 et seq. of this code ~~is authorized to may~~
 9 employ such administrative practices and procedures with respect to these optional plans as are
 10 authorized for the administration of other plans under this article. The director or the company
 11 created pursuant to §5-16A-1 et seq. of this code shall establish separate funds: (1) For deposit of

13 dental insurance premiums and payment of dental insurance claims; (2) for deposit of optical
 14 insurance premium payments and payment of optical insurance claims; (3) for deposit of disability
 15 insurance premium payments and payment of disability insurance claims; and (4) for deposit of
 16 audiology and hearing-aid service insurance premiums and payment of audiology and hearing-aid
 17 insurance claims. Such funds shall may not be supplemented by nor be used to supplement any
 18 other funds.

19 (b) The Finance Board shall study the feasibility of an oral health benefit for children of
 20 participants.

§5-16-16. Preferred provider plan.

1 The director or the company created pursuant to §5-16A-1 et seq. of this code shall ~~on or~~
 2 ~~before April 1, 1988, or as soon as practicable~~ establish a preferred provider system for the
 3 delivery of health care to plan participants by all health care providers, which may include, but not
 4 be limited to, medical doctors, chiropractors, physicians, osteopathic physicians, surgeons,
 5 hospitals, clinics, nursing homes, pharmacies and pharmaceutical companies.

6 The director or the company created pursuant to §5-16A-1 et seq. of this code shall
 7 establish the terms of the preferred provider system and the incentives therefor. The terms and
 8 incentives may include multiyear renewal options as are not prohibited by the Constitution of this
 9 state and capitated primary care arrangements which are not subject to the provisions of §33-25A-
 10 1 et seq. of this code.

§5-16-17. Preexisting conditions not covered. defined

1 ~~A preexisting condition is an injury, or sickness, or any condition relating to that injury, or~~
 2 ~~sickness, for which a participant is diagnosed, receives treatment, or incurs expenses prior to the~~
 3 ~~effective date of coverage~~

4 For all participants enrolling in the plan after the effective date of this section, payment
 5 shall be made for expenses incurred for or in connection with a preexisting condition: *Provided,*
 6 That participants may enroll or make plan selections only at the time of hire, during annual open

7 enrollment or upon the occurrence of a "qualifying event" under Section 125 of the United States
 8 Internal Revenue Code.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

1 (a) All employers operating from state general revenue or special revenue funds or federal
 2 funds or any combination of those funds shall budget the cost of insurance coverage provided by
 3 the ~~Public Employees Insurance~~ agency or the company created pursuant to §5-16A-1 et seq. of
 4 this code to current and retired employees of the employer as a separate line item, titled "PEIA", in
 5 its respective annual budget and are responsible for the transfer of funds to the director or the
 6 company created pursuant to §5-16A-1 et seq. of this code for the cost of insurance for employees
 7 covered by the plan. Each spending unit shall pay to the director or the company created pursuant
 8 to §5-16A-1 et seq. of this code its proportionate share from each source of funds. Any agency
 9 wishing to charge General Revenue Funds for insurance benefits for retirees under section
 10 thirteen of this article shall provide documentation to the director or the company created pursuant
 11 to §5-16A-1 et seq. of this code that the benefits cannot be paid for by any special revenue account
 12 or that the retiring employee has been paid solely with General Revenue Funds for twelve months
 13 prior to retirement.

14 (b) If the general revenue appropriation for any employer, excluding county boards of
 15 education, is insufficient to cover the cost of insurance coverage for the employer's participating
 16 employees, retired employees and surviving dependents, the employer shall pay the remainder of
 17 the cost from its "personal services" or "unclassified" line items. The amount of the payments for
 18 county boards of education shall be determined by the method set forth in §18-9A-24 of this code:
 19 *Provided*, That local excess levy funds shall be used only for the purposes for which they were
 20 raised: *Provided, however*, That after approval of its annual financial plan, but in no event later
 21 than December 31, of each year, the finance board shall notify the Legislature and county boards
 22 of education of the maximum amount of employer premiums that the county boards of education

23 shall pay for covered employees during the following fiscal year.

24 (c) All other employers not operating from the state General Revenue Fund shall pay to the
25 director or the company created pursuant to §5-16A-1 et seq. of this code their share of premium
26 costs from their respective budgets. The finance board or the company created pursuant to §5-
27 16A-1 et seq. of this code shall establish the employers' share of premium costs to reflect and pay
28 the actual costs of the coverage including incurred but not reported claims.

29 (d) The contribution of the other employers (namely: A county, city or town) in the state;
30 any separate corporation or instrumentality established by one or more counties, cities or towns,
31 as permitted by law; any corporation or instrumentality supported in most part by counties, cities or
32 towns; any public corporation charged by law with the performance of a governmental function and
33 whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive
34 community mental health center or comprehensive mental retardation facility established,
35 operated or licensed by the Secretary of the Department of Health and Human Resources
36 pursuant to §27-2A-1 of this code, and which is supported in part by state, county or municipal
37 funds; and a combined city-county health department created pursuant to §16-2-1 *et seq.* of this
38 code for their employees shall be the percentage of the cost of the employees' insurance package
39 as the employers determine reasonable and proper under their own particular circumstances.

40 (e) The employee's proportionate share of the premium or cost shall be withheld or
41 deducted by the employer from the employee's salary or wages as and when paid and the sums
42 shall be forwarded to the director or the company created pursuant to §5-16A-1 et seq. of this code
43 with any supporting data as the director may require.

44 (f) All moneys received by the ~~Public Employees Insurance~~ agency shall be deposited in a
45 special fund or funds as are necessary in the state Treasury and the Treasurer of the state is
46 custodian of the fund or funds and shall administer the fund or funds in accordance with the
47 provisions of this article or as the director may from time to time direct. The Treasurer shall pay all
48 warrants issued by the State Auditor against the fund or funds as the director may direct in

49 accordance with the provisions of this article. All funds received by the agency, including, but not
50 limited to, basic insurance premiums, administrative expenses and optional life insurance
51 premiums, shall be deposited, as determined by the director, in any of the investment pools with
52 the West Virginia Investment Management Board, including, but not limited to, the equity and fixed
53 income pools, with the interest income or other earnings a proper credit to all such funds for the
54 benefit of the ~~Public Employees Insurance~~ agency.

55 (g) The ~~Public Employees Insurance~~ agency or the company created pursuant to §5-16A-1
56 et seq. of this code may recover an additional interest amount from any employer that fails to pay
57 in a timely manner any premium or minimum annual employer payment, as defined in §5-16D-1 *et*
58 *seq.* of this code, which is due and payable to the ~~Public Employees Insurance~~ agency or the
59 Retiree Health Benefit Trust. The agency or the company created pursuant to §5-16A-1 et seq. of
60 this code may recover the amount due plus an additional amount equal to two and one half percent
61 per annum of the amount due. Accrual of interest owed by the delinquent employer commences
62 upon the thirty-first day following the due date for the amount owed and shall continue until receipt
63 by the ~~Public Employees Insurance~~ agency or the company created pursuant to §5-16A-1 et seq.
64 of this code of the delinquent payment. Interest shall compound every thirty days.

65 (h) Any special revenue account created pursuant to this article shall terminate upon
66 termination of the agency and its proceeds shall be distributed as set forth in §5-16A-1 et seq. of
67 this _____ code.

§5-16-24. Rules for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

1 (a) The director shall promulgate any necessary rules for the effective administration of the
2 provisions of this article. Except as specifically provided in §5-16-4(e) of this code, all rules of the
3 ~~Public Employees Insurance~~ agency and all hearings held by the ~~Public Employees Insurance~~
4 agency are exempt from the provisions of chapter twenty-nine-a of this code. Any rules

5 promulgated by the Public Employees Insurance Board or director shall remain in full force and
6 effect until they are amended or replaced by the director.

7 (b) The rules shall provide that any employee of the state who has been compelled or
8 required by law to retire before reaching the age of 65 years is eligible to participate in the public
9 employees' health insurance program at the premium contribution established by the finance
10 board after any extended coverage to which he or she, his or her spouse and dependents may be
11 entitled by virtue of his or her accrued annual leave or sick leave, pursuant to ~~the provisions of~~ §5-
12 16-13 of this code, has expired. Any employee who voluntarily retires, as provided by law, is
13 eligible to participate in the public employees' health insurance program at the premium
14 contribution established by the finance board after any extended coverage to which he or she, his
15 or her spouse and dependents may be entitled by virtue of his or her accrued annual leave or sick
16 leave, pursuant to ~~the provisions of~~ §5-16-13 of this code, has expired: *Provided*, That the
17 employee's last employer is a participating employer. The dependents of any deceased retired
18 employee are entitled to continue their participation and coverage upon payment of the premium
19 contribution established by the finance board or the company created pursuant to §5-16A-1 et seq.
20 of this code. In establishing the cost of health insurance coverage for retired employees and their
21 spouses and dependents, the finance board or the company created pursuant to §5-16A-1 et seq.
22 of this code, ~~in its discretion,~~ may cause the claims experience of the retired employees and their
23 spouses and dependents to be rated separately from that of active employees and their spouses
24 and dependents, or may cause the claims experience of retired and active employees, and their
25 spouses and dependents, to be rated together.

26 (c) Any employee who is on a medical leave of absence, approved by his or her employer,
27 is subject to the following provisions of this paragraph, ~~is entitled to~~ may continue his or her
28 coverage until he or she returns to his or her employment, and the employee and employer shall
29 continue to pay their proportionate share of premium costs as provided by this article: *Provided*,
30 That the employer is obligated to pay its proportionate share of the premium cost only for a period

31 of one year: *Provided, however,* That during the period of the leave of absence, the employee
32 shall, at least once each month, submit to the employer the statement of a qualified physician
33 certifying that the employee is unable to return to work.

34 (d) Any retiree is eligible to participate in the public employees' life insurance program,
35 including the optional life insurance coverage as already available to active employees under this
36 article, at his or her own expense for the cost of coverage, based upon actuarial experience; and
37 the director shall prepare, by rule, for that participation and coverages under declining term
38 insurance and optional additional coverage for the retirees.

39 (e) If the company created in §5-16A-1 et seq. of this code is created and operational then
40 the current agency shall continue to exist through June 30, 2024, at which time all powers and
41 duties to enforce any rules adopted by the agency are transferred to the Insurance Commissioner
42 or any other applicable state agency or division. If the company created in §5-16A-1 et seq. of this
43 code is not created or is not operational then the agency shall retain all powers and duties to
44 enforce the rules adopted by the agency until such time as the company created in §5-16A-1 et
45 seq. of this code is created and is operational.

ARTICLE 16A. PUBLIC EMPLOYEES MUTUAL INSURANCE COMPANY.

§5-16A-1. Findings and purpose.

1 The Legislature finds:

2 (1) That it is the intention of the state to provide comprehensive and essential package
3 health insurance to its employees;

4 (2) That although West Virginia Public Employees Insurance Agency continues to strive to
5 serve all those persons covered by the plans, it finds that it continues to operate at a deficit;

6 (3) That to ensure that the employees of the State of West Virginia continue to have a
7 viable and financially sound insurance program, a new and innovative approach to offering
8 insurance to state employees is necessary;

9 (4) There currently exist an actuarial funding crisis in the Public Employees Insurance

10 Agency:

11 (5) There is a belief that a privately operated public employees' mutual insurance agency
12 or a similar entity would stabilize the insurance for public employees; and

13 (6) That allowing the Public Employees Insurance Agency to offer a product that competes
14 on the open insurance market will help solidify the programs offered and make them more
15 financially viable to ensure the continued delivery of health insurance to employees of the State of
16 West Virginia.

§5-16A-2.

Definitions.

1 Unless a different meaning is clearly indicated by the context the following words and
2 phrases as used in this article have the following meanings:

3 "Agency" means the Public Employees Insurance Agency created by this article.

4 "Applied behavior analysis" means the design, implementation and evaluation of
5 environmental modifications using behavioral stimuli and consequences in order to produce
6 socially significant improvement in human behavior and includes the use of direct observation,
7 measurement and functional analysis of the relationship between environment and behavior.

8 "Autism spectrum disorder" means any pervasive developmental disorder including
9 autistic disorder, Asperger's Syndrome, Rett Syndrome, childhood disintegrative disorder or
10 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
11 Statistical Manual of Mental Disorders of the American Psychiatric Association.

12 "Certified behavior analyst" means an individual who is certified by the Behavior Analyst
13 Certification Board or certified by a similar nationally recognized organization.

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

17 Phase II: The experimental drug or treatment is given to, or a procedure is performed on, a
18 larger group of people to further measure its effectiveness and safety.

19 Phase III: Further research is conducted to confirm the effectiveness of the drug,
20 treatment or procedure, to monitor the side effects, to compare commonly used treatments and to
21 collect information on safe use.

22 Phase IV: After the drug, treatment or medical procedure is marketed, investigators
23 continue testing to determine the effects on various populations and to determine whether there
24 are side effects associated with long-term use.

25 "Company" or "successor to the agency" means the Public Employees Mutual Insurance
26 Company created pursuant to the terms of this article.

27 "Cooperative group" means a formal network of facilities that collaborate on research
28 projects and have an established NIH-approved peer review program operating within the group.

29 A cooperative group includes:

30 (1) The national cancer institute clinical cooperative group;

31 (2) The national cancer institute community clinical oncology program;

32 (3) The AIDS clinical trial group; and

33 (4) The community programs for clinical research in AIDS.

34 "FDA" means the federal food and drug administration.

35 "Director" means the Director of the Public Employees Insurance Agency created by this
36 article.

37 "Emergency medical condition" means a condition that manifests itself by acute symptoms
38 of sufficient severity including severe pain such that the absence of immediate medical attention
39 could reasonably be expected to result in serious jeopardy to the individual's health or with respect
40 to a pregnant woman the health of the unborn child, serious impairment to bodily functions or
41 serious dysfunction of any bodily part or organ.

42 "Emergency medical condition for the prudent layperson" means one that manifests itself
43 by acute symptoms of sufficient severity, including severe pain, such that the person could
44 reasonably expect the absence of immediate medical attention to result in serious jeopardy to the

45 individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious
46 impairment to bodily functions; or serious dysfunction of any bodily organ or part;

47 "Emergency services" means those services required to screen for or treat an emergency
48 medical condition until the condition is stabilized, including prehospital care;

49 "Employee" means any person, including an elected officer, who works regularly full time in
50 the service of the State of West Virginia and, for the purpose of this article only, the term
51 "employee" also means any person, including an elected officer, who works regularly full time in
52 the service of a county board of education; a county, city or town in the state; any separate
53 corporation or instrumentality established by one or more counties, cities or towns, as permitted by
54 law; any corporation or instrumentality supported in most part by counties, cities or towns; any
55 public corporation charged by law with the performance of a governmental function and whose
56 jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive
57 community mental health center or comprehensive mental retardation facility established,
58 operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of
59 this code and which is supported in part by state, county or municipal funds; any person who works
60 regularly full time in the service of the Higher Education Policy Commission, the West Virginia
61 Council for Community and Technical College Education or a governing board, as defined in §18B-
62 1-2 of this code; any person who works regularly full time in the service of a combined city-county
63 health department created pursuant to 116-2-1 et seq. of this code; any person designated as a
64 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a
65 long-term substitute as defined in §18A-1-1 of this code in the service of a county board of
66 education: *Provided*, That a long-term substitute who is continuously employed for at least 133
67 instructional days during an instructional term, and until the end of that instructional term, is eligible
68 for the benefits provided in this article until September 1, following that instructional term:
69 *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during
70 an instructional term is eligible for the benefits provided in this article only during such time as he or

71 she is actually employed as a long-term substitute. On and after January 1, 1994, and upon
72 election by a county board of education to allow elected board members to participate in the Public
73 Employees Insurance Program pursuant to this article, any person elected to a county board of
74 education shall be considered to be an "employee" during the term of office of the elected member.
75 Upon election by the state Board of Education to allow appointed board members to participate in
76 the Public Employees Insurance Program pursuant to this article, any person appointed to the
77 state Board of Education is considered an "employee" during the term of office of the appointed
78 member: *Provided further*, That the elected member of a county board of education and the
79 appointed member of the state Board of Education shall pay the entire cost of the premium if he or
80 she elects to be covered under this article. Any matters of doubt as to who is an employee within
81 the meaning of this article shall be decided by the director.

82 A person shall be considered an "employee" if that person meets the following criteria:

83 (1) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

84 (2) Has been designated, in writing, by all other participants in that job-sharing
85 arrangement as the "employee" for purposes of this section; and

86 (3) Works at least one third of the time required for a full-time employee.

87 "Employer" means the State of West Virginia, its boards, agencies, commissions,
88 departments, institutions or spending units; a county board of education; a county, city or town in
89 the state; any separate corporation or instrumentality established by one or more counties, cities
90 or towns, as permitted by law; any corporation or instrumentality supported in most part by
91 counties, cities or towns; any public corporation charged by law with the performance of a
92 governmental function and whose jurisdiction is coextensive with one or more counties, cities or
93 towns; any comprehensive community mental health center or comprehensive mental retardation
94 facility established, operated or licensed by the Secretary of Health and Human Resources
95 pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal
96 funds; a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code;

97 and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a
98 21st Century Learner Fellow pursuant to §18-3-11 of this code but the corporation is not
99 considered an employer with respect to any employee other than a 21st Century Learner Fellow.
100 Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided
101 by the director. The term "employer" does not include within its meaning the National Guard.

102 "Finance board" means the Public Employees Insurance Agency finance board created by
103 this article.

104 "Insurance Commissioner" means the Insurance Commissioner of West Virginia as
105 provided in §33-2-1 of this code.

106 "Life-threatening condition" means that the member has a terminal condition or illness that
107 according to current diagnosis has a high probability of death within two years, even with treatment
108 with an existing generally accepted treatment protocol.

109 "Medical screening examination" means an appropriate examination within the capability
110 of the hospital's emergency department, including ancillary services routinely available to the
111 emergency department, to determine whether or not an emergency medical condition exists; and

112 "Member" means a policyholder, subscriber, insured, certificate holder or a covered
113 dependent of a policyholder, subscriber, insured or certificate holder.

114 "Multiple project assurance contract" means a contract between an institution and the
115 federal Department of Health and Human Services that defines the relationship of the institution to
116 the federal Department of Health and Human Services and sets out the responsibilities of the
117 institution and the procedures that will be used by the institution to protect human subjects.

118 "Mutualization transition fund" means a fund over which the State Treasurer is custodian.
119 Moneys transferred or otherwise payable to the Mutualization Transition Fund shall be deposited
120 in the State Treasury to the credit of the Mutualization Transition Fund. Disbursements shall be
121 made from the Mutualization Transition Fund upon requisitions signed by the director, and, upon
122 termination of the agency, the Insurance Commissioner, and shall be reasonably related to the

123 legal, operational, consultative and human resource related expenses associated with the
124 establishment of the company and the transferring of personnel from the agency to the company.

125 "NIH" means the national institutes of health.

126 "New fund" means a fund owned and operated by the agency and, upon termination of the
127 agency, the successor organization of the West Virginia Public Employees Insurance Agency and
128 shall consist of those funds transferred to it from the Public Employees Insurance Fund and any
129 other applicable funds. New fund shall include all moneys due and payable to the Public
130 Employee's Insurance Agency as of June 30, 2024.

131 "New fund liabilities" means all claims payment obligations (indemnity and medical
132 expenses) for all claims, actual and incurred but not reported, for any claim with a date of injury or
133 last exposure on or after July 1, 2024.

134 "Old fund" means a fund held by the state treasurer's office consisting of those funds
135 transferred to it from the Public Employees Agency Fund or other sources and those funds due
136 and owing the Public Employees Insurance Fund as of June 30, 2024, that are thereafter
137 collected. The old fund and assets therein shall remain property of the state and may not novate or
138 otherwise transfer to the company.

139 "Old fund liabilities" mean all claims payment obligations (indemnity and medical
140 expenses), related liabilities and appropriate administrative expenses necessary for the
141 administration of all claims, actual and incurred but not reported, for any claim with a date of injury
142 or last exposure on or before June 30, 2024.

143 "Objective evidence" means standardized patient assessment instruments, outcome
144 measurements tools or measurable assessments of functional outcome. Use of objective
145 measures at the beginning of treatment, during and after treatment is recommended to quantify
146 progress and support justifications for continued treatment. The tools are not required but their
147 use will enhance the justification for continued treatment.

148 "Patient cost" means the routine costs of a medically necessary health care service that is

149 incurred by a member as a result of the treatment being provided pursuant to the protocols of the
150 clinical trial. Routine costs of a clinical trial include all items or services that are otherwise
151 generally available to beneficiaries of the insurance policies. "Patient cost" does not include:

152 (1) The cost of the investigational drug or device;

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

155 (3) Services customarily provided by the research sponsor free of charge for any
156 participant in the trial;

157 (4) Costs associated with managing the research associated with the clinical trial including,
158 but not limited to, services furnished to satisfy data collection and analysis needs that are not used
159 in the direct clinical management of the participant; or

160 (5) Costs that would not be covered under the participant's policy, plan, or contract for
161 noninvestigational treatments;

162 (6) Adverse events during treatment are divided into those that reflect the natural history of
163 the disease, or its progression, and those that are unique in the experimental treatment. Costs for
164 the former are the responsibility of the payor as provided in §5-16A-2 of this code, and costs for the
165 later are the responsibility of the sponsor. The sponsor shall hold harmless any payor for any
166 losses and injuries sustained by any member as a result of his or her participation in the clinical
167 trial.

168 "Person" means any individual, company, association, organization, corporation or other
169 legal entity, including, but not limited to, hospital, medical or dental service corporations; health
170 maintenance organizations or similar organization providing prepaid health benefits; or individuals
171 entitled to benefits under the provisions of this article.

172 "Plan", unless the context indicates otherwise, means the medical indemnity plan, the
173 managed care plan option or the group life insurance plan offered by the agency.

174 "Preexisting Condition" means an injury, or sickness, or any condition relating to that injury,

175 or sickness, for which a participant is diagnosed, receives treatment, or incurs expenses prior to
176 the effective date of coverage.

177 "Primary Coverage" means individual or group hospital and surgical insurance coverage or
178 individual or group major medical insurance coverage or group prescription drug coverage in
179 which the spouse or dependent is the named insured or certificate holder. For the purposes of this
180 section, "dependent" includes an eligible employee's unmarried child or stepchild under the age of
181 25 if that child or stepchild meets the definition of a "qualifying child" or a "qualifying relative" in
182 Section 152 of the Internal Revenue Code. The director may require proof regarding spouse and
183 dependent primary coverage and shall adopt rules governing the nature, discontinuance and
184 resumption of any employee's coverage for his or her spouse and dependents.

185 "Private carrier" means any insurer or the legal representative of an insurer authorized by
186 the insurance commissioner to provide public employees insurance pursuant to this article and
187 which maintains an office in the state.

188 "Prudent layperson" means a person who is without medical training and who draws on his
189 or her practical experience when making a decision regarding whether an emergency medical
190 condition exists for which emergency treatment should be sought;

191 "Public employees insurance" means insurance which provides health and surgical care
192 coverage to plan participants as set forth in this article;

193 "Public Employees Insurance Council" means the council set forth in §5-16A-5 of this
194 code;

195 "Retired employee" means an employee of the state who retired after April 29, 1971, and
196 an employee of the Higher Education Policy Commission, the Council for Community and
197 Technical College Education, a state institution of higher education or a county board of education
198 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after
199 the effective date of this article, meet the minimum eligibility requirements for their respective state
200 retirement system and whose last employer immediately prior to retirement under the state

201 retirement system is a participating employer in the state retirement system and in the Public
202 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who
203 are not covered by a state retirement system, but who are covered by a state-approved or state-
204 contracted retirement program or a system approved by the director, shall, in the case of education
205 employees, meet the minimum eligibility requirements of the state Teachers Retirement System
206 and in all other cases, meet the minimum eligibility requirements of the Public Employees
207 Retirement System and may participate in the Public Employees Insurance Agency as retired
208 employees upon terms as the director sets by rule as authorized in this article. Employers with
209 employees who are, or who are eligible to become, retired employees under this article shall be
210 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et*
211 *seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment
212 benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the
213 Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon
214 the written certification, under oath, of an authorized officer of the employer that the employer has
215 no employees who are, or who are eligible to become, retired employees and that the employer
216 will defend and hold harmless the Public Employees Insurance Agency from any claim by one of
217 the employer's past, present or future employees for eligibility to participate in the Public
218 Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees
219 Insurance Agency may not be liable in any respect to provide plan benefits to a retired employee of
220 a nonstate employer which has opted out of the West Virginia other post-employment benefits
221 plan of the Retiree Health Benefit Trust Fund pursuant to this section.

222 "Stabilize" means with respect to an emergency medical condition, to provide medical
223 treatment of the condition necessary to assure, with reasonable medical probability that no
224 medical deterioration of the condition is likely to result from or occur during the transfer of the
225 individual from a facility: *Provided*, That this provision may not be construed to prohibit, limit or
226 otherwise delay the transportation required for a higher level of care than that possible at the

227 treating facility.

§5-16A-3. Creation of the Public Employees Mutual Insurance Company as successor organization of the West Virginia Public Employees Insurance Agency.

1 (a) On or before July 1, 2024, the director may take such actions as are necessary to
2 establish a Public Employees Mutual Insurance Company as a domestic, private, nonstock,
3 corporation to:

4 (1) Establish a group hospital and surgical insurance plan or plans;

5 (2) A group prescription drug insurance plan or plans;

6 (3) A group major medical insurance plan or plans; and,

7 (4) A group life and accidental death insurance plan or plans for state employees as they
8 are defined in this article.

9 (5) Transact such other kinds of insurance for which the company is otherwise qualified
10 under the provisions of this code.

11 (6) The company may not sell, assign or transfer substantial assets or ownership of the
12 company.

13 (b) If the director establishes a domestic mutual insurance company pursuant to
14 subsection (a) of this section:

15 (1) As soon as practical, the company established pursuant to the provisions of this article
16 shall, through a vote of a majority of its provisional board, file its corporate charter and bylaws with
17 the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact
18 insurance business in this state. Notwithstanding any other provision of this code, the Insurance
19 Commissioner shall act on the documents within 15 days of the filing by the company.

20 (2) In recognition of the critical nature of the financial standing of the Public Employees
21 Insurance Agency in this state at the time of enactment of this article and the critical need to
22 expedite the initial operation of the company, the Legislature hereby authorizes the Insurance
23 Commissioner to review the documentation submitted by the company and to determine the initial

24 capital and surplus requirements of the company, notwithstanding the provisions of §33-3-5b of
25 this code. The company shall furnish the Insurance Commissioner with all information and
26 cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth
27 in this section and in other provisions of this article and chapter 33 of this code. The Insurance
28 Commissioner shall monitor the economic viability of the company during its initial operation on
29 not less than a monthly basis, until such time as the Insurance Commissioner determines that
30 monthly reporting is not necessary. In all other respects the company shall be subject to comply
31 with the applicable provisions of chapter 33 of this code.

32 (3) Subject to the provisions of subsection (4) of this section, the Insurance Commissioner
33 may waive other requirements imposed on mutual insurance companies by the provisions of
34 chapter 33 of this code as the Insurance Commissioner determines is necessary to enable the
35 company to begin insuring individuals in this state at the earliest possible date.

36 (4) Within 40 months of the date of the issuance of its license to transact insurance, the
37 company shall comply with the capital and surplus requirements set forth in §33-3-5b (a) of this
38 code in effect on the effective date of this enactment, unless said deadline is extended by the
39 Insurance Commissioner.

40 (c) For the duration of its existence, the company is not and may not be considered a
41 department, unit, agency, or instrumentality of the state for any purpose. All debts, claims,
42 obligations, and liabilities of the company, whenever incurred, shall be the debts, claims,
43 obligations, and liabilities of the company only and not of the state or of any department, unit,
44 agency, instrumentality, officer or employee of the state.

45 (d) The moneys of the company are not and may not be considered part of the General
46 Revenue Fund of the state. The debts, claims, obligations, and liabilities of the company are not
47 and may not be considered a debt of the state or a pledge of the credit of the state.

48 (e) The company is not subject to §6-9A-1 et seq. of this code; the provisions of chapter
49 29B of this code; the provisions of §5A-3-1 et seq. of this code; the provisions of §29-6-1 et seq. of

50 this code; the provisions of §29-6A-1 et seq. of this code; or the provisions of chapter 12 of this
51 code.

52 (f) The company shall be subject to the payment of premium taxes, surcharges and credits
53 contained in chapter 33 of this code.

§5-16A-4. Governance and organization.

1 (a) (1) The agency shall implement the initial formation and organization of the company as
2 provided by this article.

3 (2) From the inception of the company, until December 31, 2024, the company shall be
4 governed by a provisional board of directors consisting of the three persons on the Public
5 Employees Finance Board and four members of the Legislature. Two members of the West
6 Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory
7 nonvoting members of the board. The Governor shall appoint the legislative members to the
8 board. No more than three of the legislative members shall be of the same political party. The
9 provisional board shall have the authority to function as necessary to establish the company and
10 cause it to become operational, including the right to contract on behalf of the company. Each
11 voting board member shall receive compensation of not more than \$500 per day and actual and
12 necessary expenses for each day during which he or she is required to and does attend a meeting
13 of the board.

14 (3) The provisional board shall develop procedures for the nomination of the board of
15 directors that will succeed the provisional board on January 1, 2024, and for the conduct of the
16 election, to be held no later than May 1, 2024, and shall give notice of the election to the current
17 subscribers to the Workers' Compensation Fund. These procedures shall be exempt from the
18 provisions of §29A-3-1 et seq. of this code.

19 (4) Except as limited by this section and applicable insurance rules and statutes, the
20 company may: (1) On its own; (2) through the formation or acquisition of subsidiaries; or (3)
21 through a joint enterprise, offer:

22 (A) Health insurance, surgical insurance plans, group major medical insurance plans,
23 group prescription drug plans and group life and accidental death insurance plans in a state other
24 than West Virginia to the extent it also overs substantially similar insurance coverage to the public
25 employees of this state pursuant to this chapter;

26 (B) Health insurance products, surgical insurance plans, group major medical insurance
27 plans, group prescription drug plans and group life and accidental death insurance plans and
28 services and related products and services in West Virginia or other states; and

29 (C) Other types of insurance in West Virginia and other states.

30 (b) Effective July 1, 2024, the company shall be governed by a board of directors
31 consisting of seven directors, as follows:

32 (1) Two directors shall have substantial experience as an officer or employee of a company
33 in the insurance industry, one of whom is from a company with less than 50 employees;

34 (2) One shall be a certified public accountant with financial management or pension or
35 insurance audit expertise;

36 (3) One shall be an attorney with financial management experience;

37 (4) One director with general knowledge and experience in business management who is
38 an officer and employee of the company and is responsible for the daily management of the
39 company;

40 (5) One shall be a consumer of served by the products offered by the company; and

41 (6) The chief executive officer of the company.

42 (c) The directors and officers of the company are to be chosen in accordance with the
43 articles of incorporation and bylaws of the company. The initial board of directors selected shall
44 serve for the following terms: (1) Two for four-year terms; (2) two for three-year terms; (3) two for
45 two-year terms; and (4) one for a one-year term. Thereafter, the directors shall serve staggered
46 terms of four years. No director chosen may serve more than two consecutive terms, except for
47 the chief executive officer of the company. Furthermore, owners, directors, or employees of

48 employers otherwise licensed to write insurance in this state or licensed or otherwise authorized to
49 act as a third-party administrator may not be eligible to be nominated, appointed, elected or serve
50 on the company's board of directors.

51 (d) The director shall prepare and file articles of incorporation and bylaws in accordance
52 with the provisions of this article and the provisions of chapters 31 and 33 of this code.

§5-16A-5. Creation and Duties of the Public Employees Insurance Council.

1 (a) There is hereby created the Public Employees Insurance Council within the Insurance
2 Commission.

3 (b) On or before January 1, 2025, the Governor with the advice and consent of the Senate,
4 shall appoint five voting members to the council who meet the requirements and qualifications of
5 this subsection. Two members of the West Virginia Senate and two members of the West Virginia
6 House of Delegates shall serve as advisory nonvoting members of the board. The Governor shall
7 appoint the legislative members to the board. No more than three of the legislative members may
8 be of the same political party. The Insurance Commissioner shall serve as an advisory nonvoting
9 member of the board.

10 (1) (A) Five members shall be appointed by the Governor with the advice and consent of
11 the Senate for terms that begin upon appointment after the effective date of this legislation and
12 expire as follows:

13 (i) One member shall be appointed for a term ending June 30, 2026;

14 (ii) Two members shall be appointed for a term ending June 30, 2027; and

15 (iii) Two members shall be appointed for a term ending June 30, 2028.

16 (B) Except for appointments to fill vacancies, each subsequent appointment shall be for a
17 term ending June 30 of the fourth year following the year the preceding term expired. If a vacancy
18 occurs, it shall be filled by appointment for the unexpired term. A member whose term has expired
19 shall continue in office until a successor has been duly appointed and qualified. No member of the
20 council may be removed from office by the Governor except for official misconduct, incompetency,

21 neglect of duty or gross immorality.

22 (C) No appointed member may be a candidate for or hold elected office. Members may be
23 reappointed for no more than two full terms.

24 (2) Each of the appointed voting members of the council shall be appointed based upon his
25 or her demonstrated knowledge and experience to effectively accomplish the purposes of this
26 article. They shall meet the minimum qualifications as follows:

27 (A) Each shall hold a baccalaureate degree from an accredited college or university:
28 Provided, That no more than one of the appointed voting members may serve without a
29 baccalaureate degree from an accredited college or university if the member has a minimum of
30 fifteen years' experience in his or her field of expertise as required in this subdivision;

31 (B) Each shall have a minimum of ten years' experience in his or her field of expertise. The
32 Governor shall consider the following guidelines when determining whether potential candidates
33 meet the qualifications of this subsection: Expertise in insurance claims management; expertise in
34 insurance underwriting; expertise in the financial management of pensions or insurance plans;
35 expertise as a trustee of pension or trust funds of more than 200 beneficiaries or \$300 million;
36 expertise in loss prevention and rehabilitation; expertise in medicine demonstrated by licensure as
37 a medical doctor in West Virginia and experience, board certification or university affiliation; or
38 expertise in similar areas of endeavor;

39 (C) At least one shall be a certified public accountant with financial management or
40 pension or insurance audit expertise; at least one shall be an attorney with financial management
41 experience; one shall be an academician holding an advanced degree from an accredited college
42 or university in business, finance, insurance or economics; and one shall represent the interest of
43 public employees.

44 (D) The council shall elect one of its members to serve as chairperson. The chairperson
45 shall serve for a one-year term and may serve more than one consecutive term. The council shall
46 hold meetings at the request of the chairperson or at the request of at least three of the members

47 of the council, but no less frequently than once every three months. The chairperson shall
48 determine the date and time of each meeting. Three members of the council constitute a quorum
49 for the conduct of the business of the council. No vacancy in the membership of the council may
50 impair the right of a quorum to exercise all the rights and perform all the duties of the council. No
51 action may be taken by the council except upon the affirmative vote of three members of the
52 council.

53 (3) (A) Each voting appointed member of the council shall receive compensation of not
54 more than \$500 per day for each day during which he or she is required to and does attend a
55 meeting of the board.

56 (B) Each voting appointed member of the council shall be reimbursed for actual and
57 necessary expenses incurred for each day or portion thereof engaged in the discharge of official
58 duties in a manner consistent with guidelines of the travel management office of the department of
59 administration.

60 (C) Each member of the council shall be provided appropriate liability insurance, including,
61 but not limited to, errors and omissions coverage, without additional premium, by the state board
62 of risk and insurance management established pursuant to §29-12-1 et seq. of this code.

63 (c) The council shall:

64 (1) In consultation with the Insurance Commissioner, establish operating guidelines and
65 policies designed to ensure the effective administration of the Public Employees Insurance Mutual
66 Insurance Company in West Virginia.

67 (2) Review and approve, reject or modify rules that are proposed by the Insurance
68 Commissioner for operation and regulation of the Public Employees Mutual Insurance Company
69 before the rules are filed with the Secretary of State. The rules adopted by the council are not
70 subject to §29A-3-9 through 16, inclusive, of this code. The council shall follow the remaining
71 provisions of chapter 29A of this code for giving notice to the public of its actions and for holding
72 hearings and receiving public comments on the rules.

73 (3) In accordance with the laws and rules of West Virginia, establish and monitor
74 performance standards and measurements to ensure the timeliness and accuracy of activities
75 performed under this article and applicable rules.

76 (4) Submit for approval by the Legislature, as an isolated and clearly discernable
77 component of the Insurance Commissioner’s budget, a budget for the sufficient administrative
78 resources and funding requirements necessary for their duties under this article.

79 (5) Perform all record and information gathering functions necessary to carry out its duties
80 under this code.

81 (6) Every two years, conduct an overview of the initiatives currently being utilized in the
82 insurance industry which could be utilized in the operation and management of the company and
83 report said findings to the Joint Committee on Government and Finance. Each private carrier
84 licensed and doing business in West Virginia shall cooperate with the council in the performance
85 of its duties to evaluate insurer services. Each entity of state government, including, but not limited
86 to, state boards, agencies, commissions, departments, institutions or spending units shall provide
87 to the council, upon request, any information, statistics or data in its records requested by the
88 council in the performance of these duties.

89 (7) Perform all other duties as specifically provided in this article for the council and those
90 duties incidental thereto.

91 (d) The Public Employees Insurance Council shall:

92 (1) Review and approve, reject or modify recommendations from the Insurance
93 Commissioner for the development of overall policy for the administration of this article.

94 (2) In consultation with the Insurance Commissioner, establish operating guidelines and
95 policies designed to ensure the effective administration of the public employees insurance market
96 in West Virginia.

97 (3) Review and approve, reject or modify rules that are proposed by the Insurance
98 Commissioner for operation and regulation of the public employees insurance market before the

99 rules are filed with the Secretary of State. The rules adopted by the Public Employee Insurance
100 Council are not subject to §29A-3-9 through 16, inclusive, of this code. The Public Employee
101 Insurance Council shall follow the remaining provisions of chapter 29 of this code for giving notice
102 to the public of its actions and for holding hearings and receiving public comments on the rules.

103 (4) In accordance with the laws and rules of West Virginia, establish and monitor
104 performance standards and measurements to ensure the timeliness and accuracy of activities
105 performed under chapter 5 of this code and applicable rules.

106 (5) Submit for approval by the Legislature, as an isolated and clearly discernable
107 component of the Insurance Commissioner's budget, a budget for the sufficient administrative
108 resources and funding requirements necessary for their duties under this article.

109 (6) Perform all record and information gathering functions necessary to carry out its duties
110 under this code.

111 (7) On a biannual basis, conduct an overview of the safety initiatives currently being
112 utilized or which could be utilized in to provide better coverage and functionality of the plans
113 offered on the public employee insurance market and report said finding to the Joint Committee on
114 Government and Finance. Other private carriers licensed or doing business in West Virginia shall
115 cooperate with the council in the performance of its duties to evaluate insurer services provided to
116 control losses and provide information on the prevention other healthcare initiatives for disease
117 awareness and prevention. Employers and private carriers shall provide to the council, upon
118 request, any information, statistics or data in its records requested by the council in the
119 performance of these duties.

120 (8) The council shall elect one member to serve as chairperson.

121 (9) Perform all other duties as specifically provided in this chapter for the industrial council
122 and those duties incidental thereto.

123 (10) Establish a method of indexing claims that will make information concerning one
124 insurer available to other insurers.

§5-16A-6. Creation of new fund, old fund, mutualization transition fund and assigned risk fund.

1 (a) Effective upon the date upon which this enactment is made effective by the Legislature,
2 there is hereby established in the State Treasury a "Public Employees Old Fund", "Public
3 Employees New Fund", "Mutualization Transition Fund" and an "Assigned Risk Fund". The
4 Director of the Public Employees Insurance Agency has full authority to administer the old fund,
5 the new fund and the mutualization transition fund until termination of the agency. As soon as
6 practicable upon the establishment of the mutualization transition fund, the director shall cause an
7 amount determined by the West Virginia Commissioner of Insurance and approved by the Joint
8 Committee on Government and Finance to be transferred from the Public Employees Insurance
9 fund into the Mutualization Transition Fund. If the proclamation set forth in this article has not been
10 issued, all unencumbered funds remaining in the Mutualization Transition Fund as of termination
11 of the agency shall be transferred back to the Public Employees Insurance Fund.

12 (b) If the proclamation set forth in this article is issued, then upon termination of the agency,
13 the funds contained in the Public Employees Insurance Fund shall be disbursed with an amount
14 determined by the West Virginia Commissioner of Insurance and approved by the Joint Committee
15 on Government and Finance into the Public Employee Insurance Old Fund, the exact amount of
16 which shall be set forth in the governor's proclamation provided in this article and the remainder
17 into the new fund.

§5-16A-7. Custody, investment and disbursement of funds.

1 (a) The State Treasurer shall be the custodian of the Public Employees Insurance Old
2 Fund and the Assigned Risk Pool and moneys payable to each of these funds shall be deposited
3 in the State Treasury to the credit of the funds. Each fund shall be a separate and distinct fund
4 upon the books and records of the Auditor and Treasurer. Disbursements from these funds shall
5 be made upon requisitions signed by the director and, effective upon termination of the agency, the
6 administrator of the funds or the Insurance Commissioner, whichever is applicable. The Public

7 Employees Insurance Old Fund and the Assigned Risk Fund are participant plans as defined in
8 §12-6-2 of this code and are subject to the provisions of §12-6-9a of this code. The funds may be
9 invested by the Investment Management Board in accordance with said article.

10 (b) If the Governor issues the proclamation set forth in this article, then, effective upon
11 termination of the agency, all remaining assets and funds contained in the Public Employees Fund
12 which are payable to the new fund shall be so disbursed and paid to the company in a manner
13 previously provided by the director to the State Treasurer or other appropriate state official.

§5-16A-8. Transfer of assets from new fund to the Domestic Mutual Insurance Company
established as a successor to the agency; transfer of agency employees.

1 (a) If the Governor determines that:

2 (1) The old fund assets are sufficient to satisfy the old fund liabilities or that a revenue
3 source has been secured to satisfy the old fund liabilities as they occur from time to time;

4 (2) The director has established a Domestic Mutual Insurance Company pursuant to this
5 code; and

6 (3) The Insurance Commissioner has determined that the Domestic Mutual Insurance
7 Company established by the director qualifies:

8 (A) For a certificate of authority to transact industrial insurance in this state; and

9 (B) For the authority to issue nonassessable policies of insurance pursuant to this code,
10 the Governor shall issue a proclamation stating that the events described in subdivisions (1)
11 through (3), inclusive, of this subsection have occurred, along with the exact amount of funds to be
12 transferred from the Public Employees Insurance Fund to the old fund. The proclamation may not
13 be effective any earlier than June 30, 2024.

14 (b) If the Governor issues a proclamation the director shall transfer to the Domestic Mutual
15 Insurance Company established pursuant to this code the premiums and other money paid or
16 payable, transferred or transferable from the Public Employee Insurance Fund into the new fund,
17 old fund, and any other applicable fund. The Investment Management Board, State Treasurer and

18 any other agency or board shall fully cooperate in the transfer of the new fund assets.

19 (c) Upon the issuance of the proclamation set forth is subsection (a) of this section, all
20 agency employees assigned regulatory duties shall transfer from the agency to the Public
21 Employees Insurance Council: *Provided*, That the director has sole authority to identify and select
22 the employees that are employed by the agency to be assigned and transferred to the Insurance
23 Commission.

24 (d) All employees not transferred pursuant to the provisions of subsection (c) shall
25 immediately upon the transfer date become at-will employees of the company.

26 (e) The Division of Personnel shall cooperate fully by assisting in all personnel activities
27 necessary to expedite all changes for the agency and the Insurance Commissioner. Due to the
28 emergency currently existing at the agency and the urgent need to develop fast, efficient claims
29 processing, management and administration, the Insurance Commissioner is granted authority to
30 reorganize internal functions and operations and to delegate, assign, transfer, combine, establish,
31 eliminate and consolidate responsibilities and duties to and among the positions transferred under
32 the authority of this subsection. These actions may not be subject to the grievance process.

§5-16A-9. Certain personnel provisions governing employees laid-off by the mutual during
its initial year of operation.

1 If a domestic mutual insurance company is established pursuant to this article, a person
2 who:

3 (1) Is employed on July 1, 2024, by the agency;

4 (2) Was employed by the agency upon its termination; and

5 (3) Is laid off by the company on or before January 1, 2024, is entitled to be placed on an
6 appropriate reemployment list maintained by the Division of Personnel and to be allowed a
7 preference on that list. The Division of Personnel shall maintain such employee on the
8 reemployment list indefinitely, or until the employee has declined three offers of employment at a
9 paygrade substantially similar to that of his or her position upon termination of the agency, or until

10 he or she is reemployed by the executive branch of state government, whichever occurs earlier.

§5-16A-10. Certain retraining benefits to those employees laid-off by the mutual during its

first year of operation.

1 If a domestic mutual insurance company is established pursuant to this article, the chief
2 executive officer of the company shall enter into an agreement with the Division of Personnel for
3 the provision of services and training to an employee of the company who is laid off during the first
4 year of the company’s operation and requires additional training to obtain other gainful
5 employment. The Division of Personnel shall administer the program. The fees required for those
6 services and training shall be in an amount established by the Division of Personnel, may not
7 exceed \$3 million, in the aggregate, and shall be paid out of the mutualization transition fund.

§5-16A-11. Certain benefits provided to commission employees.

1 (a) If a domestic mutual insurance company is created pursuant to this article and
2 becomes operational as a private carrier, then the company shall pay the full actuarial cost to
3 purchase years of credit for not more than five years of service under the state’s public employee
4 retirement system to those individuals who retire upon termination of the agency or who become
5 employed by the company upon termination of the agency. The amount purchased per employee
6 shall be calculated by allowing six months of credit to be purchased for each year of service with
7 the agency and shall be paid out of the mutualization transition fund. If upon said purchase, an
8 employee does not vest in the public employee retirement plan, the employee can receive his or
9 her contribution from the retirement plan and an amount equal to the employer’s contribution to be
10 payable out of the mutualization transition fund.

11 (b) The public employees’ retirement system shall take such action as is necessary to carry
12 out the provisions of subsection (a).

13 (c) Any employee of the agency as of the transfer date and who becomes an employee of
14 the company shall have the following options related to their accrued and unused sick leave:
15 Freeze said accrued and unused sick leave at the balance that exists as of the transfer date and

16 use said sick leave at the time of retirement for those purposes that would have been available to
 17 the employee under law in existence at the date of the transfer had the employee retired on the
 18 transfer date; or have his or her accrued and unused sick leave irrevocably surrendered in
 19 exchange for one hour of pay for each hour of accrued and unused sick leave surrendered to be
 20 payable from the mutualization transition fund. With respect to any agency employee as of the
 21 transfer date and who becomes an employee of the company, the Department of Administration
 22 shall pay the employee such amounts as the employee is entitled for his or her accrued but
 23 unused annual leave, not to exceed 40 days.

24 (d) The Division of Personnel shall cooperate fully by assisting in all activities necessary to
 25 expedite all changes for the agency and agency employees, including, but not limited to, all of the
 26 above subsections.

§5-16A-12. Mandatory coverage.

1 (a) Effective upon termination of the agency, all participant plans for the public employees
 2 of the State of West Virginia shall transfer to the company and all public employees of West
 3 Virginia who choose to utilize public employees insurance shall participate in the plans offered by
 4 the company. The company shall assume responsibility for all new fund obligations.

5 (b) The company shall establish a group hospital and surgical insurance plan or plans, a
 6 group prescription drug insurance plan or plans, a group major medical insurance plan or plans
 7 and a group life and accidental death insurance plan or plans for those employees who are eligible
 8 and administer these plans subject to the limitations contained in this article. These plans shall
 9 include:

10 (1) Coverages and benefits for x-ray and laboratory services in connection with
 11 mammograms when medically appropriate and consistent with current guidelines from the United
 12 States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology,
 13 whichever is medically appropriate, and consistent with the current guidelines from either the
 14 United States Preventive Services Task Force or The American College of Obstetricians and

15 Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and
16 consistent with current guidelines from either the United States Preventive Services Task Force or
17 The American College of Obstetricians and Gynecologists, when performed for cancer screening
18 or diagnostic services on a woman age eighteen or over;

19 (2) Annual checkups for prostate cancer in men age fifty and over;

20 (3) Annual screening for kidney disease as determined to be medically necessary by a
21 physician using any combination of blood pressure testing, urine albumin or urine protein testing
22 and serum creatinine testing as recommended by the National Kidney Foundation;

23 (4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed
24 health care facility for a mother and her newly born infant for the length of time which the attending
25 physician considers medically necessary for the mother or her newly born child. No plan may
26 deny payment for a mother or her newborn child prior to 48 hours following a vaginal delivery or
27 prior to 96 hours following a caesarean section delivery if the attending physician considers
28 discharge medically inappropriate;

29 (5) For plans which provide coverages for post-delivery care to a mother and her newly
30 born child in the home, coverage for inpatient care following childbirth as provided in subdivision
31 (4) of this subsection if inpatient care is determined to be medically necessary by the attending
32 physician. These plans may include, among other things, medicines, medical equipment,
33 prosthetic appliances and any other inpatient and outpatient services and expenses considered
34 appropriate and desirable by the agency; and

35 (6) Coverage for treatment of serious mental illness:

36 (A) The coverage does not include custodial care, residential care or schooling. For
37 purposes of this section, "serious mental illness" means an illness included in the American
38 Psychiatric Association's Diagnostic and Statistical Manual of mental disorders, as periodically
39 revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other
40 psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related

41 disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v)
42 anxiety disorders; and (vi) anorexia and bulimia. With regard to a covered individual who has not
43 yet attained the age of 19 years, "serious mental illness" also includes attention deficit
44 hyperactivity disorder, separation anxiety disorder and conduct disorder.

45 (B) Notwithstanding any other provision in this section to the contrary, if the company
46 demonstrates that its total costs for the treatment of mental illness for any plan exceeds two
47 percent of the total costs for such plan in any experience period, then the company may apply
48 whatever additional cost-containment measures may be necessary in order to maintain costs
49 below two percent of the total costs for the plan for the next experience period. These measures
50 may include, but are not limited to, limitations on inpatient and outpatient benefits.

51 (C) The company may not discriminate between medical-surgical benefits and mental
52 health benefits in the administration of its plan. With regard to both medical-surgical and mental
53 health benefits, it may make determinations of medical necessity and appropriateness and it may
54 use recognized health care quality and cost management tools including, but not limited to,
55 limitations on inpatient and outpatient benefits, utilization review, implementation of cost-
56 containment measures, preauthorization for certain treatments, setting coverage levels, setting
57 maximum number of visits within certain time periods, using capitated benefit arrangements, using
58 fee-for-service arrangements, using third-party administrators, using provider networks and using
59 patient cost sharing in the form of copayments, deductibles and coinsurance.

60 (7) Coverage for general anesthesia for dental procedures and associated outpatient
61 hospital or ambulatory facility charges provided by appropriately licensed health care individuals in
62 conjunction with dental care if the covered person is:

63 (A) Seven years of age or younger or is developmentally disabled and is an individual for
64 whom a successful result cannot be expected from dental care provided under local anesthesia
65 because of a physical, intellectual or other medically compromising condition of the individual and
66 for whom a superior result can be expected from dental care provided under general anesthesia;

67 (B) A child who is 12 years of age or younger with documented phobias or with
68 documented mental illness and with dental needs of such magnitude that treatment should not be
69 delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of
70 teeth or other increased oral or dental morbidity and for whom a successful result cannot be
71 expected from dental care provided under local anesthesia because of such condition and for
72 whom a superior result can be expected from dental care provided under general anesthesia.

73 (8) (A) Any plan issued shall include coverage for diagnosis, evaluation and treatment of
74 autism spectrum disorder in individuals ages 18 months to 18 years. To be eligible for coverage
75 and benefits under this subdivision, the individual must be diagnosed with autism spectrum
76 disorder at age eight or younger. Such plan shall provide coverage for treatments that are
77 medically necessary and ordered or prescribed by a licensed physician or licensed psychologist
78 and in accordance with a treatment plan developed from a comprehensive evaluation by a certified
79 behavior analyst for an individual diagnosed with autism spectrum disorder.

80 (B) The coverage shall include, but not be limited to, applied behavior analysis which shall
81 be provided or supervised by a certified behavior analyst. The annual maximum benefit for
82 applied behavior analysis required by this subdivision shall be in an amount not to exceed \$30,000
83 per individual for three consecutive years from the date treatment commences. At the conclusion
84 of the third year, coverage for applied behavior analysis required by this subdivision shall be in an
85 amount not to exceed \$2,000 per month, until the individual reaches eighteen years of age, as
86 long as the treatment is medically necessary and in accordance with a treatment plan developed
87 by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the
88 individual. This subdivision does not limit, replace or affect any obligation to provide services to an
89 individual under the Individuals with Disabilities Education Act, 20 U. S. C. 1400 et seq., as
90 amended from time to time or other publicly funded programs. Nothing in this subdivision requires
91 reimbursement for services provided by public school personnel.

92 (C) The certified behavior analyst shall file progress reports with the agency semiannually.

93 In order for treatment to continue, the agency must receive objective evidence or a clinically
94 supportable statement of expectation that:

95 (i) The individual's condition is improving in response to treatment;

96 (ii) A maximum improvement is yet to be attained; and

97 (iii) There is an expectation that the anticipated improvement is attainable in a reasonable
98 and generally predictable period of time.

99 (D) To the extent that the application of this subdivision for autism spectrum disorder
100 causes an increase of at least one percent of actual total costs of coverage for the plan year, the
101 agency may apply additional cost containment measures.

102 (E) To the extent that the provisions of this subdivision require benefits that exceed the
103 essential health benefits specified under section 1302(b) of the Patient Protection and Affordable
104 Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified
105 essential health benefits may not be required of insurance plans offered by the company.

106 (9) For plans that include maternity benefits, coverage for the same maternity benefits for
107 all individuals participating in or receiving coverage under plans that are issued or renewed on or
108 after January 1, 2014: *Provided*, That to the extent that the provisions of this subdivision require
109 benefits that exceed the essential health benefits specified under section 1302(b) of the Patient
110 Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that
111 exceed the specified essential health benefits may not be required of a health benefit plan when
112 the plan is offered in this state.

113 (10) Notwithstanding any provision of any policy, provision, contract, plan or agreement
114 applicable to this article, reimbursement or indemnification for colorectal cancer examinations and
115 laboratory testing may not be denied for any nonsymptomatic person 50 years of age or older, or a
116 symptomatic person under 50 years of age, when reimbursement or indemnity for laboratory or X
117 ray services are covered under the policy and are performed for colorectal cancer screening or
118 diagnostic purposes at the direction of a person licensed to practice medicine and surgery by the

119 Board of Medicine. The tests are as follows: An annual fecal occult blood test, a flexible
120 sigmoidoscopy repeated every five years, a colonoscopy repeated every 10 years and a double
121 contrast barium enema repeated every five years.

122 (A) A symptomatic person is defined as: (1) An individual who experiences a change in
123 bowel habits, rectal bleeding or stomach cramps that are persistent; or (2) an individual who poses
124 a higher than average risk for colorectal cancer because he or she has had colorectal cancer or
125 polyps, inflammatory bowel disease, or an immediate family history of such conditions.

126 (B) The same deductibles, coinsurance, network restrictions and other limitations for
127 covered services found in the policy, provision, contract, plan or agreement of the covered person
128 may apply to colorectal cancer examinations and laboratory testing.

129 (11) The plan shall provide, in a case of a participant or beneficiary who is receiving
130 benefits in connection with a mastectomy and who elects breast reconstruction in connection with
131 such mastectomy, coverage for:

132 (A) All stages of reconstruction of the breast on which the mastectomy has been
133 performed;

134 (B) Surgery and reconstruction of the other breast to produce a symmetrical appearance;
135 and

136 (C) Prostheses and physical complications of mastectomy, including lymphedemas in a
137 manner determined in consultation with the attending physician and the patient. Coverage shall be
138 provided for a minimum stay in the hospital of not less than 48 hours for a patient following a
139 radical or modified mastectomy and not less than 24 hours of inpatient care following a total
140 mastectomy or partial mastectomy with lymph node dissection for the treatment of breast cancer.

141 Nothing in this section shall be construed as requiring inpatient coverage where inpatient
142 coverage is not medically necessary or where the attending physician in consultation with the
143 patient determines that a shorter period of hospital stay is appropriate. This coverage may be
144 subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as

145 are consistent with those established for other benefits under the plan. Written notice of the
146 availability of such coverage shall be delivered to the participant upon enrollment and annually
147 thereafter in the summary plan description or similar document. The plan may not deny to a patient
148 eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely
149 for the purpose of avoiding the requirements of this section; and penalize or otherwise reduce or
150 limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to
151 an attending provider, to induce such provider to provide care to an individual participant or
152 beneficiary in a manner inconsistent with this section.

153 (D) Nothing in this section may be construed to prevent a health benefit plan policy or a
154 health insurer offering health insurance coverage from negotiating the level and type of
155 reimbursement with a provider for care provided in accordance with this section.

156 (12) Coverage for patient cost of clinical trials.

157 (A) The provisions of this section apply to the health plans regulated by this article.

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

160 (C) A policy, plan or contract subject to this section shall provide coverage for patient cost
161 to a member in a clinical trial, as a result of:

162 (i) Treatment provided for a life-threatening condition; or

163 (ii) Prevention of, early detection of or treatment studies on cancer.

164 (D) The coverage under paragraph(C) of this section is required if the treatment is being
165 provided or the studies are being conducted in a Phase II, Phase III or Phase IV clinical trial for
166 cancer and has therapeutic intent or the treatment is being provided in a Phase II, Phase III or
167 Phase IV clinical trial for any other life-threatening condition and has therapeutic intent or, the
168 treatment is being provided in a clinical trial approved by one of the national institutes of health, an
169 NIH cooperative group or an NIH center, the FDA in the form of an investigational new drug
170 application or investigational device exemption, the federal Department of Veterans Affairs or, an

171 institutional review board of an institution in the state which has a multiple project assurance
172 contract approved by the office of protection from research risks of the national institutes of health;

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

175 (ii) There is no clearly superior, noninvestigational treatment alternative;

176 (iii) The available clinical or preclinical data provide a reasonable expectation that the
177 treatment will be more effective than the noninvestigational treatment alternative;

178 (iv) The treatment is provided in this state: *Provided*, That, if the treatment is provided
179 outside of this state, the treatment must be approved by the payor designated in subsection (a) of
180 this section;

181 (v) Reimbursement for treatment is subject to all coinsurance, copayment and deductibles
182 and is otherwise subject to all restrictions and obligations of the health plan; and

183 (vi) Reimbursement for treatment by an out of network or noncontracting provider shall be
184 reimbursed at a rate which is no greater than that provided by an in network or contracting
185 provider. Coverage may not be required if the out of network or noncontracting provider will not
186 accept this level of reimbursement.

187 (E) Payment for patient costs for a clinical trial is not required by the provisions of this
188 section, if:

189 (i) The purpose of the clinical trial is designed to extend the patent of any existing drug, to
190 gain approval or coverage of a metabolite of an existing drug, or to gain approval or coverage
191 relating to additional clinical indications for an existing drug; or

192 (ii) The purpose of the clinical trial is designed to keep a generic version of a drug from
193 becoming available on the market; or

194 (iii) The purpose of the clinical trial is to gain approval of or coverage for a reformulated or
195 repackaged version of an existing drug.

196 (F) Any provider billing a third party payor for services or products provided to a patient in a

197 clinical trial shall provide written notice to the payor that specifically identifies the services as part
198 of a clinical trial.

199 (G) Notwithstanding any provision in this section to the contrary, coverage is not required
200 for Phase I of any clinical trial.

201 (c) The company shall, with full authorization, make available to each eligible employee, at
202 full cost to the employee, the opportunity to purchase optional group life and accidental death
203 insurance as established under the rules of the agency. In addition, each employee is entitled to
204 have his or her spouse and dependents, as defined by the rules of the agency or by the company,
205 included in the optional coverage, at full cost to the employee, for each eligible dependent.

206 (d) The company may cause to be separately rated for claims experience purposes:

207 (1) All employees of the State of West Virginia;

208 (2) All teaching and professional employees of state public institutions of higher education
209 and county boards of education;

210 (3) All nonteaching employees of the Higher Education Policy Commission, West Virginia
211 Council for Community and Technical College Education and county boards of education; or

212 (4) Any other categorization which would ensure the stability of the overall program.

213 (e) The company shall maintain the medical and prescription drug coverage for Medicare
214 eligible retirees by providing coverage through one of the existing plans or by enrolling the
215 Medicare eligible retired employees into a Medicare specific plan, including, but not limited to, the
216 Medicare/Advantage Prescription Drug Plan. If a Medicare specific plan is no longer available or
217 advantageous for the agency and the retirees, the retirees remain eligible for coverage through the
218 agency.

§5-16A-13. Permissive participation; exemptions.

1 (a) The provisions of this article are not mandatory upon any employee or employer who is
2 not an employee of or is not the State of West Virginia, its boards, agencies, commissions,
3 departments, institutions or spending units or a county board of education, and nothing contained

4 in this article may be construed so as to compel any employee or employer to enroll in or subscribe
5 to any insurance plan authorized by the provisions of this article.

6 (b) Employees enrolled in the insurance program authorized under the provisions of article
7 §21A-2B-1 et seq. of this code may not be required to enroll in or subscribe to an insurance plan or
8 plans authorized by the provisions of this article, and the employees of any department which has
9 an existing insurance program for its employees to which the government of the United States
10 contributes any part or all of the premium or cost of the premium may be exempted from the
11 provisions of this article. Any employee or employer exempted under the provisions of this
12 paragraph may enroll in any insurance program authorized by the provisions of this article at any
13 time, to the same extent as any other qualified employee or employer, but employee or employer
14 may not remain enrolled in both programs. The provisions of §33-14-1 et seq., §33-15-1 et seq.,
15 and §33-15-1 et seq. relating to group life insurance, accident and sickness insurance, and group
16 accident and sickness insurance, are not applicable to this article if §33-14-1 et seq., §33-15-1 et
17 seq., and §33-15-1 et seq. of this code are in conflict with or contrary to any provision set forth in
18 this article or to any plan or plans established by the company.

19 (c) Employers, other than the State of West Virginia, its boards, agencies, commissions,
20 departments, institutions, spending units or a county board of education are exempt from
21 participating in the insurance program provided for by the provisions of this article unless
22 participation by the employer has been approved by a majority vote of the employer's governing
23 body. It is the duty of the clerk or secretary of the governing body of an employer who, by majority
24 vote, becomes a participant in the insurance program to notify the director not later than 10 days
25 after the vote.

26 (d) Any employer, whether the employer participates in the Public Employees Insurance
27 Agency insurance program as a group or not, which has retired employees, their dependents or
28 surviving dependents of deceased retired employees who participate in the Public Employees
29 Insurance Agency insurance program as authorized by this article, shall pay to the company the

30 same contribution toward the cost of coverage for its retired employees, their dependents or
 31 surviving dependents of deceased retired employees as the State of West Virginia, its boards,
 32 agencies, commissions, departments, institutions, spending units or a county board of education
 33 pay for their retired employees, their dependents and surviving dependents of deceased retired
 34 employees, as determined by the finance board: *Provided, That after June 30, 1996, an employer*
 35 not mandated to participate in the plan is only required to pay a contribution toward the cost of
 36 coverage for its retired employees, their dependents or the surviving dependents of deceased
 37 retired employees who elect coverage when the retired employee participated in the plan as an
 38 active employee of the employer for at least five years: *Provided, however, That those retired*
 39 employees of an employer not participating in the plan who retire on or after July 1, 2010, who
 40 have participated in the plan as active employees of the employer for less than five years are
 41 responsible for the entire premium cost for coverage and the company shall bill for and collect the
 42 entire premium from the retired employees, unless the employer elects to pay the employer share
 43 of the premium. Each employer is hereby authorized and required to budget for and make such
 44 payments as are required by this section.

45 (e) Any person employed by the State of West Virginia on or before the transfer date may
 46 use their accrued and unused sick leave at the time of retirement for those purposes that would
 47 have been available to the employee under law in existence at the date of the transfer had the
 48 employee retired on the transfer date, including use of sick leave at the time of retirement to
 49 purchase insurance through the company.

§5-16A-14. Administration of old fund.

1 (a) Notwithstanding any provision of this code to the contrary, the company shall be the
 2 administrator of the old fund from its inception and thereafter for seven years and shall be charged
 3 with all authority and responsibilities incidental to the administration of the old fund which are
 4 necessary to accomplish the express provisions and the intent of this article. The company shall
 5 be paid a monthly administrative fee of five percent of claims paid each month for the

6 administration of the old fund through June 30, 2027, and four percent of claims paid each month
 7 for the administration of the old fund thereafter through the June 30, 2028. The company's
 8 administrative duties shall include, but not be limited to, receipt of all claims, processing said
 9 claims, providing for the payment of said claims through the State Treasurer's office or other
 10 applicable state agency, and ensuring, through the selection and assignment of counsel, that
 11 claims decisions are properly defended. The administration of the old fund after this seven-year
 12 period shall be subject to the procedures set forth in §5A-31 *et seq.* of this code.

13 (b) The Insurance Commissioner may contract or employ counsel to perform legal services
 14 related solely to the collection of moneys due the old fund and enforcement of repayment
 15 agreements entered into for the collection of moneys due on or before June 30, 2024, in any
 16 administrative proceeding and in any state or federal court.

17 (c) The Insurance Commissioner may conduct or cause to be conducted an annual audit to
 18 be performed on the old fund.

§5-16A-15. Ratemaking; insurance commissioner.

1 (a) For the fiscal year beginning July 1, 2025, the company shall charge the actuarially
 2 determined base rates for the fiscal year. The base rates shall be calculated by the company and
 3 submitted for the fiscal year beginning July 1, 2026, all private carriers' rates shall be governed by
 4 the following:

5 (1) For the period beginning on July 1, 2024, and ending on June 30, 2025, no more than
 6 five percent variance from the base rates established by the Insurance Commissioner.

7 (2) For the period beginning on July 1, 2025, and ending on June 30, 2026, no more than
 8 ten percent variance from the base rates established by the Insurance Commissioner.

9 (b) The Insurance Commissioner approval by the Insurance Commissioner.

10 (c) For the fiscal year beginning July 1, 2026, the company shall charge the actuarially
 11 determined base rates for said fiscal year. The base rates shall be calculated by the company and
 12 submitted for approval by the Insurance Commissioner.

13 (d) Effective retains authority to disapprove rates in effect if it is determined that the rates
14 are not in compliance with the following:

15 (1) Rates must not be excessive, inadequate or unfairly discriminatory, nor may an insurer
16 charge any rate which if continued will have or tend to have the effect of destroying competition or
17 creating a monopoly.

18 (2) The Insurance Commissioner may disapprove rates if there is not a reasonable degree
19 of price competition at the consumer level. In determining whether a reasonable degree of price
20 competition exists, the Insurance Commissioner shall consider all relevant tests, including:

21 (A) The number of insurers actively engaged and their shares of the market;

22 (B) The existence of differentials in rates in that class;

23 (C) Whether long-run profitability for private carriers generally of the class is unreasonably
24 high in relation to its risk;

25 (D) Consumers' knowledge in regard to the market in question; and

26 (E) Whether price competition is a result of the market or is artificial. If competition does
27 not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably high
28 in relation to the risk of the class of business, or if expenses are unreasonably high in relation to
29 the services rendered.

30 (3) Rates are inadequate if they are clearly insufficient, together with the income from
31 investments attributable to them, to sustain projected losses and expenses in the class.

32 (4) One rate is unfairly discriminatory in relation to another in the same class if it clearly
33 fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly
34 discriminatory because different premiums result for policyholders with similar exposure to loss
35 but different expense factors, or similar expense factors but different exposure to loss, so long as
36 the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if
37 they are averaged broadly among persons insured under a group, franchise or blanket policy.

1 The successor to the agency and any other private carrier shall exercise all authority and
 2 responsibility granted to the agency in this article and provide notices of action taken to effect the
 3 purposes of this article to provide health and surgical care benefits as set forth in this article to
 4 persons who are plan participants. The successor to the agency and private carriers shall at all
 5 times be bound and shall comply fully with all of the provisions of this article.

§5-16A-17. Rules.

1 Except as otherwise provided in this chapter, all rules applicable to the former Public
 2 Employees Insurance Agency are hereby adopted and made effective as to the operation of the
 3 public employees insurance market to the extent that they are not in conflict with the current law.
 4 Authority to enforce the existing rules and the regulatory functions of the agency as set forth in
 5 chapter five of the code shall transfer from the agency to the Insurance Commissioner effective
 6 upon termination of the agency. The Insurance Commissioner shall review and seek approval,
 7 modification or replacement, through the public employees insurance council, of all existing rules
 8 no later than July 1, 2024.

§5-16A-18. Transfer of assets and contracts.

1 With the establishment of the company, all agency assets, including, but not limited to, all
 2 tangible items, records (electronic and hard copy) necessary to administer the old fund and
 3 operate as the company, hardware, software, intellectual property, maintenance agreements,
 4 system support agreements, and warranties, and all contracts, along with rights and obligations
 5 thereunder, obtained or signed on behalf of the Public Employees Insurance Agency in
 6 furtherance of the purposes of this article, are hereby transferred and assigned to the company.

§5-16A-19. No waiver of sovereign immunity.

1 Nothing contained in this article may be deemed or construed to waive or abrogate in any
 2 way the sovereign immunity of the state or to deprive the board, department or any officer or
 3 employee thereof of sovereign immunity.

§5-16A-20. Not obligation of the state.

- 1 The obligations of the company may not constitute debts or obligations of the agency, the
- 2 Department of Administration or the state.

NOTE: The purpose of this bill is to dissolve the Public Employees Insurance Agency and convert it to an employer-owned mutual insurance company.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added. §5-16-1 and §5-16-2 have been completely rewritten.