

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2024

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WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

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(H. B. 4274 - By Delegates Summers, Tully, Hite, Rohrbach, and Fehrenbacher)

[Passed January 22, 2024; In effect from passage.]

[Approved by the Governor on January 26, 2024.]

AN ACT to amend and reenact §4-10-8 of the Code of West Virginia, 1931; to amend and reenact §5-1E-1 and §5-1E-2 of said code; to repeal §5-5-4 of said code; to amend and reenact §5-6-4 of said code; to amend and reenact §5-10C-3 of said code; to amend and reenact §5-14-3 and §5-14-5 of said code; to amend and reenact §5-16-2 and §5-16-18 of said code; to amend and reenact §5-16B-1, §5-16B-2, §5-16B-4 and §5-16B-10 of said code; to amend and reenact §5-26-1 of said code; to amend and reenact §5-29-2 of said code; to amend and reenact §5A-1A-2 of said code; to repeal §5A-2-34 of said code; to amend and reenact §5A-3-1a and §5A-3-3b of said code; to amend and reenact §5B-2-15; to amend and reenact §5F-1-2; to amend and reenact §6-7-2a of said code; to amend and reenact §7-1-3a of said code; to amend and reenact §7-4-4 of said code; to amend and reenact §7-10-2; to amend and reenact §8-19-21 of said code; to amend and reenact §8A-1-2 of said code; to amend and reenact §9-1-2 of said code; to amend and reenact §9-2-6a, and §9-2-10 of said code; to repeal §9-2-9 of said code; to amend and reenact §9-3-4, §9-3-5 and §9-3-6 of said code; to amend and reenact §9-4A-2, §9-4A-2a, §9-4A-2b and §9-4A-4 of said code; to amend and reenact §9-4B-1 and §9-4B-4 of said code; to amend and reenact §9-4C-1, §9-4C-7 and §9-4C-8 of said code; to amend and reenact §9-4D-2 and §9-4D-9 of said code; to amend and reenact §9-5-9, §9-5-11, §9-5-11a, §9-5-11b, §9-5-11c, §9-5-12a, §9-5-15, §9-5-16a, §9-5-19, §9-5-26, §9-5-27, §9-5-29 and §9-5-30 of said code; to repeal §9-5-25 of said code; to amend and reenact §9-6-1, §9-6-2, §9-6-9, §9-6-11 and §9-6-16 of said code; to

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Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-8. Schedule of departments for agency review.

(a) Each department shall make a presentation, pursuant to the provisions of this article, to the joint standing committee and the committee during the first interim meeting after the regular session of the year in which the department is to be reviewed pursuant to the schedule set forth in subsection (b) of this section.

(b) An agency review shall be performed on one or more agencies under the purview of each department at least once every seven years, as follows:

(1) 2017: The Department of Revenue and the Department of Commerce;

(2) 2018: The Department of Environmental Protection and the Department of Military Affairs and Public Safety;

(3) 2019: Department of Human Services, the Department of Health, and the Department of Health Facilities, including the Bureau of Senior Services;

(4) 2020: The Department of Transportation;

(5) 2021: The Department of Administration;

(6) 2022: The Department of Education, the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education; and

(7) 2023: The Department of Veterans' Assistance and the Department of Education and the Arts.

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.

§5-1E-1. Findings and purposes.

The Legislature finds and declares that the rise in obesity and related weight problems accompanied by the resulting incidence of chronic disease has created a health care crisis that burdens the health care infrastructure of the state. The Legislature also finds that the State of West Virginia must take an informed, sensitive approach to communicate and educate the citizens of the state about health issues related to obesity and inappropriate weight gain. The Legislature further finds that the state must take action to assist West Virginia citizens in engaging in healthful eating and regular physical activity. The Legislature further finds that the state must invest in research that improves understanding of inappropriate weight gain and obesity. These efforts are needed to coordinate the state's interest in improving the health of its citizens and in reducing the cost of health care. Therefore, it is the purpose of this article to create, as an integral part of the Department of Health, an entity to coordinate the efforts of all agencies to prevent and remedy obesity and related weight problems and to ensure that all citizens are being educated on this serious health risk that is affecting the state.

§5-1E-2. Creation of the Office of Healthy Lifestyles.

There is hereby created the Office of Healthy Lifestyles within the Department of Health. The management of this office shall be provided in the manner determined by the Secretary of the Department of Health to be in the best interest of the state and its citizens.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**§5-5-4. Department of Health and Human Resources salary adjustment.**

[Repealed]

ARTICLE 6. STATE BUILDINGS.**§5-6-4. Powers of commission.**

(a) The commission has the power:

(1) To sue and be sued, plead, and be impleaded;

(2) To have a seal and alter the same at pleasure;

(3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

(4) To acquire, hold and dispose of personal property for its corporate purposes;

(5) To make bylaws for the management and regulation of its affairs;

(6) With the consent of the Attorney General of the State of West Virginia, to use the facilities of his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;

(7) To appoint officers, agents and employees and fix their compensation;

(8) To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;

(9) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;

(10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the State of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to the consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space in the warehouse in Kanawha County for the West Virginia Alcohol Beverage Control Commissioner, and equip and furnish the office space; and to acquire or construct, through lease, purchase, lease-purchase or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and supervision of the division of health and at institutions under the jurisdiction of the Division of Corrections or the regional jail and correctional facilities authority; and to formulate and program plans for the orderly and timely capital improvement of all of the hospitals and institutions and the state Capitol buildings; and to construct a building or buildings in Kanawha County to be used as a general headquarters by the division of public safety to accommodate that division's executive staff, clerical offices, technical services, supply facilities and dormitory accommodations; and to develop, improve and expand state parks and recreational facilities to be operated by the Division of Natural Resources; and to establish one or more systems or complexes of buildings and projects under control of the commission; and, subject to prior agreements with holders of bonds previously issued, to change the systems, complexes of buildings and projects from time to time, in order to facilitate the issuance

and sale of bonds of different series on a parity with each other or having such priorities between series as the commission may determine; and to acquire by purchase, eminent domain or otherwise all real property or interests in the real property necessary or convenient to accomplish the purposes of this subdivision. The rights and powers set forth in this subdivision shall not be construed as in derogation of any rights and powers now vested in the West Virginia Alcohol Beverage Control Commissioner, the Department of Health Facilities, the Division of Corrections, or the Division of Natural Resources;

(11) To maintain, construct, remove, and operate a project authorized under this article;

(12) To charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as provided in this article: *Provided*, That on and after the effective date of the amendments to this section, to charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired, maintained or improved, in whole or in part, with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as in this section provided, or with any funds available to the state building commission, including, but not limited to, all buildings and property owned by the State of West Virginia or by the state building commission, but no rentals shall be charged to the Governor, Attorney General, Secretary of State, State Auditor, State Treasurer, the Legislature and the members of the Legislature, the Supreme Court of Appeals, nor for their offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights of the holders of the negotiable bonds;

(14) To accept and expend any gift, grant, or contribution of money to, or for the benefit of, the commission, from the State of West Virginia or any other source for any or all of the purposes

specified in this article or for any one or more of such purposes as may be specified in connection with the gift, grant, or contribution;

(15) To enter on any lands and premises for the purpose of making surveys, soundings, and examinations;

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects;

(17) To issue revenue bonds in accordance with the applicable provisions of this article for the purposes set forth in §5-6-11a of this code; and

(18) To do all things necessary or convenient to carry out the powers given in this article.

(19) The power and authority granted to the state building commission pursuant to this section and §5-6-7, §5-6-8, and §5-6-11a of this code to initiate, acquire, construct, finance or develop projects; to issue revenue bonds; or to exercise the power of eminent domain with respect to any project, shall terminate on the effective date of this section: *Provided*, That nothing herein shall be construed to affect the validity of any act of the state building commission prior to the effective date of this section or to impair the rights of bondholders with respect to bonds or other evidence of indebtedness issued prior to the effective date of this section. Following the effective date of this section, the secretary of administration may exercise any power expressly granted pursuant to this article with respect to any project or facility previously constructed or acquired, any existing contractual obligations, and any outstanding bonded indebtedness. Refunding bonds for any outstanding bonded indebtedness are authorized, subject to the provisions of article two-e, chapter thirteen of this code. The West Virginia economic development authority provided for in §31-15-1 *et seq.* of this code is designated to act as the governing body whose authorizations and determinations are required for the purpose of refunding bonds.

(b) Notwithstanding any provision of this code to the contrary, the commission may not cause or permit to be caused the dedication or naming of any state building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the member's deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The Consolidated Public Retirement Board created in article ten-d of this chapter; the Higher Education Policy Commission; the West Virginia Council for Community and Technical College Education; the institutional governing boards responsible for the higher education retirement plan and supplemental retirement plan; or the boards of trustees of the firemen's and policemen's pension and relief funds created in §8-22-1 *et seq.* of this code.

(3) "Employee" means any person, whether appointed, elected or under contract, providing services for a public employer for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any person who has accumulated contributions standing to his or her credit in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by §5-10-29 of this code from employees

who are members of the West Virginia Public Employees Retirement System; the contributions required by §15-2-26 of this code from employees who are members of the West Virginia State Police Death, Disability and Retirement Fund; the contributions required by §7-14D-7 of this code from employees who are members of the Deputy Sheriff Retirement System; the contributions required by §18-7A-14 of this code from employees who are members of the State Teachers Retirement System; the contributions authorized or required by §18-7A-14a of said chapter or by §18-23-4a of said chapter from employees who are members of the West Virginia higher education retirement plan and supplemental retirement plan; the contributions required by §51-9-4 of this code from employees who are members of the Judges' Retirement System; the contributions required by §8-22-19 of this code from employees who are members of municipal firemen's and policemen's pension and relief funds; the contributions required by §8-22A-8 of this code from employees who are members of the Municipal Police Officers and Firefighters Retirement System; the contributions required by §18-7B-9 of this code from employees who are members of the Teachers' Defined Contribution Retirement System; the contributions required by §15-2A-5 of this code from the employees who are members of the West Virginia State Police Retirement System; the contributions required by §16-5V-8 of this code from employees who are members of the West Virginia Emergency Medical Services Retirement System; or the contributions required by §20-18-8 of this code from employees who are members of the West Virginia Natural Resources Police Officers Retirement System.

(6) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit and includes any agency with full-time employees, created by rule of the Supreme Court of Appeals, which for the purpose of this article shall be considered a department of state government and county boards of education with respect to teachers and nonteachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Public Employees Retirement System; any political subdivision in the

state which has elected to cover its employees, as defined in this article, under the Deputy Sheriff Retirement System; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; any political subdivision in this state which is subject to the provisions of articles twenty-two and twenty-two-a, chapter eight of this code; and any public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in, and cover its employees under, either the State Teachers Retirement System or the Teachers' Defined Contribution Retirement System.

(7) "Political subdivision" means the State of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by or approved by the Department of Human Services for the provision of community or mental health services and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia Public Employees Retirement System created in §5-10-1 *et seq.* of this code; the West Virginia State Police Death, Disability and Retirement Fund created in §15-2-26 through §15-2-39a of this code, inclusive; the West Virginia Deputy Sheriff Retirement System created in §7-14D-1 *et seq.* of this code; the state Teachers Retirement System created in §18-7A-1 *et seq.* of this code; the West Virginia higher education retirement plan and supplemental retirement plan created in §18-7A-14a of this code and §18-23-4a of this code; the Judges' Retirement System created in §51-9-1 *et seq.* of this code; the firemen's or policemen's pension and relief funds created in §8-22-16 of this code; the Municipal Police Officers and Firefighters Retirement System created in §8-22A-4 of this code; the Teachers' Defined Contribution Retirement

System created in article seven-b, chapter eighteen of this code; the West Virginia State Police Retirement System created in article two-a, chapter fifteen of this code; the West Virginia Emergency Medical Services Retirement System created in §16-5V-1 *et seq.* of this code; or the West Virginia Natural Resources Police Officers Retirement System created in article eighteen, chapter twenty of this code.

(9) "Teacher" and "nonteacher" have the meanings ascribed to the terms "teacher member" and "nonteaching member" in §18-7A-3 of this code.

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-3. Continuation of commission; membership.

(a) The West Virginia Commission for the Deaf and Hard of Hearing is continued within the Department of Health consisting of 17 persons, eight of whom shall serve *ex officio*. The remaining members are appointed by the Governor by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission's expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters.

(b) The members are: The Secretary of the Department of Health, or his or her designee; the Commissioner of the Division of Labor, or his or her designee; the Commissioner of the Bureau for Public Health, or his or her designee; the State Superintendent of Schools, or his or her designee; the Director of the Division of Rehabilitation Services, or his or her designee; the Chairman of the Advisory Council for the Education of Exceptional Children, or his or her designee; and the Superintendent of the West Virginia School for the Deaf and Blind, or his or her designee, all of whom serve *ex officio* with full voting privileges.

(c) The Governor shall appoint nine persons, at least five of whom are deaf or hard of hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the deaf or hard of hearing, one audiologist and one otolaryngologist. Of the five deaf people, at least three shall be selected from a list of five people recommended by the Board of the West Virginia Association of the Deaf.

§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

(a) The commission shall maintain a clearinghouse of information, the purpose of which is to aid deaf or hard of hearing persons and others in obtaining appropriate services or information about such services, including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

(b) The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language.

(c) The Secretary of the Department of Health shall promulgate rules pursuant to §29A-3-1 *et seq.* of this code for the state quality assurance evaluation, including the establishment of required qualifications and ethical standards for interpreters, the approval of interpreters, the monitoring and investigation of interpreters and the suspension and revocation of approvals. The commission may conduct interpreter evaluations and collect and expend funds with regard thereto.

(d) The commission shall develop an outreach program to familiarize the public with the rights and needs of deaf or hard of hearing people and of available services.

(e) The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multi-handicapped deaf or hard of hearing.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

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

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

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

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

"Dependent" includes an eligible employee's child under the age of 26 as defined in the Patient Protection and Affordable Care Act.

"Device" means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps.

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

"Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

"Employee" means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia; and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works

regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, or a governing board as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an "employee" during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

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

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 *et seq.* of this code;

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

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

"Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public Employees Insurance Program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 *et seq.* of this code and which is supported in part by state, county, or municipal funds; a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

"Established patient" means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

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

"Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

"Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

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

"Person" means any individual, company, association, organization, corporation, or other legal entity.

"Plan" means a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans.

"Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes, and includes at least one type of insulin in all of the following categories:

- (1) Rapid-acting;
- (2) Short-acting;
- (3) Intermediate-acting;

- (4) Long-acting;
- (5) Pre-mixed insulin products;
- (6) Pre-mixed insulin/GLP-1 RA products; and
- (7) Concentrated human regular insulin.

"Primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder.

"Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

"Retired employee" means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education, or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system, and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System, and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as

the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present, or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

"Virtual telehealth" means a new patient or follow-up patient for acute care that does not require chronic management or scheduled medications.

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

(a) All employers operating from state general revenue or special revenue funds, or federal funds, or any combination of those funds, shall budget the cost of insurance coverage provided by the Public Employees Insurance Agency to current and retired

employees of the employer as a separate line item titled PEIA in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge General Revenue Funds for insurance benefits for retirees under §5-16-13 of this code shall provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring employee has been paid solely with General Revenue Funds for 12 months prior to retirement.

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

(c) All other employers not operating from the state General Revenue Fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers' share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

(d) The contribution of the other employers that are counties, cities, or towns in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a

governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or comprehensive mental health facility established, operated, or licensed pursuant to §27-2A-1 *et seq.* of this code, and which is supported in part by state, county, or municipal funds; and a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code for their employees shall be the percentage of the cost of the employees' insurance package as the employers determine reasonable and proper under their own particular circumstances.

(e) The employee's proportionate share of the premium or cost shall be withheld or deducted by the employer from the employee's salary or wages as and when paid and the sums shall be forwarded to the director with any supporting data as the director may require.

(f) All moneys received by the Public Employees Insurance Agency shall be deposited in a special fund or funds as are necessary in the State Treasury and the Treasurer is custodian of the fund or funds and shall administer the fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The Treasurer shall pay all warrants issued by the State Auditor against the fund or funds as the director may direct in accordance with the provisions of this article. All funds received by the agency, shall be deposited, as determined by the director, in any of the investment pools with the West Virginia Investment Management Board, with the interest income or other earnings a proper credit to all such funds for the benefit of the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency may recover an additional interest amount from any employer that fails to pay in a timely manner any premium or minimum annual employer payment, as defined in §5-16D-1 *et seq.* of this code, which is due and payable to the Public Employees Insurance Agency or the Retiree Health Benefit Trust. The agency may recover the amount due plus an additional amount equal to 2.5 percent per annum of the amount due. Accrual of interest owed by the delinquent employer commences upon the 31st day following the due date for the amount owed and shall continue until receipt by the Public

Employees Insurance Agency of the delinquent payment. Interest shall compound every 30 days.

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-1. Expansion of health care coverage to children; continuation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state, and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia Children's Health Insurance Program heretofore created shall be continued and administered by the Department of Human Services, in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997: *Provided*, That on and after July 1, 2022, the agencies, boards and programs including all of the allied, advisory, affiliated, or related entities and funds associated with the Children's Health Insurance Program and Children's Health Insurance Agency, shall be incorporated in and administered as a part of the Bureau for Medical Services. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which does not create an entitlement to coverage in any person. Nothing in this article requires any appropriation of State General Revenue Funds for the payment of any benefit provided in this article. If this article conflicts with the requirements of federal law, federal law governs.

(b) In developing a Children's Health Insurance Program that operates with the highest degree of simplicity and governmental efficiency, the director shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the director may consider any cost savings, administrative efficiency, or other benefit to be

gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

(d) In order to enroll as many eligible children as possible in the program created by this article and to expedite the effective date of their health insurance coverage, the director shall develop and implement a plan whereby applications for enrollment may be taken at any primary care center or other health care provider, as determined by the director, and transmitted electronically to the program's offices for eligibility screening and other necessary processing. The director may use any funds available to the agency in the development and implementation of the plan, including grant funds or other private or public moneys.

§5-16B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Agency" means the Children's Health Insurance Agency, a division within the Bureau for Medical Services.

"Board" means the Children's Health Insurance Program Advisory Board.

"Commissioner" means the Commissioner of the Bureau for Medical Services appointed by the Secretary of the Department of Human Services.

"Director" means the deputy commissioner within the Bureau for Medical Services who has responsibility for the operation and oversight of the Children's Health Insurance Agency.

"Essential community health service provider" means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which constitute a significant portion of its patient population or, in the case of a sole

community provider, serves medically indigent patients within its medical capability; and

(2) Either waives service fees or charges fees based on a sliding scale and does not restrict access or services because of a client's financial limitations. Essential community health service provider includes, but is not limited to, community mental health centers, school health clinics, primary care centers, pediatric health clinics or rural health clinics.

"Program" means the West Virginia Children's Health Insurance Program.

§5-16B-4. Children's health policy advisory board created; qualifications and removal of members; powers; duties; meetings; and compensation.

(a) There is hereby created the West Virginia children's health insurance advisory board, which shall consist of the Director of the Public Employees Insurance Agency, the Secretary of the Department of Human Services, or his or her designee, and six citizen members appointed by the Governor, one of whom shall represent children's interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment. A member of the Senate, as appointed by the Senate President and a member of the House of Delegates, as appointed by the Speaker of the House of Delegates, shall serve as ex officio members. All appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only: *Provided*, That the citizen members appointed prior to July 1, 2022, shall serve for the remainder of his or her term of appointment and be deemed a member of the advisory board. Three of the citizen members shall have at least a bachelor's degree and experience in the administration or design of public or private employee or group benefit programs and the children's representative shall have experience that demonstrates knowledge in the health, educational, and social needs of children. No more than three citizen members may be members of the same political party and no board member may represent or have a pecuniary interest in an entity reasonably expected to compete for

contracts under this article. Members of the board shall assume the duties of the office immediately upon appointment. The director of the agency shall serve as the chairperson of the board. Vacancies in the board shall be filled in the same manner as the original appointment.

(b) The purpose of the advisory board is to present recommendations and alternatives for the design of the annual plans and to advise the director with respect to other actions necessary to be undertaken in furtherance of this article.

(c) The board shall meet by the call of the director.

(d) Each member of the advisory board shall receive reimbursement for reasonable and necessary travel expenses for each day actually served in attendance at meetings of the board in accordance with the state's travel rules. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with the auditor and preserved as a public record.

§5-16B-10. Assignment of rights; right of subrogation by children's health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) *Definitions.* — As used in this section, unless the context otherwise requires:

"Bureau" means the Bureau for Medical Services.

"Department" means the West Virginia Department of Human Services, or its contracted designee.

"Recipient" means a person who applies for and receives assistance under the Children's Health Insurance Program.

"Secretary" means the Secretary of the Department of Human Services.

"Third-party" means an individual or entity that is alleged to be liable to pay all or part of the costs of a recipient's medical

treatment and medical-related services for personal injury, disease, illness, or disability, as well as any entity including, but not limited to, a business organization, health service organization, insurer, or public or private agency acting by or on behalf of the allegedly liable third-party.

(b) *Assignment of rights.* —

(1) Submission of an application to the children's health insurance agency for medical assistance is, as a matter of law, an assignment of the right of the applicant or his or her legal representative, to recover from third parties past medical expenses paid for by the children's health insurance program. This assignment of rights does not extend to Medicare benefits. At the time the application is made, the children's health insurance agency shall include a statement along with the application that explains that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(2) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third party and from including, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses.

(3) The department shall be legally subrogated to the rights of the recipient against the third party.

(4) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(5) A recipient is considered to have authorized all third parties to release to the department information needed by the department to secure or enforce its rights as assignee under this article.

(c) *Notice requirement for claims and civil actions.* —

(1) A recipient's legal representative shall provide notice to the department within 60 days of asserting a claim against a third party.

If the claim is asserted in a formal civil action, the recipient's legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.

(2) If the recipient has no legal representative and the third party knows or reasonably should know that a recipient has no representation then the third party shall provide notice to the department within 60 days of receipt of a claim or within 30 days of receipt of information or documentation reflecting the recipient is receiving children's health insurance program benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter have the right to file and receive pleadings, intervene, and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within 30 days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than 15 days after receipt of a request for same.

(d) Notice of settlement requirement. —

(1) A recipient or his or her representative shall notify the department of a settlement with a third party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the secretary or his or her designee within 30 days of consent to the proposed allocation.

(2) If the total amount of the settlement is less than the department's subrogation lien, then the settling parties shall obtain the department's consent to the settlement before finalizing the settlement. The department shall advise the parties within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(3) If the department rejects the proposed allocation, the department shall seek a judicial determination within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(A) If judicial determination becomes necessary, the trial court is required to hold an evidentiary hearing. The recipient and the department shall be provided ample notice of the same and be given just opportunity to present the necessary evidence, including fact witness and expert witness testimony, to establish the amount to which the department is entitled to be reimbursed pursuant to this section.

(B) The department has the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court's decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

(4) Any settlement by a recipient with one or more third parties which would otherwise fully resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be exempt from the provisions of this section.

(5) Nothing herein prevents a recipient from seeking judicial intervention to resolve any dispute as to allocation prior to effectuating a settlement with a third party.

(e) *Department failure to respond to notice of settlement.* — If the department fails to appropriately respond to a notification of

settlement, the amount to which the department is entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient has allocated toward past medical expenses.

(f) *Penalty for failure to notify the department.* — A legal representative acting on behalf of a recipient or third party that fails to comply with the provisions of this section is liable to the department for all reimbursement amounts the department would otherwise have been entitled to collect pursuant to this section but for the failure to comply. Under no circumstances may a pro se recipient be penalized for failing to comply with the provisions of this section.

(g) *Miscellaneous provisions relating to trial.* —

(1) Where an action implicated by this section is tried by a jury, the jury may not be informed at any time as to the subrogation lien of the department.

(2) Where an action implicated by this section is tried by judge or jury, the trial judge shall, or in the instance of a jury trial, require that the jury precisely identify the amount of the verdict awarded that represents past medical expenses.

(3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of the judgment any damages awarded for past medical expenses be withheld and paid directly to the department, not to exceed the amount of past medical expenses paid by the department on behalf of the recipient.

(h) *Attorneys' fees.* — Irrespective of whether an action or claim is terminated by judgment or settlement without trial, from the amount required to be paid to the department there shall be deducted the reasonable costs and attorneys' fees attributable to the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees: *Provided*, That if there is no

recovery, the department may under no circumstances be liable for any costs or attorneys' fees expended in the matter.

(i) *Class actions and multiple plaintiff actions not authorized.* — Nothing in this article authorizes the department to institute a class action or multiple plaintiff action against any manufacturer, distributor, or vendor of any product to recover medical care expenditures paid for by the Medicaid program.

(j) *Secretary's authority.* — The secretary or his or her designee may compromise, settle, and execute a release of any claim relating to the department's right of subrogation, in whole or in part.

ARTICLE 26. HERBERT HENDERSON OFFICE ON MINORITY AFFAIRS.

§5-26-1. Herbert Henderson Office of Minority Affairs; duties and responsibilities.

(a) The Herbert Henderson Office of Minority Affairs within the Office of the Governor is continued. The office shall:

(1) Provide a forum for discussion of issues that affect the state's minorities;

(2) Identify and promote best practices in the provision of programs and services to minorities;

(3) Review information and research that can inform state policy as to the delivery of programs and services to minorities;

(4) Make recommendations in areas of policy and allocation of resources;

(5) Apply for grants, and accept gifts from private and public sources for research to improve and enhance minority affairs;

(6) Integrate and coordinate state grant and loan programs established specifically for minority related issues;

(7) Award grants, loans and loan guaranties for minority affairs programs and activities in this state if such funds are available from grants or gifts from public or private sources;

(8) Identify other state and local agencies and programs that provide services or assistance to minorities;

(9) Establish the appropriate program linkages with related federal, state and local agencies and programs including, but not limited to, the Office of Minority Health located within the Department of Health and the Economic Development Authority established pursuant to article fifteen, chapter 31 of this code; and

(10) Provide recommendations to the Governor and the Legislature regarding the most appropriate means to provide programs and services to support minority groups in the state.

(b) On or before January 1 of each year, the office shall submit a report to the Governor and the Joint Committee on Government and Finance. The report may include, but is not limited to, findings and recommendations regarding:

(1) The extent to which programs and services for minorities are available in the state, and to which funding for providing those programs and services is available;

(2) The most appropriate means for the planning, delivery and evaluation of existing and needed programs and services for minority groups in the manner that best promotes diversity and regional, cultural and ethnic sensitivity;

(3) Recommendations for the coordination of programs and services to minority groups throughout the state and with those of other states and the federal government;

(4) Identifications of governmental and private agencies, offices, departments or other entities in existence or recommended for creation that would, alone or in concert, most effectively improve the delivery of programs and services to minority groups throughout the state;

(5) Recommendations for changes to law that would facilitate the achievement of the objectives of the office; and

(6) Other matters as the office may determine appropriate to its purposes.

(c) The Governor shall appoint an executive director of the office to carry out its functions, and shall provide funding and offices for those purposes. The executive director shall serve at the will and pleasure of the Governor.

(d) The executive director may hire one administrative assistant to assist in carrying out the functions of the office.

(e) On or before January 1 of each year, the office shall report to the Select Committee on Minority Affairs Interim Committee on the efforts and progress of the office.

(f) The executive director shall review and consider any recommendations of the Select Committee on Minority Affairs Interim Committee's report and recommendations.

ARTICLE 29. EXPEDITIOUS ISSUANCE OF LICENSES BY REGULATORY AGENCIES.

§5-29-2. Regulatory agencies to study expedited permits, licenses and certificates; reports to the Legislature.

(a) The following regulatory agencies shall study, review and develop a plan for expediting the issuance and renewal of permits, licenses and certificates for business entities in good standing:

(1) Division of labor;

(2) The office of miners' health, safety and training;

(3) The Division of Forestry;

(4) The Office of Health Facilities Licensure and Certification;
and

(5) The Department of Environmental Protection excepting the oil and gas inspectors' examining board.

(b) On or before December 1, 2004, each agency to which this article applies shall file a report with the joint standing committee on government organization, setting forth the findings of its study, its plan to expedite the issuance and renewal of permits, licenses and certificates to business entities in good standing, and its recommendations for any legislation required to meet the purposes of this article.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1A. EMPLOYEE SUGGESTION AWARD BOARD.

§5A-1A-2. Board created; term of members.

There is continued an employee suggestion award board which shall be composed of the Secretary of Administration or his or her designee, Governor's Chief Technology Officer or his or her designee, the President of the Senate or his or her designee, the Speaker of the House of Delegates or his or her designee, two members of the House of Delegates from different political parties to be appointed by the Speaker of the House of Delegates, two members of the Senate from different political parties to be appointed by the President of the Senate, and the Secretary of the Department of Human Services, or his or her designee. The terms of the members of the board shall be consistent with the terms of the offices to which they have been elected or appointed.

ARTICLE 2. FINANCE DIVISION.

§5A-2-34. Study of centralized accounting system.

[Repealed]

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1a. Prescription drug products.

In addition to other provisions of this article, the division is authorized, on behalf of the Public Employees Insurance Agency, the schools of medicine of the state colleges and universities, the

department of vocational rehabilitation and the Department of Human Services, to negotiate and enter into agreements directly with manufacturers and distributors whose prescription drug products are sold in the state for sole-source and multiple-source drugs to be paid for under a state program for eligible recipients. Such agreements shall provide for a rebate of a negotiated percentage of the total product cost to be paid by the manufacturer or distributor of a specific product. Each agency is authorized to establish, either singularly or together with other agencies, a drug formulary.

Prescription drug products are included in the drug formulary only upon completion of the application to and approval of the division. Those products for which a rebate is successfully negotiated are automatically included in the drug formulary for a period of time coterminous with the negotiated rebate.

If there has been a failure to negotiate or renew a rebate agreement for a specific prescription drug product, the pharmaceutical manufacturer of that product shall disclose to the division its most favorable pricing arrangements available to state and nonstate government purchasers. If the division determines that the product needs to be included in the drug formulary, with the approval of the agency the division shall establish the amount to be reimbursed for the product based upon the price information provided by the manufacturer. The determination as to whether a product should be included in the drug formulary is based on the product's efficiency, cost, medical necessity and safety. Any rebate returns, as a result of the provisions of this section regarding prescription drugs, shall be deposited in the General Revenue Fund.

It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. Therefore, the Department of Human Services is authorized to negotiate rebates as provided for in this section.

§5A-3-3b. Exemption of facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health Facilities.

Notwithstanding any provisions of section one or three of this article to the contrary, the provisions of this article do not apply to facilities providing direct patient care services that are managed, directed, controlled and governed by the Secretary of the Department of Health Facilities: *Provided*, That on or before July 1, 2020, the Legislative Auditor shall audit the purchasing procedures of the facilities described in this section and report the results to the Joint Committee on Government and Finance on the effects of exempting said facilities from the provisions of this article, including, but not limited to, any realized cost savings and changes in purchasing policies resulting from such exemption.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

§5B-2-15. Upper Kanawha Valley Resiliency and Revitalization Program.

(a) *Definitions.* —

(1) *General.* — Terms defined in this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this section.

(2) *Terms Defined.* —

"Contributing partners" means those entities or their representatives described in subsection (f) of this section.

"Prioritize" means, with regard to resources, planning, and technical assistance, that the members of the revitalization council are required to waive their discretionary program guidelines to allow funding requests that may fall outside of the program's

guidelines but address the Upper Kanawha Valley communities' goals for revitalization: *Provided*, That properly filed funding applications by Upper Kanawha Valley communities shall be given preferential treatment.

"Program" means the Upper Kanawha Valley Resiliency and Revitalization Program established in this section.

"Revitalization council" means those entities or their representatives described in subsection (d) of this section.

"Technical assistance" means resources provided by the state, revitalization council, contributing partners, or any other individuals or entities providing programming, funding, or other support to benefit the Upper Kanawha Valley under the program.

"Upper Kanawha Valley" means an area historically known as the Upper Kanawha Valley including municipalities and surrounding areas from the Charleston city limits to Gauley Bridge or other communities in the vicinity of the West Virginia University Institute of Technology.

"Upper Kanawha Valley Resiliency and Revitalization Program" means the entire process undertaken to further the goals of this section, including collaboration development and implementation between the members, contributors, and technical assistance resource providers.

(b) *Legislative purpose, findings, and intent.* —

(1) The decision to relocate the historic campus of the West Virginia University Institute of Technology from Montgomery, West Virginia, to Beckley, West Virginia, will have a dramatic economic impact on the Upper Kanawha Valley.

(2) The purpose of this section is to establish the Upper Kanawha Valley Resiliency and Revitalization Program. To further this purpose, this program creates a collaboration among state government, higher education, and private and nonprofit sectors to streamline technical assistance capacity, existing

services, and other resources to facilitate community revitalization in the Upper Kanawha Valley.

(3) It is the intent of the Legislature to identify existing state resources that can be prioritized to support the Upper Kanawha Valley, generate thoughtful and responsible ideas to mitigate the negative effects of the departure of the West Virginia Institute of Technology from the Upper Kanawha Valley, and help chart a new course and prosperous future for the Upper Kanawha Valley.

(c) Upper Kanawha Valley Resiliency and Revitalization Program established; duration of program. —

(1) The Development Office shall establish the Upper Kanawha Valley Resiliency and Revitalization Program in accordance with the provisions of this section. The program shall inventory existing assets and resources, prioritize planning and technical assistance, and determine such other assistance as might be available to revitalize communities in the Upper Kanawha Valley.

(2) The program shall remain active until it concludes its work on June 30, 2024, and delivers a final report to the Joint Committee on Government and Finance no later than October 1, 2024.

(d) Revitalization council created. — There is created a revitalization council to fulfill the purposes of this section. The revitalization council shall be coordinated by the Department of Economic Development and be subject to oversight by the secretary of the department. The following entities shall serve as members of the revitalization council:

(1) The Secretary of the Department of Economic Development or their designee, who shall serve as chairperson of the council;

(2) The Secretary of the Department of Health or their designee;

(3) The Commissioner of the Department of Agriculture or their designee;

(4) The Executive Director of the West Virginia Housing Development Fund or their designee;

(5) A representative from the Kanawha County Commission;

(6) A representative from the Fayette County Commission;

(7) The mayor, or their designee, from the municipalities of Montgomery, Smithers, Pratt, and Gauley Bridge;

(8) A representative from Bridge Valley Community and Technical College; and

(9) A representative from West Virginia University.

(e) *Duties of the revitalization council.* —

(1) The council shall identify existing state resources that can be prioritized to support economic development efforts in the Upper Kanawha Valley.

(2) The council shall direct existing resources in a unified effort and in conjunction with contributing partners, as applicable, to support the Upper Kanawha Valley.

(3) The council shall develop a rapid response strategy to attract or develop new enterprises and job-creating opportunities in the Upper Kanawha Valley.

(4) The council shall conduct or commission a comprehensive assessment of assets available at the campus of the West Virginia Institute of Technology and determine how those assets will be preserved and repurposed.

(5) The council shall assist communities in the Upper Kanawha Valley by developing an economic plan to diversify and advance the community.

(6) Members of the council shall support both the planning and implementation for the program and shall give priority wherever possible to programmatic activity and discretionary,

noncompetitive funding during the period the program remains in effect.

(7) Members of the council shall work together to leverage funding or other agency resources to benefit efforts to revitalize the Upper Kanawha Valley.

(f) *Contributing partners.* — To the extent possible, the revitalization council shall incorporate the resources and expertise of additional providers of technical assistance to support the program, which shall include but not be limited to:

- (1) The West Virginia Small Business Development Center;
- (2) The Center for Rural Health Development;
- (3) The West Virginia University Brickstreet Center for Entrepreneurship;
- (4) The West Virginia University Land Use and Sustainability Law Clinic;
- (5) The West Virginia University Center for Big Ideas;
- (6) The New River Gorge Regional Development Authority;
- (7) The Appalachian Transportation Institute;
- (8) The Marshall University Center for Business and Economic Research;
- (9) TechConnect;
- (10) The West Virginia Community Development Hub;
- (11) The West Virginia University Northern Brownfields Assistance Center;
- (12) West Virginia State University Extension Service; and
- (13) West Virginia University Extension Service, Community, Economic and Workforce Development.

(g) *Reporting and agency accountability.* — The revitalization council, in coordination with its contributing partners, as applicable, shall report annually to the Governor and the Legislature detailing the progress of the technical assistance support provided by the program, the strategic plan for the Upper Kanawha Valley, and the results of these efforts. The annual report to the Legislature shall be made to the Joint Committee on Government and Finance regarding the previous fiscal year no later than October 1 of each year. Copies of the annual report to the Legislature shall be provided to the county commissions and the mayors of the Upper Kanawha Valley.

(h) *Economic incentives for businesses investing in the Upper Kanawha Valley.* — The Department of Economic Development and the revitalization council, as applicable, shall work to educate businesses investing, or interested in investing, in the Upper Kanawha Valley, about the availability of, and access to, economic development assistance, including but not limited to, the economic opportunity tax credit provided in §11-13Q-19 of this code; the manufacturing investment tax credit provided under §11-13S-1 *et seq.* of this code; and any other applicable tax credit or development assistance.

(i) *Use of state property and equipment; faculty.* — The Department of Economic Development or other owner of state property and equipment in the Upper Kanawha Valley is authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs, and other scientific and necessary equipment to assist any business within the Upper Kanawha Valley at a nominal or reduced-cost reimbursements to the state for that use.

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

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

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

- (1) Department of Administration;
- (2) Department of Environmental Protection;
- (3) Department of Health;
- (4) Department of Homeland Security;
- (5) Department of Revenue;
- (6) Department of Transportation;
- (7) Department of Commerce;
- (8) Department of Veterans' Assistance;
- (9) Department of Economic Development;
- (10) Department of Tourism;
- (11) Department of Human Services; and
- (12) Department of Health Facilities.

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

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the

appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections and Rehabilitation, \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police, \$85,000; Commissioner, Division of Financial Institutions, \$75,000; Commissioner, Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights Commission, \$55,000; Commissioner, Division of Labor, \$70,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the Department of Human Services, the Secretary of the Department of Health, and the Secretary of the Department of Health Facilities shall be paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this subsection whose salary is increased by more than \$5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, \$80,000; Director, Division of Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director, Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director, Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute, \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of Forestry, \$75,000; and Executive Director of the Health Care Authority, \$80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Lottery Director, \$110,000; Director, Division of Homeland Security and Emergency Management, \$65,000; and Adjutant General, \$125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the

Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

(e) The annual salary of each appointive state officer named in this section shall continue in the amount as set forth in this section from the effective date of the amendments to this section enacted in 2020, until the position held by the officer is vacated or until July 1, 2020, whichever occurs first. After the vacancy or after July 1, 2020, whichever occurs first, unless otherwise prohibited by law, the annual salary of each appointed state officer named in this section shall be fixed by the Governor within the current budget allocation. In the event the annual salary fixed by the Governor for an appointed state officer named in this section exceeds the amount set forth in this section for the appointed state officer, the amount of the annual salary for the appointed state officer shall be set forth in a line-item in the budget bill, and payment of an annual salary to the appointed state officer may not exceed that amount but may be lower than the salary approved in the budget bill or established in this section. The salary of a newly appointed state officer named in this section shall be included in the appointment letter for the position.

The amendment and reenactment of this section in the third extraordinary session of the Legislature, 2021, shall not operate to reduce the salary of any appointive state officer whose salary has been increased pursuant to this subsection since July 1, 2020.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers, improved streets and maintenance of roads not in the state road system.

In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby

authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: *Provided*, That the county commission of Webster County is authorized to expend county funds in the opening of, and upkeep of a sulphur well now situate on county property: *Provided, however*, That such authority and power herein conferred upon county commissions shall not extend into the territory within any municipal corporation: *Provided further*, That any county commission is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such commissions by this section.

Considering the importance of public fire protection, any county commission, public service district, public or private utility which installs, constructs, maintains, or upgrades water mains shall ensure that all new mains specifically intended to provide fire protection are supplied by mains which are not less than six inches in diameter. A permit or other written approval shall be obtained from the Department of Health for each hydrant or group of hydrants installed in compliance with §16-1-9 of the West Virginia code as amended: *Provided*, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are desired or required by the public or private utility: *Provided, however*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health.

In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and alleys and lay sewers and enter into contracts for maintenance of county roads and subdivision roads used by the public but not in the state road system as follows: Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, between any two cross-streets, or between a cross-street and an alley in any unincorporated community, requesting the county commission so to do according to plans and specifications

submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, or the total cost of maintenance of county roads or subdivision roads used by the public but not in the state road system, the county commission may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications as hereinafter provided: *Provided*, That the county commission is further authorized, if the said county commission so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that event, the said county commission may order such improvements as one single unit and project, upon petition in writing duly verified of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of all streets or alleys, or portions thereof included by said county commission in said unit and project.

The total cost including labor and materials, engineering, and legal service of grading and paving, curbing, improving any such road, street or alley (including the cost of the intersections) and assessing the cost thereof shall be borne by the owners of the land abutting upon such road, street or alley when the work is completed and accepted according to the following plan, that is to say, payment is to be made by all landowners on either side of such road, street or alley so paved or improved in such proportion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all the land so abutting on such road, street or alley, so paved or improved as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him or her to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of

the lots abutting on one side of any county or subdivision road or roads between any two cross-roads, all used by the public but not in the state road system or street between any two cross-streets or between a cross-street and an alley in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the total cost thereof, the county commission may cause any sidewalk to be improved, or paved, or repaved, substantially with such materials according to such plans and specifications and the total cost including labor and materials, engineering and legal service of improving, grading, paving or repaving such sidewalk and assessing the cost thereof shall, when the work is completed and accepted, be assessed against the owners of the lots or fractional part of lots abutting on such sidewalk, in such portion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all lots so abutting on such sidewalk so paved or improved, as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him or her to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the cost, as hereinafter provided, the county commission may lay and construct sanitary sewers in any street or alley with such materials and substantially according to such plans and specifications and when such sewer is completed and accepted, the county engineer or surveyor shall report to the county commission, in writing, the total cost of such sewer and a description of the lots and lands, as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost of constructing and laying the sewer including labor, materials, legal and engineering services shall be borne by the owners of the land

abutting upon the streets and alleys, in which the sewer is laid according to the following plan: Payment is to be made by each landowner on either side of such portion of a street or alley in which such sewer is laid, in such proportions as the frontage of his or her land upon said street or alley bears to the total frontage of all lots so abutting on such street or alley. In case of a corner lot, frontage is to be measured along the longest dimensions thereof abutting on such street or alley in which such sewer is laid. Any lot having a depth of two hundred feet or more, and fronting on two streets or alleys, one in the front and one in the rear of said lot, shall be assessed on both of said streets or alleys if a sewer is laid in both such streets and alleys. Where a corner lot has been assessed on the end it shall not be assessed on the side for the same sewer and where it has been assessed on the side it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such county road or subdivision road, street, alley or sidewalk in a manner which does not require the permanent paving or repaving thereof, the county commission shall likewise have authority to improve such county road or subdivision road, street, alley or sidewalk, substantially as requested in such petition, and the total cost thereof including labor, materials, engineering and legal services shall be assessed against the abutting owners in the proportion which the frontage of their lots abutting upon such county road or subdivision road, street, alley or sidewalk bears to the total frontage of all lots abutting upon such street, alley or sidewalk so improved.

Upon the filing of such petition and before work is begun, or let to contract, the county commission shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the county road or subdivision road, street, alley or sidewalk affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the improvement is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county commission may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving or sewerage will result in special benefits to all owners of property abutting on said county road or subdivision road, street, alley or sidewalk in an amount at least equal in value to the cost thereof. The commission shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

Any owner of property abutting upon said county road or subdivision road, street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county commission by filing within ten days after the entry of such order a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county commission be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county commission.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at a rate not to exceed twelve percent per annum, as follows: The first installment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county commission may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot or fractional part thereof, fronting on such county road or subdivision road, street, alley or sidewalk which has been improved, paved, or repaved or in which a sewer has been laid, as aforesaid, and the holder of said certificate shall have a lien having priority over all other liens except those for taxes upon the lot or part of lot fronting on such county road or subdivision road, street, alley or sidewalk, and such certificate shall likewise draw interest from the date of assessment at a rate not to exceed twelve percent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his or her assignee, or to any person, firm or corporation: *Provided*, That the county commission in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county commission shall let the work of grading, paving, curbing or sewerage to contract to the lowest responsible bidder. In each such case the county commission shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no

certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

The owner of any lot or fractional part of a lot abutting upon such county road or subdivision road, street, alley or sidewalk so improved, paved, repaved, or sewerred shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest at any time, within thirty days following the date of the assessment.

Nothing in this section contained shall be construed to authorize the county commissions of the various counties to acquire any road construction, ditching or paving equipment. The county commissions are hereby authorized to rent from the state road commissioner or any other person, firm or corporation such equipment as may be necessary from time to time, to improve any county road or subdivision road used by the public but not in the state road system, street or sidewalk which petitioners do not desire to have paved in a permanent manner, and for such purpose to employ such labor as may be necessary but no expense connected therewith shall be charged to any county funds.

No county commission shall be under any duty after the paving, repaving or improvement of any county road or subdivision road used by the public but not in the state road system, street, alley or sidewalk or the laying of any sanitary sewer under the provisions of this section, to maintain or repair the same, but any such commission shall have authority upon petition duly verified, signed by at least sixty percent of the owners of property abutting upon any improvement made under this section, to maintain or repair such improvement or sewer and to assess the cost thereof against the owners of such abutting property in the same manner as the cost of the original improvement.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

The prosecutor's advisory council composed of elected prosecuting attorneys of each county of the state or a designated member of their staff is continued. The prosecutor's advisory council shall meet not less than one time each year. Annually, the council shall elect from among its membership a chairman of the council who shall set the agenda for the council's meetings and shall appoint necessary committees and direct the work of the council in carrying out its duties under the provisions of this section.

The council shall provide advice, assistance, training, and leadership to the offices of the various county prosecuting attorneys of this state in criminal and civil cases which involve child abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide advice and assistance to the Secretary of the Department of Human Services in the implementation of a multidisciplinary planning process as set forth in §49-4-401 through §49-4-413 of this code.

The council may seek funds and programs to provide each prosecuting attorney's office with a staff person to assist children who are crime victims to obtain services and assistance from other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by their respective county commissions for necessary expenses actually incurred when attending meetings of the council.

The council may apply for and receive funds from any grant program of any agency or institution in the United States, public or private, to be used for carrying out the purposes of this section.

ARTICLE 10. HUMANE OFFICERS.

§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.

(a) Humane officers shall prevent the perpetration or continuance of any act of cruelty upon any animal and investigate and, upon probable cause, cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and, as provided by law, such officers have the right to access and inspect records and property reasonably necessary to any investigation.

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds for the suspicion. In the event of suspected child abuse or neglect, the humane officer shall report to the local child protective services agency of the Department of Human Services in accordance with the provisions of §49-2-809 of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department's local adult protective services agency in accordance with the provisions of §9-6-11 of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of §48-27-101 *et seq.* of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in jail not more than 30 days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-21. Specifications for water mains and water service pipes.

Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs or constructs water mains, shall ensure that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective July 1, 2007, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant: *Provided*, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the 2008 regular session of the Legislature. A permit or other written approval shall be obtained from the Department of Health for each hydrant or group of hydrants installed in compliance with section nine, article one, chapter sixteen of the West Virginia Code as amended: *Provided, however*, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are required by the public or private utility: *Provided further*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 1. GENERAL PROVISIONS.

§8A-1-2. Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Abandonment" means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.

(b) "Aggrieved" or "aggrieved person" means a person who:

(1) Is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or

(2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.

(c) "Comprehensive plan" means a plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body's jurisdiction.

(d) "Conditional use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.

(e) "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to determine lots, parcels, municipal boundaries or county boundaries as contiguous.

(f) "Essential utilities and equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

(1) Local serving;

(2) Nonlocal or transmission through the county or municipality; and

(3) Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:

(A) Public service commission; or

(B) Department of environmental protection; or

(C) The Department of Health.

(g) "Existing use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year: *Provided*, That in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

(h) "Exterior architectural features" means the architectural character and general composition of the exterior of a structure, including, but not limited to, the kind, color and texture of the building material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the site, all of which are subject to public view from a public street, way or place.

(i) "Factory-built homes" means modular and manufactured homes.

(j) "Flood-prone area" means any land area susceptible to repeated inundation by water from any source.

(k) "Governing body" means the body that governs a municipality or county.

(l) "Historic district" means a geographically definable area, designated as historic on a national, state or local register, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

(m) "Historic landmark" means a site, building, structure or object designated as historic on a national, state or local register.

(n) "Historic site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure whether standing, ruined or vanished, where the location itself possesses historical, cultural or archaeological value regardless of the value of any existing structure and designated as historic on a national, state or local register.

(o) "Improvement location permit" means a permit issued by a municipality or county, in accordance with its subdivision and land development ordinance, for the construction, erection, installation, placement, rehabilitation or renovation of a structure or development of land, and for the purpose of regulating development within flood-prone areas.

(p) "Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

(q) "Land development" means the development of one or more lots, tracts or parcels of land by any means and for any purpose, but does not include easements, rights-of-way or construction of private roads for extraction, harvesting or transporting of natural resources.

(r) "Manufactured home" means housing built in a factory according to the federal manufactured home construction and safety standards effective June 15, 1976.

(s) "Modular home" means housing built in a factory that meets state or local building codes where the homes will be sited.

(t) "Non-traditional zoning ordinance" means an ordinance that sets forth development standards and approval processes for land uses within the jurisdiction, but does not necessarily divide the jurisdiction into distinct zoning classifications or districts requiring strict separation of different uses, and does not require a zoning map amendment.

(u) "Permitted use" means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

(v) "Plan" means a written description for the development of land.

(w) "Planning commission" means a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission.

(x) "Plat" means a map of the land development that becomes its official recorded representation in the office of the clerk of the county commission where a majority of the land to be developed lies.

(y) "Preferred development area" means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

(z) "Public place" means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

(aa) "Sprawl" means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.

(bb) "Streets" means streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways.

(cc) "Subdivision or partition" means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels.

(dd) "Unit of government" means any federal, state, regional, county or municipal government or governmental agency.

(ee) "Urban area" means all lands or lots within the jurisdiction of a municipal planning commission.

(ff) "Utility" means a public or private distribution service to the public that is regulated by the Public Service Commission.

(gg) "Zoning" means the division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

(hh) "Zoning map" means a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which is certified as the official zoning map for the municipality or county.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 1. LEGISLATIVE PURPOSE AND DEFINITIONS.

§9-1-2. Definitions.

The following words and terms when used in this chapter have the meanings indicated:

"Department" means the Department of Human Services.

"Commissioner" means the Secretary of the Department of Human Services.

"Federal-state assistance" means and includes: (1) All forms of aid, care, assistance and services to or on behalf of persons, which are authorized by, and who are authorized to receive the same under and by virtue of, subchapters one, four, five, ten, fourteen, sixteen, eighteen and nineteen, chapter seven, Title 42, United

States Code, as those subchapters have heretofore been and may hereafter be amended, supplemented and revised by acts of Congress, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by valid rules and regulations promulgated by authorized federal agents and agencies, and as those subchapters so amended, supplemented and revised have heretofore been and may hereafter be supplemented by rules promulgated by the state division of human services or by the Department of Human Services, which rules shall be consistent with federal laws, rules and regulations, but not inconsistent with state law; and (2) all forms of aid, care, assistance and services to persons, which are authorized by, and who are authorized to receive the same under and by virtue of, any act of Congress, other than the federal social security act, as amended, for distribution through the state division of human services or the Department of Human Services to recipients of any form of aid, care, assistance and services to persons designated or referred to in (1) of this definition and to recipients of state assistance, including by way of illustration, surplus food and food stamps, which Congress has authorized the secretary of agriculture of the United States to distribute to needy persons.

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

"State assistance" means and includes all forms of aid, care, assistance, services and general relief made possible solely out of state, county and private appropriations to or on behalf of indigent persons, which are authorized by, and who are authorized to receive the same under and by virtue of, state division of human services' or Department of Human Services' rules.

"Assistance" means the three classes of assistance, namely: Federal-state assistance, federal assistance and state assistance.

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

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

"Medical services" means medical, surgical, dental and nursing services, and other remedial services recognized by law, in the home, office, hospital, clinic and any other suitable place, provided or prescribed by persons permitted or authorized by law to give such services; the services to include drugs and medical supplies, appliances, laboratory, diagnostic and therapeutic services, nursing home and convalescent care and such other medical services and supplies as may be prescribed by the persons.

"Secretary" means the secretary of the Department of Human Services.

"Estate" means all real and personal property and other assets included within the individual's estate as defined in the state's probate law.

"Services" means nursing facility services, home and community-based services, and related hospital and prescription drug services for which an individual received Medicaid medical assistance.

"State Medicaid agency" means the Bureau for Medical Services that is the federally designated single state agency charged with administration and supervision of the state Medicaid program.

**ARTICLE 2. SECRETARY OF HUMAN SERVICES;
POWERS, DUTIES AND RESPONSIBILITIES
GENERALLY.****§9-2-6a. Secretary to develop caseload standards; committee;
definitions.**

The secretary shall develop caseload standards based on the actual duties of employees in each program area of the department and may take into consideration existing professional caseload standards. Standards shall be reasonable and achievable.

A caseload standards committee shall be established and composed of two employees from each program area in each region. The members shall be elected by the employees from each program area from among all the employees in the program area. A subcommittee composed of the members from each program of services provided shall meet with the appropriate office director to develop caseload standards for each program. The committee shall meet at least twice yearly and shall report recommendations to the commissioner through the personnel advisory committee representative under existing procedures.

Representatives of an employee organization may serve in an advisory role.

The caseload standards which are developed establishing minimum and maximum caseloads shall be advisory for the department in the hiring of staff and in individual caseload assignments, and may be used as a basis of the Department of Human Services personal services budget request to the governor and the Legislature.

As used in this section:

"Caseload standards" means a measurable numerical minimum and maximum workload which an employee can reasonably be expected to perform in a normal workday or workweek, based on the number, variety and complexity of cases handled or number of different job functions performed.

"Professional caseload standards" means standards established by national standard setting authorities, when they exist, or caseload standards used in other states which have similar job titles.

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

[Repealed]

§9-2-10. Collection of copayments by health care providers; penalties.

(a) The secretary is directed to institute a program by January 1, 1994, which requires the payment and collection of copayments. Such program shall conform with Section 447.53, Chapter 42 of the Code of Federal Regulations, and the amount of such copayments shall be determined in accordance with the provisions of Sections 447.54 and 447.55, Chapter 42 of the Code of Federal Regulations. The secretary shall complete all federal requirements necessary to implement this section, including the submission of any amendment to the state Medicaid plan, immediately following the effective date of this section.

(b) Any individual or entity receiving reimbursement from this state under the medical assistance program of the Social Security Act is required to collect such copayments: *Provided*, That in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no such individual or entity shall refuse care or services to any Medicaid-eligible individual because that individual is unable to pay such copayment. The amount of copayments collected shall be reported to the secretary.

(c) After February 1, 1994, any person, firm, corporation or other entity who willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, fails to attempt to collect copayments as required by this section, shall be liable for payment of a civil money penalty in the

amount of \$100 for each occurrence of willful failure to collect a required copayment.

(d) If it comes to the attention of the secretary that a person or other entity is failing to attempt to collect copayments as mandated, the matter shall be referred to the Medicaid fraud control unit for investigation and referral for prosecution pursuant to the provisions of article seven of this chapter.

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

Any recipient of financial assistance under the program of state and federal assistance established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act thereto, shall, as a condition of receiving assistance funded under this part, assign to the Department of Human Services any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.

Each applicant for assistance subject to the assignment established in this section shall (during the application process) be informed in writing of the nature of the assignment.

Any payment of federal and state assistance made to or for the benefit of any child or children or the caretaker of a child or children creates a debt due and owing to the Department of Human Services by the person or persons responsible for the support and maintenance of the child, children or caretaker in an amount equal to the amount of assistance money paid: *Provided*, That the debt is limited by the amount established in any court order or final decree of divorce if the amount in the order or decree is less than the amount of assistance paid.

The assignment under this section shall subrogate the Department of Human Services to the rights of the child, children or caretaker to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby Department of Human Services may be reimbursed for moneys expended on behalf of the child, children or caretaker. The Department of Human Services shall further be subrogated to the debt created by any order or decree awarding support and maintenance to or for the benefit of any child, children or caretaker included within the assignment under this section and shall be empowered to receive money judgments and endorse any check, draft, note or other negotiable document in payment thereof.

The assignment created under this section shall be released upon closure of the assistance case and the termination of assistance payments except for support and maintenance obligations accrued and owing at the time of closure which are necessary to reimburse the department for any balance of assistance payments made.

The Department of Human Services may, at the election of the recipient, continue to receive support and maintenance moneys on behalf of the recipient following closure of the assistance case and shall distribute the moneys to the caretaker, child or children.

§9-3-5. Services to persons not otherwise eligible.

The department may make available the services established under the provisions of section four of this article, to any person not eligible for receipt of public assistance upon application by such person: *Provided*, That the department may not require such person to use its services. These services may include, but need not be limited to, the following: Location of the responsible parent whose whereabouts are unknown, collection of child support and maintenance moneys owed, and distribution of support and maintenance moneys paid.

The department may charge a reasonable fee to nonpublic assistance persons for the provision of services and, when the department has provided services for the collection of support and

maintenance, may charge a reasonable fee to the person responsible for the support and maintenance. The commissioner shall establish by regulations the amount of such fees, not in excess of maximum amounts permitted by applicable federal law, which regulations may be amended and supplemented from time to time.

§9-3-6. Program for drug screening of applicants for cash assistance.

(a) As used in this section:

(1) "Applicant" means a person who is applying for benefits from the Temporary Assistance for Needy Families Program.

(2) "Board of Review" means the board established in §9-2-6(13) of this code.

(3) "Caseworker" means a person employed by the department with responsibility for making a reasonable suspicion determination during the application process for Temporary Assistance for Needy Families Program.

(4) "Child Protective Services" means the agency within the department responsible for investigating reports of child abuse and neglect as required in §49-2-802 of this code.

(5) "Department" means the Department of Human Services.

(6) "Drug screen" or "drug screening" means any analysis regarding substance abuse conducted by the Department of Human Services on applicants for assistance from the Temporary Assistance for Needy Families Program.

(7) "Drug test" or "drug testing" means a drug test which tests urine for amphetamines (amphetamine and methamphetamine), cocaine, marijuana, opiates (codeine and morphine), phencyclidine, barbiturates, benzodiazepines, methadone, propoxyphene, and expanded opiates (oxycodone, hydromorphone, hydrocodone, oxymorphone).

(8) "Secretary" means the secretary of the department or his or her designee.

(9) "Temporary Assistance for Needy Families Program" means assistance provided through ongoing cash benefits pursuant to 42 U. S. C. § 601 *et seq.* operated in West Virginia as the West Virginia Works Program pursuant to §9-9-1 *et seq.* of this code.

(b) Subject to federal approval, the secretary shall implement and administer a program to drug screen any adult applying for assistance from the Temporary Assistance for Needy Families Program. The secretary shall administer this program until December 31, 2026.

(c) Reasonable suspicion exists if:

(1) A case worker determines, based upon the result of the drug screen, that the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen; or

(2) An applicant has been convicted of a drug-related offense within the three years immediately prior to an application for Temporary Assistance for Needy Families Program and whose conviction becomes known as a result of a drug screen as set forth in this section.

(d) Presentation of a valid prescription for a detected substance that is prescribed by a health care provider authorized to prescribe a controlled substance is an absolute defense for failure of any drug test administered under the provisions of this section.

(e) Upon a determination by the case worker of reasonable suspicion as set forth in this section an applicant shall be required to complete a drug test. The cost of administering the drug test and initial substance abuse testing program is the responsibility of the Department of Human Services. Any applicant whose drug test results are positive may request that the drug test specimen be sent to an alternative drug-testing facility for additional drug testing. Any applicant who requests an additional drug test at an alternative drug-testing facility shall be required to pay the cost of the alternative drug test.

(f) Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the secretary. An applicant may continue to receive benefits from the Temporary Assistance for Needy Families Program while participating in the substance abuse treatment and counseling program or job skills program. Upon completion of both a substance abuse treatment and counseling program and a job skills program, the applicant is subject to periodic drug screening and testing as determined by the secretary in rule. Subject to applicable federal laws, any applicant for Temporary Assistance for Needy Families Program who fails to complete, or refuses to participate in, the substance abuse treatment and counseling program or job skills program as required under this subsection is ineligible to receive Temporary Assistance for Needy Families benefits until he or she is successfully enrolled in substance abuse treatment and counseling and job skills programs. Upon a second positive drug test, an applicant shall be ordered to complete a second substance abuse treatment and counseling program and job skills program. He or she shall be suspended from the Temporary Assistance for Needy Families Program for a period of 12 months, or until he or she completes both a substance abuse treatment and counseling program and a job skills program. Upon a third positive drug test an applicant shall be permanently terminated from the Temporary Assistance for Needy Families Program subject to applicable federal law.

(g) Any applicant who refuses a drug screen or a drug test is ineligible for assistance.

(h) The secretary shall order an investigation and home visit from Child Protective Services on any applicant whose benefits are suspended and who has not designated a protective payee or whose benefits are terminated due to failure to pass a drug test. This investigation and home visit may include a face-to-face interview with the child, if appropriate; the development of a protection plan; and, if necessary for the health and well-being of the child, may also involve law enforcement. This investigation and home visit shall be followed by a report detailing recommended action which Child Protective Services shall undertake. Child Protective

Services is responsible for providing, directing, or coordinating the appropriate and timely delivery of services to any child who is the subject of any investigation and home visit conducted pursuant to this section. In cases where Child Protective Services determines that the best interests of the child require court action, it shall initiate the appropriate legal proceeding.

(i) Any other adult members of a household that includes a person declared ineligible for the Temporary Assistance for Needy Families Program pursuant to this section shall, if otherwise eligible, continue to receive Temporary Assistance for Needy Families benefits.

(j)(1) No dependent child's eligibility for benefits under the Temporary Assistance for Needy Families Program may be affected by a parent's failure to pass a drug test.

(2) If pursuant to this section a parent is deemed ineligible for the Temporary Assistance for Needy Families Program, the dependent child's eligibility is not affected and an appropriate protective payee shall be designated to receive benefits on behalf of the child.

(3) The parent may choose to designate another person as a protective payee to receive benefits for the minor child. The designated person shall be an immediate family member, or if an immediate family member is not available or declines the option, another person may be designated.

(4) The secretary shall screen and approve the designated person.

(k)(1) An applicant who is determined by the secretary to be ineligible to receive benefits pursuant to subsection (f) of this section due to a failure to participate in a substance abuse treatment and counseling program or a job skills program who can later document successful completion of a drug treatment program approved by the secretary may reapply for benefits six months after the completion of the substance abuse treatment and counseling program or job skills program. An applicant who has met the

requirements of this subdivision and reapplies is also required to submit to a drug test and is subject to the provisions of subsection (f) of this section.

(2) An applicant may reapply only once pursuant to the exceptions contained in this subsection.

(3) The cost of any drug screen or test and drug treatment provided under this subsection is the responsibility of the individual being screened and receiving treatment.

(l) An applicant who is denied assistance under this section may request a review of the denial by the Board of Review. The results of a drug screen or test are admissible without further authentication or qualification in the review of denial by the Board of Review and in any appeal. The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process to applicants who have been denied Temporary Assistance for Needy Families benefits pursuant to the provisions of this section. The Board of Review shall make findings regarding the denial of benefits and issue a decision which either verifies the denial or reverses the decision to deny benefits. Any applicant adversely affected or aggrieved by a final decision or order of the Board of Review may seek judicial review of that decision.

(m) The secretary shall ensure the confidentiality of all drug screen and drug test results administered as part of this program. Drug screen and test results shall be used only for the purpose of determining eligibility for the Temporary Assistance for Needy Families Program. At no time may drug screen or test results be released to any public or private person or entity or any law-enforcement agency, except as otherwise authorized by this section.

(n) The secretary shall promulgate emergency rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to prescribe the design, operation, and standards for the implementation of this section.

(o) A person who intentionally misrepresents any material fact in an application filed under the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$1,000 or by confinement in jail not to exceed six months, or by both fine and confinement.

(p) The secretary shall report to the Joint Committee on Government and Finance by December 31, 2016, and annually after that until the conclusion of the program on the status of the federal approval and program described in this section. The report shall include, but is not limited to:

(1) The total number of applicants who were deemed ineligible to receive benefits under the program due to a positive drug test for controlled substances;

(2) The number of applicants for whom there was a reasonable suspicion due to a conviction of a drug-related offense within the five years prior to an application for assistance;

(3) The number of those applicants that receive benefits after successful completion of a drug treatment program as specified in this section; and

(4) The total cost to operate the program.

(q) Should federal approval not be given for any portion of the program as set forth in this section, the secretary shall implement the program to meet the federal objections and continue to operate a program consistent with the purposes of this section.

(r) For the purposes of the program contained in this section, pursuant to the authority and option granted by 21 U. S. C. § 862a(d)(1)(A) to the states, West Virginia exempts all persons domiciled within the state from the application of 21 U. S. C. § 862a(a).

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2. Creation of Medicaid uncompensated care fund.

(a) There is created in the state Treasury a special revolving fund known as the Medicaid uncompensated care fund. All moneys deposited or accrued in this fund shall be used exclusively:

(1) To provide the state's share of the federal Medicaid program funds in order to improve inpatient payments to disproportionate share hospitals; and

(2) To cover administrative cost incurred by the Department of Human Services and associated with the Medicaid program and this fund: *Provided*, That no expenditures may be made to cover said administrative costs for any fiscal year after 1992, except as appropriated by the Legislature.

(b) Moneys from the following sources may be placed into the fund:

(1) All public funds transferred by any public agency to the Medicaid program for deposit in the fund as contemplated or permitted by applicable federal Medicaid laws;

(2) All private funds contributed, donated or bequeathed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal Medicaid laws;

(3) Interest which accrued on amounts in the fund from sources identified in subdivisions (1) and (2) of this subsection; and

(4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the Medicaid uncompensated care fund at the end of any state fiscal year shall not revert to the state Treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

(d) Moneys received into the fund shall not be counted or credited as part of the legislative general appropriation to the state Medicaid program.

(e) The fund shall be administered by the Department of Human Services. Moneys shall be disbursed from the fund on a quarterly basis. The secretary of the department shall implement the provisions of this article prior to the receipt of any transfer, contribution, donation or bequest from any public or private source.

(f) All moneys expended from the fund after receipt of federal financial participation shall be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share hospitals. Except for the payment of administrative costs as provided for in this section, appropriation from this fund for any other purposes is void.

§9-4A-2a. Medical services trust fund.

(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's Medicaid program and providing services for future federally mandated population groups in conjunction with federal reform.

(b) There is created a special account within the Department of Human Services, which shall be an interest-bearing account and may be invested in the manner permitted by §12-6-9 of this code, designated the medical services trust fund. Funds paid into the account shall be derived from the following sources:

(1) Transfers, by intergovernmental transfer, from the hospital services revenue account provided for in §16-1-15a of this code;

(2) All interest or return on investment accruing to the fund;

(3) Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation; and

(4) Any appropriations by the Legislature which may be made for this purpose.

(c) Expenditures from the fund are limited to the following:

(1) Payment of backlogged billings from providers of Medicaid services when cash-flow problems within the medical services fund do not permit payment of providers within federally required time limits; and

(2) Funding for services to future federally mandated population groups in conjunction with federal health care reform: *Provided*, That other Medicaid funds have been exhausted for the federally mandated expansion: *Provided, however*, That new optional services for which a state Medicaid plan amendment is submitted after May 1, 1993, which are not cost effective for the state, are eliminated prior to expenditure of any moneys from this fund for Medicaid expansion.

(3) Payment of the required state match for Medicaid disproportionate share payments in order to receive federal financial participation in the disproportionate share hospital program.

(d) Expenditures from the fund solely for the purposes set forth in subsection (c) of this section shall be authorized in writing by the Governor, who shall determine in his or her discretion whether any expenditure shall be made, based on the best interests of the state as a whole and its citizens, and shall designate the purpose of the expenditure. Upon authorization signed by the Governor, funds may be transferred to the medical services fund: *Provided*, That all expenditures from the medical services trust fund shall be reported forthwith to the Joint Committee on Government and Finance.

(e) Notwithstanding the provision of §12-2-2 of this code, moneys within the medical services trust fund may not be redesignated for any purpose other than those set forth in subsection (c) of this section, except that, upon elimination of the Medicaid program in conjunction with federal health care reform, moneys within the fund may be redesignated for the purpose of

providing health care coverage or services in coordination with federal reform.

§9-4A-2b. Expansion of coverage to children and terminally ill.

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the Department of Human Services shall undertake the following:

(1) The department shall provide a streamlined application form, which shall be no longer than two pages, for all families applying for medical coverage for children under any of the programs set forth in this section; and

(2) The department shall provide the option of hospice care to terminally ill West Virginians who otherwise qualify for Medicaid.

(3) The department shall accelerate the Medicaid option for coverage of Medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty guideline.

(b) Notwithstanding the provisions of §9-4A-2a of this code, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in subsection (a) of this section: *Provided*, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid into the medical services trust fund after June 30, 1994, may be applied to cover the cost of the specified programs.

(c) Annually on January 1, the department shall report to the Governor and to the Legislature information regarding the number of children and elderly covered by the programs in subdivisions (2) and (3) of subsection (a), the cost of services by type of service provided, a cost-benefit analysis of the acceleration and expansion on other insurers and the reduction of uncompensated care in hospitals as a result of the programs.

§9-4A-4. Legislative reports.

(a) The Secretary of the Department of Human Services shall make an annual report to the Legislature on the use of the Medicaid uncompensated care fund.

(b) The health care cost review authority shall make an annual report to the Legislature on the impact of improved Medicaid inpatient payments resulting from the fund on nongovernmental payor health care costs.

ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PROVIDER MEDICAID ACT.**§9-4B-1. Definitions.**

The following words, when used in this article, have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Board" means the physician/medical practitioner provider Medicaid enhancement board created to develop, review and recommend the physician/medical practitioner provider fee schedule;

(b) "Physician provider" means an allopathic or osteopathic physician, rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity;

(c) "Nurse practitioner" means a registered nurse qualified by virtue of his or her education and credentials and approved by the West Virginia board of examiners for registered professional nurses to practice as an advanced practice nurse independently or in a collaborative relationship with a physician;

(d) "Nurse-midwife" means a qualified professional nurse registered with the West Virginia board of examiners for registered professional nurses who by virtue of additional training is specifically qualified to practice nurse-midwifery according to the

statement of standards for the practice of nurse-midwifery as set forth by the American college of nurse-midwives;

(e) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master's degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;

(f) "Registered nurse first assistant" means one who:

(1) Holds a current active registered nurse licensure;

(2) Is certified in perioperative nursing; and

(3) Has successfully completed and holds a degree or certificate from a recognized program which consists of:

(A) The association of operating room nurses, inc., care curriculum for the registered nurse first assistant; and

(B) One year of post-basic nursing study, which shall include at least forty-five hours of didactic instruction and one hundred twenty hours of clinical internship or its equivalent of two college semesters;

A registered nurse who was certified by the certification board of perioperative nursing before one thousand nine hundred ninety-seven is not required to fulfill the requirements of subdivision (3) of this subsection;

(g) "Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative and post-operative nursing care to surgical patients;

(h) "Secretary" means the Secretary of the Department of Human Services; and

(i) "Single state agency" means the single state agency for Medicaid in this state.

§9-4B-4. Powers and duties.

(a) The board shall:

(1) Develop and recommend a reasonable physician/medical practitioner provider fee schedule that conforms with federal Medicaid laws and remains within the limits of annual funding available to the single state agency for the Medicaid program. In developing the fee schedule, the board may refer to a nationally published regional specific fee schedule selected by the Secretary of the Department of Human Services. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal Medicaid laws and may recommend higher reimbursement rates for basic primary and preventive health care services than for other services. If the single state agency approves the fee schedule, it shall implement the physician/medical practitioner provider fee schedule;

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

(3) Meet and confer with representatives from each medical specialty area so that equity in reimbursement increases or decreases be achieved to the greatest extent possible;

(4) Assist and enhance communications between participating physician and medical practitioner providers and the Department of Human Services; and

(5) Review reimbursements in relation to those physician and medical practitioner providers who provide early and periodic screening diagnosis and treatment.

(b) The board may carry out any other powers and duties as prescribed for it by the secretary.

(c) Nothing in this section gives the board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's Medicaid plan are met and shall report the same to the Joint Committee on Government and Finance on a quarterly basis: *Provided*, That the single state agency shall provide reimbursement for the services of a registered nurse first assistant which reimbursement shall be no less than thirteen and six tenths of one percent of the rate for a surgeon physician. The purpose of the board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the Medicaid provider community and the agency.

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

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-1. Definitions.

The following words when used in this article have the meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Ambulance service provider" means a person rendering ambulance services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(b) "General health care provider" means an audiologist, a behavioral health center, a chiropractor, a community care center, an independent laboratory, an independent X ray service, an

occupational therapist, an optician, an optometrist, a physical therapist, a podiatrist, a private duty nurse, a psychologist, a rehabilitative specialist, a respiratory therapist and a speech therapist rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) "Inpatient hospital services provider" means a provider of inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

(d) "Intermediate care facility for individuals with an intellectual disability services provider" means a provider of intermediate care facility services for individuals with an intellectual disability for purposes of Section 1903(w) of the Social Security Act.

(e) "Nursing facility services provider" means a provider of nursing facility services for purposes of Section 1903(w) of the Social Security Act.

(f) "Outpatient hospital service provider" means a hospital providing preventative, diagnostic, therapeutic, rehabilitative or palliative services that are furnished to outpatients.

(g) "Secretary" means the Secretary of the Department of Human Services.

(h) "Single state agency" means the single state agency for Medicaid in this state.

§9-4C-7. Powers and duties.

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

(1) Develop, recommend, and review reimbursement methodology where applicable, and develop and recommend a reasonable provider fee schedule, in relation to its respective provider groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of annual funding

available to the single state agency for the Medicaid program. In developing the fee schedule the board may refer to a nationally published regional specific fee schedule, if available, as selected by the secretary in accordance with §9-4C-8 of this code. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic primary and preventative health care services than for other services. In identifying basic primary and preventative health care services, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year 1992; and minimum benefits and coverages for policies of insurance as set forth in and minimum benefits and coverages for policies of insurance as set forth in chapter thirty-three of this code and rules of the Insurance Commissioner promulgated thereunder. If the single state agency approves the adjustments to the fee schedule, it shall implement the provider fee schedule;

(2) Review its respective provider fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves any of the board's recommendations, it shall immediately implement those adjustments;

(3) Assist and enhance communications between participating providers and the Department of Human Services;

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

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

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

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

(d) In addition to the duties specified in subsection (a) of this section, the ambulance service provider Medicaid board shall develop a method for regulating rates charged by ambulance services.

§9-4C-8. Duties of Secretary of Department of Human Services.

(a) The secretary, or his or her designee, shall serve on each board created pursuant to this article as an ex officio, nonvoting member and shall keep and maintain records for each board.

(b) In relation to outpatient hospital services, the secretary shall furnish information needed for reporting purposes. This information includes, but is not limited to, the following:

(1) For each hospital, the amount of payments and related billed charges for hospital outpatient services each month;

(2) The percentage of the state's share of Medicaid program financial obligation from time to time as necessary; and

(3) Any other financial and statistical information necessary to determine the net effect of any cost shift.

(c) The secretary shall determine an appropriate resolution for conflicts arising between the various boards.

(d) The secretary shall purchase nationally published fee schedules to be used, if available, as a reference by the Medicaid enhancement boards in developing fee schedules.

ARTICLE 4D. MEDICAID BUY-IN PROGRAM.

§9-4D-2. Definitions.

As used in this article:

(1) "Approved accounts" means any retirement account that the secretary has determined is not to be included as an asset in determining the eligibility of an individual for participation in the buy-in program. Approved accounts may include, but not be limited to, private retirement accounts such as individual retirement accounts; other individual accounts; and employer-sponsored retirement plans such as 401(k) plans, Keogh plans and employer pension plans.

(2) "Basic coverage group" means an optional coverage group as defined by the Ticket to Work and Work Incentives Improvement Act of 1999.

(3) "Copayment" is a fixed fee to be paid by the patient at the time of each office visit, outpatient service or filling of prescriptions.

(4) "Cost-sharing" means the eligible participant will participate in the cost of the program by paying the enrollment fee, monthly premiums and copayments if established by the department.

(5) "Countable income" means income that does not exceed two hundred fifty percent of the federal poverty level: *Provided*, That for purposes of this article, countable income does not include:

(A) The income of the individual's spouse, parent or guardian with whom he or she resides; and

(B) Income disregarded under the state Medicaid plan's financial methodology, including income disregarded under the federal supplemental security income program (42 U.S.C. §1382) as impairment-related work expenses.

(6) "Countable resources" includes earned and unearned income: *Provided*, That countable resources do not include:

(A) Liquid assets of up to \$5,000 for an individual;

(B) Liquid assets of up to \$10,000 for a family;

(C) Retirement accounts; and

(D) Independence accounts.

(7) "Department" means the Department of Human Services.

(8) "Disability" means a medically determinable physical or mental condition that:

(A) Can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than twelve months; and

(B) Renders a person unable to engage in substantial gainful activity; and

(C) Is a disability defined by social security administration criteria and has been determined by either the social security administration or the department.

(9) "Eligible buy-in participant" means an individual who:

(A) Is a resident of the State of West Virginia;

(B) Has a disability as defined herein;

(C) Is at least sixteen years of age and less than sixty-five years of age;

(D) Is engaged in competitive employment, including self-employment or nontraditional work that results in remuneration at or above minimum wage in an integrated setting;

(E) Has countable resources that do not exceed the resource limits as defined in this article; and

(F) Has countable income that does not exceed the income limits as defined in this article.

(10) "Enrollment fee" means a one-time fee to participate in the Medicaid buy-in program.

(11) "Federal benefit rate" is the amount of monthly federal or state benefits paid to persons with limited income and resources who are age sixty-five or older, blind or disabled.

(12) "Federal poverty level" means the level of personal or family income below which one is classified as poor according to federal governmental standards, commonly referred to as the federal poverty guidelines which are issued and printed each year in the federal register.

(13) "Income" means money earned from employment wages or self-employment earnings and unearned money received from any other source.

(14) "Independence accounts" are department-approved accounts established with the department solely by funds paid from the earned income of an eligible buy-in participant to cover expenses necessary to enhance or maintain his or her independence or increase employment opportunities. Approved expenditures from the funds may include: Educational expenses; work-related expenses; home purchase or modification; transportation; medical expenses; assistive technology and related services; or for short-term living expenses in times of qualified emergencies as determined by the department.

(15) "Liquid assets" are cash or assets payable in cash on demand, including financial instruments that can be converted to

cash within twenty working days. For purposes of this article, national, state and local holidays are not working days.

(16) "Premium" is a monthly fee paid by an eligible buy-in participant to continue participation in the program.

(17) "Resources" are possessions that the eligible buy-in participant owns that could be changed to cash and used for food, clothing or shelter and that qualify as resources under the applicable social security administration guidelines.

(18) "Retirement accounts" are moneys invested in approved retirement funds and accounts that are disregarded as an asset by the department in determining the eligibility of an individual for participation in the buy-in program.

§9-4D-9. Advisory council; rules.

(a) The secretary of the department shall establish a Medicaid buy-in program advisory council, consisting of representatives from the state Medicaid agency, the state rehabilitation agency, the state office of family support, the West Virginia statewide independent living council, the West Virginia state rehabilitation council, the West Virginia developmental disabilities council, the West Virginia mental health planning council and the center for excellence in disabilities at West Virginia University.

(b) The secretary shall submit proposed rules for review and input to the advisory council prior to release for public comment and shall consider any recommendations of the advisory council before adopting final rules.

(c) The secretary shall propose emergency rules in accordance with the provisions of 29A-3-15 of this code to implement the provisions of this article. Thereafter, the secretary shall propose additional rules for legislative approval in accordance with the provisions of said article three, chapter twenty-nine-a of this code as may be needed to administer and maintain the Medicaid buy-in program.

ARTICLE 5. MISCELLANEOUS PROVISIONS.**§9-5-9. Direct cremation or direct burial expenses for indigent persons.**

(a) For the purposes of this section:

"Direct burial" means the removal of the remains from the place of death; casket for the deceased and transportation to a West Virginia cemetery.

"Direct cremation" includes the removal of the remains from the place of death; container; and crematory fees.

"Spouse" means the person to whom the decedent was legally married and who survived the decedent: *Provided*, That a petition for divorce had not been filed by either the decedent or the spouse prior to the decedent's death.

(b) The Department of Health shall pay for direct cremation or direct burial for indigent persons in an amount not to exceed the actual cost of the direct cremation or direct burial service provided, or \$1,000 whichever is less.

(c) Prior to paying for direct cremation or direct burial, the department shall determine the financial assets of a deceased person and whether or not the deceased's estate or any of his or her relatives who are liable for the direct cremation or direct burial expenses pursuant to subsection (d) of this section is financially able to pay, alone or in conjunction, for the direct cremation or direct burial expenses. The department shall require that an affidavit be filed with the department, in a form provided by and determined in accordance with the income guidelines as set forth by the department, as well as any other supporting financial information the department may require, including, but not limited to, bank statements and income tax information of the deceased person and the relatives of the deceased person who are liable for the direct cremation or direct burial expenses pursuant to section nine of this article. The affidavit must be:

(1) Signed by the heir or heirs-at-law and state that the estate of the deceased person is unable to pay the costs associated with direct cremation or direct burial and that the sole or combined assets of the heir or heirs-at-law are not sufficient to pay for the direct cremation or direct burial of the deceased person; or

(2) Signed by the county coroner or the county health officer, the attending physician or other person signing the death certificate or the state medical examiner stating that the deceased person has no heirs or that heirs have not been located after a reasonable search and that the deceased person had no estate or the estate is pecuniarily unable to pay the costs associated with direct cremation or direct burial.

(d) The relatives of an indigent person, who are of sufficient ability, shall be liable to pay the direct cremation or direct burial expenses in the following order:

(1) The spouse.

(2) The children.

(3) The parents.

(4) The brothers and sisters.

(e) The department may proceed by motion in the circuit court of the county in which the indigent person may be, against one or more of the relatives liable.

(f) If a relative so liable does not reside in this state and has no estate or debts due him or her within the state by means of which the liability can be enforced against him or her, the other relatives shall be liable as provided by this section.

(g) The liability of the relative of an indigent person for funeral service expenses is limited to the amount paid by the department.

(h) Payment for direct burials or direct cremations for indigents shall be made by the department to the West Virginia funeral director licensed pursuant to §30-6-9 of this code or a crematory

operator certificated pursuant to §30-6-11 of this code that provided the direct burial or direct cremation, as the department may determine, pursuant to appropriations for expenditures made by the Legislature. Nothing in this section shall prohibit a family from holding a memorial service for the indigent person: *Provided*, That payment under this section is limited to direct burial and direct cremation and may not include payment for a memorial service.

(i) In the event that no family members can be found, or refuse to participate, an application for payment of direct cremation or direct burial for indigent persons may be submitted to the department by the provider of such services.

(j) A direct cremation may not be made of the decedent if objectionable pursuant to decedent's religion or otherwise prohibited by federal law, state law or regulation, in which case, alternate funeral service expenses shall be substituted. In the absence of a religious objection or prohibition by federal law, state law or regulation, an indigent for which payment under this section is authorized shall be cremated.

(k) A person who knowingly swears falsely in an affidavit required by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for a period of not more than six months, or both fined and confined.

§9-5-11. Definitions; Assignment of rights; right of subrogation by the department for third-party liability; notice requirement for claims and civil actions; notice requirement for settlement of third-party claim; penalty for failure to notify the department; provisions related to trial; attorneys fees; class actions and multiple plaintiff actions not authorized; and Secretary's authority to settle.

(a) *Definitions.* — As used in this section, unless the context otherwise requires:

(1) "Bureau" means the Bureau for Medical Services.

(2) "Department" means the Department of Human Services, or its contracted designee.

(3) "Recipient" means a person who applies for and receives assistance under the Medicaid Program.

(4) "Secretary" means the Secretary of the Department of Human Services.

(5) "Third-party" means an individual or entity that is alleged to be liable to pay all or part of the costs of a recipient's medical treatment and medical-related services for personal injury, disease, illness or disability, as well as any entity including, but not limited to, a business organization, health service organization, insurer, or public or private agency acting by or on behalf of the allegedly liable third-party.

(b) *Assignment of rights.* —

(1) Submission of an application to the department for medical assistance is, as a matter of law, an assignment of the right of the applicant or his or her legal representative to recover from third parties past medical expenses paid for by the Medicaid program.

(2) At the time an application for medical assistance is made, the department shall include a statement along with the application that explains that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(3) This assignment of rights does not extend to Medicare benefits.

(4) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third-party and from including, as part of the compensatory damages sought to be recovered, the amounts of his or her past medical expenses.

(5) The department shall be legally subrogated to the rights of the recipient against the third party.

(6) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(7) A recipient is considered to have authorized all third-parties to release to the department information needed by the department to secure or enforce its rights as assignee under this chapter.

(c) Notice requirement for claims and civil actions. —

(1) A recipient's legal representative shall provide notice to the department within 60 days of asserting a claim against a third party. If the claim is asserted in a formal civil action, the recipient's legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.

(2) If the recipient has no legal representative and the third party knows or reasonably should know that a recipient has no representation then the third party shall provide notice to the department within sixty days of receipt of a claim or within thirty days of receipt of information or documentation reflecting the recipient is receiving Medicaid benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter have the right to file and receive pleadings, intervene and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within thirty days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than fifteen days after receipt of a request for same.

(d) Notice of settlement requirement. —

(1) A recipient or his or her representative shall notify the department of a settlement with a third-party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the Secretary or his or her designee within 30 days of consent to the proposed allocation.

(2) If the total amount of the settlement is less than the department's subrogation lien, then the settling parties shall obtain the department's consent to the settlement before finalizing the settlement. The department shall advise the parties within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(3) If the department rejects the proposed allocation, the department shall seek a judicial determination within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(A) If judicial determination becomes necessary, the trial court is required to hold an evidentiary hearing. The recipient and the department shall be provided ample notice of the same and be given just opportunity to present the necessary evidence, including fact witness and expert witness testimony, to establish the amount to which the department is entitled to be reimbursed pursuant to this section.

(B) The department shall have the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court's decision should be set forth in a detailed order containing the

requisite findings of fact and conclusions of law to support its rulings.

(4) Any settlement by a recipient with one or more third-parties which would otherwise fully resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be exempt from the provisions of this section.

(5) Nothing herein prevents a recipient from seeking judicial intervention to resolve any dispute as to allocation prior to effectuating a settlement with a third party.

(e) Department failure to respond to notice of settlement. — If the department fails to appropriately respond to a notification of settlement, the amount to which the department is entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient has allocated toward past medical expenses.

(f) Penalty for failure to notify the department. — A legal representative acting on behalf of a recipient or third party that fails to comply with the provisions of this section is liable to the department for all reimbursement amounts the department would otherwise have been entitled to collect pursuant to this section but for the failure to comply. Under no circumstances may a pro se recipient be penalized for failing to comply with the provisions of this section.

(g) *Miscellaneous provisions relating to trial.* —

(1) Where an action implicated by this section is tried by a jury, the jury may not be informed at any time as to the subrogation lien of the department.

(2) Where an action implicated by this section is tried by judge or jury, the trial judge shall, or in the instance of a jury trial, require that the jury, identify precisely the amount of the verdict awarded that represents past medical expenses.

(3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of the judgment any damages awarded

for past medical expenses be withheld and paid directly to the department, not to exceed the amount of past medical expenses paid by the department on behalf of the recipient.

(h) *Attorneys' fees.* — Irrespective of whether an action or claim is terminated by judgment or settlement without trial, from the amount required to be paid to the department there shall be deducted the reasonable costs and attorneys' fees attributable to the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees: *Provided*, That if there is no recovery, the department shall under no circumstances be liable for any costs or attorneys' fees expended in the matter.

(i) *Class actions and multiple plaintiff actions not authorized.* — Nothing in this article shall authorize the department to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover medical care expenditures paid for by the Medicaid program.

(j) *Secretary's authority.* — The Secretary or his or her designee may compromise, settle and execute a release of any claim relating to the department's right of subrogation, in whole or in part.

§9-5-11a. Notice of action or claim.

If either the medical assistance recipient or the department brings an action or claim against a third person, the recipient, his or her attorney or such department shall, within thirty days of filing the action, give to the other written notice of the action or claim by certified mail. This notice shall contain the name of the third person and the court in which the action is brought. If the department institutes said action, the notice shall advise the recipient of their right to bring such action in their own name, in which they may include as a part of their claim the sums claimed by such department. Proof of such notice shall be filed in said action subject to the notice and intent procedure as outlined in section eleven of this article. If an action or claim is brought by either the recipient

or the department, the other may, at any time before trial, become a party to the action, or shall consolidate his or her action or claim with the other if brought independently: *Provided*, That this consolidation or entry as a party does not delay the proceedings.

§9-5-11b. Release of information.

(a) All recipients of medical assistance under the Medicaid program are considered to have authorized all third parties, including, but not limited to, insurance companies and providers of medical care, to release to the department information needed by the department to secure or enforce its rights as assignee under this chapter.

(b) As a condition of doing business in the state, health insurers, including self-insured plans, group health plans as defined in §6074(a) of the Employee Retirement Income Security Act of 1974, service benefit plans, third-party administrators, managed care organizations, pharmacy benefit managers or other parties that are by statute, contract or agreement, legally responsible for payment of a claim for a health care item or service are required to comply with the following:

(1) Upon the request of the Bureau for Medical Services, or its contractor, provide information to determine the period that the service recipients, their spouse or dependents may be or may have been covered by the health insurer, including the nature of the coverage that is or was provided by the health insurer, the name, address, date of birth, Social Security number, group number, identifying number of the plan, and effective and termination dates. The information shall be provided in a format suitable for electronic data matches, conducted under the direction of the department, no less than monthly or as prescribed by the secretary. The health insurer must respond within sixty working days after receipt of a written request for enrollment data from the department or its contractor;

(2) Accept the right of the Bureau for Medical Services of recovery and the assignment to the state of any right of an individual or other entity to payment from the party for an item or

service for which payment has been made by the Bureau for Medical Services;

(3) Respond to any inquiry by the Bureau for Medical Services regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and

(4) Accept a claim submitted by the Bureau for Medical Services regardless of the date of submission of the claim, the type or format of the claim form, lack of preauthorization or the failure to present proper documentation at the point-of-sale that is the basis of the claim: *Provided*, That the claim is submitted by the Bureau for Medical Services within the three-year period beginning on the date on which the item or service was furnished and any action by the Bureau for Medical Services to enforce its right with respect to the claim is commenced within six years of the Bureau for Medical Services' submission of the claim.

§9-5-11c. Right of the department to recover medical assistance.

(a) Upon the death of a person who was fifty-five years of age or older at the time the person received welfare assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services, the department, in addition to any other available remedy, may file a claim or lien against the estate of the recipient for the total amount of medical assistance provided by Medicaid for nursing facility services, home and community-based services, and related hospital and prescription drug services provided for the benefit of the recipient. Claims so filed shall be classified as and included in the class of debts due the state.

(b) The department may recover pursuant to subsection (a) only after the death of the individual's surviving spouse, if any and only after such time as the individual has no surviving children under the age of twenty-one, or when the individual has no surviving children who meet the Social Security Act's definition of blindness or permanent and total disability.

(c) The state shall have the right to place a lien upon the property of individuals who are inpatients in a nursing facility, intermediate care facility for individuals with an intellectual disability or other medical institution who, after notice and an opportunity for a hearing, the state has deemed to be permanently institutionalized. This lien shall be in an amount equal to Medicaid expenditures for services provided by a nursing facility, intermediate care facility for individuals with an intellectual disability or other medical institution, and shall be rendered against the proceeds of the sale of property except for a minimal amount reserved for the individual's personal needs. Any such lien dissolves upon that individual's discharge from the medical institution. The secretary has authority to compromise or otherwise reduce the amount of this lien in cases where enforcement would create a hardship.

(d) No lien may be imposed on such individual's home when the home is the lawful residence of: (1) The spouse of the individual; (2) the individual's child who is under the age of twenty-one; (3) the individual's child meets the Social Security Act's definition of blindness or permanent and total disability; or (4) the individual's sibling has an equity interest in the home and was residing in the home for a period of at least one year immediately before the date of the individual's admission to a medical institution.

(e) The filing of a claim, pursuant to this section, neither reduces or diminishes the general claims of the department, except that the department may not receive double recovery for the same expenditure. The death of the recipient neither extinguishes or diminishes any right of the department to recover. Nothing in this section affects or prevents a proceeding to enforce a lien pursuant to this section or a proceeding to set aside a fraudulent conveyance.

(f) Any claim or lien imposed pursuant to this section is effective for the full amount of medical assistance provided by Medicaid for nursing facility services, home and community-based services, and related hospital and prescription drug services. The lien attaches and is perfected automatically as of the beginning date of medical assistance, the date when a recipient first receives

treatment for which the department may be obligated to provide medical assistance. A claim may be waived by the department, if the department determines, pursuant to applicable federal law and rules and regulations, that the claim will cause substantial hardship to the surviving dependents of the deceased.

(g) Upon the effective date of this section, the Attorney General, on behalf of the State of West Virginia, shall commence an action in a court of competent jurisdiction to test the validity, constitutionality, and the ability of the Congress of the United States to mandate the implementation of this section. This subsection does not limit the right of others, including recipients, to intervene in any litigation, nor does it limit the discretion of the Attorney General or appropriate counsel to seek affected persons to act as parties to the litigation, either individually or as a class.

***§9-5-12a. Medicaid program; dental care.**

(a) The following terms are defined:

(1) "Cosmetic services" means dental work that improves the appearance of the teeth, gums, or bite, including, but not limited to, inlays or onlays, composite bonding, dental veneers, teeth whitening, or braces.

(2) "Diagnostic and preventative services" means dental work that maintains good oral health and includes oral evaluations, routine cleanings, x-rays, fluoride treatment, fillings, and extractions.

(3) "Restorative services" means dental work that involves tooth replacement, including, but not limited to, dentures, dental implants, bridges, crowns, or corrective procedures such as root canals.

(b) The Department of Human Services shall extend Medicaid coverage to adults age 21 and over covered by the Medicaid program for diagnostic and preventative dental services and restorative dental services, excluding cosmetic services. This

***NOTE:** This section was also amended by H. B. 4933 (Chapter 167), which passed subsequent to this Act.

coverage is limited to \$1,000 each budget year. Recipients must pay for services over the \$1,000 yearly limit. No provision in this section shall restrict the department in exercising new options provided by, or to be in compliance with, new federal legislation that further expands eligibility for dental care for adult recipients.

(c) The department is responsible for the implementation of, and program design for, a dental care system to reduce the continuing harm and continuing impact on the health care system in West Virginia. The dental health system design shall include oversight, quality assurance measures, case management, and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations. The department shall seek authority from the Centers for Medicare and Medicaid Services to implement the provisions of this section.

(d) The provisions of this section enacted during the 2020 regular legislative session shall only become effective upon approval from the federal Centers for Medicare and Medicaid Services of the provider tax as set forth in §11-27-10a of this code.

§9-5-15. Medicaid program; preferred drug list and drug utilization review.

The Legislature finds that it is a public necessity that trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates that are contained in records, as well as any meetings at which this information is negotiated or discussed need confidentiality to insure the most significant rebates available for the state. Information pertaining to similar agreements with the federal government and negotiated by pharmaceutical manufacturers is confidential pursuant to 42 U.S.C. 1396r-8. A rebate as a percentage of average manufacture price is confidential under federal law and the federal rebate could be made known if not protected by state law. Because of the protection afforded by federal law, if this information is not protected by state law, manufacturers will not be willing to offer a rebate in West Virginia.

Further, the Legislature finds that the number and value of supplemental rebates obtained by the department will increase, to the benefit of Medicaid recipients, if information related to the supplemental rebates is protected in the records of the department and in meetings in which this information is disclosed because manufacturers will be assured they will not to be placed at a competitive disadvantage by exposure of this information.

The secretary of the Department of Human Services has the authority to develop a preferred drug list, in accordance with federal law, which shall consist of federally approved drugs. The department, through administration of the Medicaid program, may reimburse, where applicable and in accordance with federal law, entities providing and dispensing prescription drugs from the preferred drug list.

The secretary is authorized to negotiate and enter into agreements with pharmaceutical manufacturers for supplemental rebates for Medicaid reimbursable drugs.

The provisions of article three, chapter five-a of this code shall not apply to any contract or contracts entered into under this section.

Trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates which are contained in the department's records and those of its agents with respect to supplemental rebate negotiations and which are prepared pursuant to a supplemental rebate agreement are confidential and exempt from all of article one, chapter twenty-nine-b of this code.

Those portions of any meetings of the committee at which trade secrets, rebate amounts, percentage of rebate, manufacturer's pricing and supplemental rebates are disclosed for discussion or negotiation of a supplemental rebate agreement are exempt from all of article nine-a, chapter six of this code.

The secretary will monitor and evaluate the effects of this provision on Medicaid recipients, the Medicaid program, physicians and pharmacies.

The commissioner shall implement a drug utilization review program to assure that prescribing and dispensing of drug products result in the most rational cost-effective medication therapy for Medicaid patients.

Any moneys received in supplemental rebates will be deposited in the medical services fund established in §9-4-2 of this code.

§9-5-16a. Medicaid-certified nursing homes; screening of applicants and residents for mental illness; reimbursement of hospitals.

(a) The department of human services shall cause individuals applying for admission to or residing in a Medicaid-certified nursing home to be screened as required by the Omnibus Budget Reconciliation Act of 1987.

(b) Effective April 1, 1989, hospitals shall receive administrative day payment at a rate set by the Medicaid agency to reimburse the hospitals for days required for the screening of Medicaid eligible patients required by subsection (a) of this section.

(c) The Secretary of the Department of Human Services is authorized to promulgate rules and regulations to fully implement this section.

§9-5-19. Summary review for certain behavioral health facilities and services.

(a) A certificate of need as provided in article two-d, chapter sixteen of this code is not required by an entity proposing additional behavioral health care services, but only to the extent necessary to gain federal approval of the Medicaid MR/DD waiver program, if a summary review is performed in accordance with the provisions of this section.

(b) Prior to initiating any summary review, the secretary shall direct the revision of the state mental health plan as required by the provisions of 42 U.S.C. 300x and section four, article one-a,

chapter twenty-seven of this code. In developing those revisions, the secretary is to appoint an advisory committee composed of representatives of the associations representing providers, child care providers, physicians and advocates. The secretary shall appoint the appropriate department employees representing regulatory agencies, reimbursement agencies and oversight agencies of the behavioral health system.

(c) If the secretary determines that specific services are needed but unavailable, he or she shall provide notice of the department's intent to develop those services. Notice may be provided through publication in the state register, publication in newspapers or a modified request for proposal as developed by the secretary.

(d) The secretary may initiate a summary review of additional behavioral health care services, but only to the extent necessary to gain federal approval of the Medicaid MR/DD waiver program, by recommending exemption from the provisions of article two-d, chapter sixteen of this code to the Health Care Authority. The recommendation is to include the following findings:

(1) That the proposed service is consistent with the state health plan and the state mental health plan;

(2) That the proposed service is consistent with the department's programmatic and fiscal plan for behavioral health services;

(3) That the proposed service contributes to providing services that prevent admission to restrictive environments or enables an individual to remain in a nonrestrictive environment;

(4) That the proposed service contributes to reducing the number of individuals admitted to inpatient or residential treatment programs or services;

(5) If applicable, that the proposed service will be community-based, locally accessible, provided in an appropriate setting consistent with the unique needs and potential of each client and his or her family and located in an area that is unserved or

underserved or does not allow consumers a choice of providers; and

(6) That the secretary is determining that sufficient funds are available for the proposed service without decreasing access to or provision of existing services. The secretary may, from time to time, transfer funds pursuant to the general provisions of the budget bill.

(e) The secretary's findings required by this section shall be filed with the secretary's recommendation and appropriate documentation. If the secretary's findings are supported by the accompanying documentation, the proposal does not require a certificate of need.

(f) Any entity that does not qualify for summary review is subject to a certificate of need review.

(g) Any provider of the proposed services denied authorization to provide those services pursuant to the summary review has the right to appeal that decision to the state agency in accordance with the provisions of section ten, article two-d, chapter sixteen of this code.

§9-5-25. Medicaid program compact.

[Repealed]

§9-5-26. Supplemental Medicare and Medicaid reimbursement.

(a) A ground emergency medical transportation services provider, owned, operated by, or providing services under contract to, the state, or a city, a county, or city and county, that provides services to Medicare and Medicaid beneficiaries is eligible for supplemental reimbursement.

(b) An eligible provider's supplemental reimbursement shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible provider shall be equal to the amount of federal financial participation received as a result of the claims submitted.

(2) In no instance may the amount certified, when combined with the amount received from all other sources of reimbursement from the Medicare or Medicaid program, exceed 100 percent of actual costs, as determined pursuant to the Medicaid State Plan or the state's Medicare plan, for ground emergency medical transportation services.

(3) The supplemental Medicare and Medicaid reimbursement shall be distributed exclusively to eligible providers under a payment methodology based on ground emergency medical transportation services provided to Medicare and Medicaid beneficiaries by eligible providers on a per-transport basis or other federally permissible basis. The Department of Human Services shall obtain approval from the Centers for Medicare and Medicaid Services for the payment methodology to be used, and may not make any payment pursuant to this section prior to obtaining that approval.

(c) No funds may be expended from the State Fund, General Revenue for any supplemental reimbursement paid under this section.

(d) The nonfederal share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation may be paid only with funds from the governmental entities.

(e) Participation in the program by an eligible provider described in this section is voluntary.

(f) If an applicable governmental entity elects to seek supplemental reimbursement pursuant to this section on behalf of an eligible provider, the governmental entity shall:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the ground emergency medical transportation services are eligible for federal financial participation;

(2) Provide evidence supporting the certification as specified by the department;

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation; and

(4) Keep, maintain, and have readily retrievable any records specified by the department to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. The department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (42 U.S.C. §1396 *et seq.*). If federal approval is not obtained for implementation of this section, this section may not be implemented.

(2) The department shall submit claims for federal financial participation for the expenditures for the services that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(4) Notwithstanding the provisions of §9-5-26(g)(1) of this code, the department shall, prior to seeking federal approval of any supplemental reimbursement pursuant to this section, attempt to maximize the number of qualified group emergency medical

transportation service providers eligible to receive the supplemental reimbursement. These emergency medical transportation service providers would include:

(A) Any not-for-profit emergency medical transport providers not owned by the state or a city, a county, or a city and county;

(B) Any voluntary emergency transportation service providers not owned by the state or a city, a county, or a city and county; and

(C) All other emergency medical transportation service providers licensed pursuant to the provisions of §16-4C-1 *et seq.* of this code.

***§9-5-27. Transitioning foster care into managed care.**

(a) "Eligible services" means acute care, including medical, pharmacy, dental, and behavioral health services.

(b) The secretary shall transition to a capitated Medicaid program for a child classified as a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure the appropriate care is delivered in the most appropriate place and time.

(c) The secretary shall make payments for the eligible services, including home and community-based services, using a managed care model.

(d) The secretary shall submit, if necessary, applications to the United States Department of Health and Human Services for waivers of federal Medicaid requirements that would otherwise be violated in the implementation of the program, and shall consolidate any additional waivers where appropriate: *Provided*, That this subsection does not apply to the Aged and Disabled

***NOTE:** This section was also amended by S. B. 300 (Chapter 208) and then H. B. 4594 (Chapter 166), both of which passed subsequent to this Act.

Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

(e) If a selected managed care organization ceases to contract with the Department of Human Services to provide Medicaid managed care services, it must provide all patient records, including medical records, to the next selected managed care organization to ensure the Eligible Medicaid Beneficiaries do not experience an interruption in care.

(f) In designing the program, the secretary shall ensure that the program:

(1) Reduces fragmentation and offers a seamless approach to meeting participants' needs;

(2) Delivers needed supports and services in the most integrated, appropriate, and cost-effective way possible;

(3) Offers a continuum of acute care services, which includes an array of home and community-based options;

(4) Includes a comprehensive quality approach across the entire continuum of care services; and

(5) Consult stakeholders in the program development process, and the managed care organization that is awarded the contract shall create a voluntary advisory group of foster, adoptive, and kinship parents, which shall meet every quarter for the first year following the effective date of the changes made to this section during the 2019 Regular Session of the Legislature and then every six months thereafter, to discuss issues they are encountering with the managed care organization and recommend solutions. The managed care organization shall report on the recommendations of the advisory group and address how and why procedures have or have not changed based on those recommendations. This report shall be submitted to the secretary and the Legislative Oversight Commission on Health and Human Resources Accountability as set forth in §16-29E-1 *et seq.* of this code, and the public in a timely fashion and shall be available on the managed care organization's webpage.

(g) The department shall evaluate the transition to managed care and shall collect and annually report on the following items: the number of claims submitted, the number of claims approved, the number of claims denied, the number of claims appealed, the resolution of appealed claims, the average time of an appeal, the average length of stay in a child residential care center, and health outcomes. The initial report will be filed by July 1, 2021, with the Legislative Oversight Commission on Health and Human Resources Accountability and the Foster Care Ombudsman with a final report submitted July 1, 2023.

(h) The transition of foster care to managed care shall terminate on June 30, 2024, unless cancelled by the secretary at an earlier date.

(i) (1) The Office of the Inspector General shall employ an independent foster care ombudsman, with experience as a former foster parent or experience in the area of child welfare;

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

(A) Advocating for the rights of foster children and foster parents;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a foster child or foster parent, relating to action, inaction or decisions of providers of managed care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare and rights of the foster child or foster parent;

(C) Monitoring the development and implementation of federal, state and local legislation, regulations and policies with respect to foster care services; and

(D) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints for the purpose of identifying and resolving significant problems faced by foster children and foster parents as a class. The data shall be

submitted to the Bureau of Children and Families and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis;

(3) The ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities.

(j) An employee of the department who, as a function of that employment, has engaged in the development of any contract developed pursuant to the requirements of this section may not for a period of two years thereafter be employed by any agency or company that has benefitted or stands to benefit directly from a contract between the department and that agency or company.

(k) Any managed care company selected as the managed care contractor pursuant to the provisions of this article shall have at least 80 percent of the total full-time equivalent positions allocated to manage care of foster children in West Virginia according to the contract must have a primary work place in the state of West Virginia.

***§9-5-29. Payments to substance use disorder residential treatment facilities based upon performance-based outcomes.**

(a) For purposes of this section:

(1) "Department" means the Department of Human Services.

(2) "Evidence-based" means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended populations.

(3) "MCOs" means Medicaid managed care organizations.

(4) "Performance-based contracting" means structuring all aspects of the service contract around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable

***NOTE:** This section was also amended by S. B. 820 (Chapter 165), which passed subsequent to this Act.

outcomes and linking payment for services to contractor performance.

(5) "Promising practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(6) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) Within three months of effective date, Bureau for Medical Services shall seek an amendment to an existing waiver or waivers from the Centers for Medicare and Medicaid Services to support the pilot program. Within 90 days of Centers for Medicare and Medicaid Services approval, Bureau for Medical Services shall enter into contracts with the MCOs wherein, at a minimum, 15 percent of substance use disorder residential treatment contracts for facilities providing substance use disorder treatment services are paid based upon performance-based measures.

(c) The department's contracts with the MCOs shall be developed and implemented in a manner that complies with the applicable provisions of this code and are exempt from §5A-3-1 *et seq.* of this code.

(d) The MCOs shall contract with substance use disorder residential treatment facilities and allow substance use disorder treatment facilities the option to be paid based upon performance-based metrics. Substance use disorder residential treatment facilities that opt for performance-based contracting shall including the following:

(1) The use of programs that are evidence-based, research-based, and supported by promising practices, in providing services to patient population, including fidelity and quality assurance provisions.

(2) The substance use disorder residential treatment facility shall develop a robust post-treatment planning program, including, but not limited to, connecting the patient population to community-

based supports, otherwise known as wraparound services, to include, but not be limited to, designation of a patient navigator to assist each discharged patient with linkage to medical, substance use, and psychological treatment services; assistance with job placement; weekly communication regarding status for up to three years; and assistance with housing and transportation.

(3) The department shall create an advisory committee that includes representatives from the Office of Drug Control Policy, the Bureau for Behavioral Health, the Bureau for Medical Services, and the MCO to develop the performance-based metrics for which payment is based that shall include, but are not limited to, the following:

(A) Whether patient is drug free, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post-discharge;

(B) Whether patient is employed, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post-discharge;

(C) Whether patient has housing, 30 days post discharge, six months post discharge, and one-year post-discharge;

(D) Whether substance use disorder residential treatment facility has arranged medical, substance use, psychological services, or other community-based supports for the patient and whether the patient attended, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post-discharge;

(E) Whether the patient has transportation 30 days post-discharge; and

(F) Whether patient has relapsed and needed any additional substance use disorder treatment, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post discharge.

(G) A managed care organization does not have an obligation to provide any of the information specified in this section regarding a patient if that patient ceases to be an enrolled member of that particular MCO.

(e) The substance use disorder residential treatment facility shall report the performance-based metrics to the Office of Drug Control Policy on the first of every month.

(f) For the three years of implementation of performance-based contracting, the MCO may transfer risk for the provision of services to the substance use disorder residential treatment facility only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the MCO may develop a shared saving methodology through which the substance use disorder residential treatment facility shall receive a defined share of any savings that result from improved performance.

(g) The department shall hire a full-time employee who will actively monitor the substance use disorder residential treatment facility's compliance with required reporting, monitor contracts executed under this section, and support the advisory committee in determining the best practices and refinement of this pilot.

(h) The advisory committee shall evaluate this pilot program annually for effectiveness, adjust metrics as indicated to improve quality outcomes, and assess the pilot for continuation.

(i) The pilot program shall terminate in three years, unless it is recommended for continued evaluation based upon metrics that indicate the effectiveness of this program.

(j) The department shall conduct actuarial analysis of the pilot program annually and submit this report together with a detailed report of the overall performance of the pilot program, including but not limited to, any performance-based metrics added in the fiscal year, and a recommendation regarding the effectiveness of the program to the Legislative Oversight Commission on Health

and Human Resources Accountability by January 15, 2023, and annually thereafter throughout the term of the pilot program.

§9-5-30. Certified community behavioral health clinics.

(a) The Bureau for Medical Services shall develop, seek approval of, and implement a Medicaid state plan amendment as necessary and appropriate to effectuate a system of certified community behavioral health clinics (CCBHCs).

(b) The Bureau for Medical Services, in partnership with the Bureau for Behavioral Health, shall establish a state certification system for CCBHCs in accordance with the following requirements:

(1) To the fullest extent practicable, the CCBHC system shall be consistent with the demonstration program established by Section 223 of the Protecting Access to Medicare Act of 2014 (P.L. 113-93, 42 U.S.C. 1396a note), as amended.

(2) Standards and methodologies for a prospective payment system shall be established to reimburse each CCBHC under the state Medicaid program on a predetermined, fixed amount per day for covered services rendered to each Medicaid beneficiary.

(3) A quality incentive payment system shall be established for those CCBHCs which achieve specific thresholds on performance metrics identified by the Bureau for Medical Services. Such quality incentive payments shall be in addition to the bundled prospective daily rate.

(4) The prospective payment rate for each CCBHC shall be adjusted tri-annually by the Medicare Economic Index as defined in Section 223 of Protecting Access to Medicare Act of 2014. In addition, the prospective payment rate shall allow for modifications based upon a change in scope for an individual CCBHC. Rate adjustments can be made upon request by the provider.

(5) Criteria shall be established to certify a facility as a CCBHC which, at a minimum, shall require each CCBHC to offer directly,

or indirectly through formal referral relationships with other providers, the following services:

(A) Crisis mental health services, including 24-hour mobile crisis teams, emergency crisis intervention services, and crisis stabilization;

(B) Screening, assessment, and diagnosis, including risk assessment;

(C) Patient-centered treatment planning or similar processes, including risk assessment and crisis planning;

(D) Outpatient clinic primary care screening and monitoring of key health indicators and health risk;

(E) Targeted case management;

(F) Psychiatric rehabilitation services;

(G) Peer support and counselor services;

(H) Family support services; and

(I) Community-based mental health services, including mental health services for members of the armed forces and veterans.

(c) All nonprofit comprehensive community mental health centers, comprehensive intellectual disability facilities, as established by §27-2A-1 of this code, and all other providers set forth in the Medicaid state plan amendment shall be eligible to apply for certification as a CCBHC.

(d) The Bureau for Medical Services, in partnership with the Bureau for Behavioral Health, shall establish any other procedures and standards as may be necessary for an eligible facility to apply for certification, become certified, and remain certified as a CCBHC, as set forth in the legislative rule developed pursuant to this section.

(e) The participation of any eligible facility in the CCBHC system shall be strictly voluntary. Nothing in this section shall

require a facility that is eligible for certification as a CCBHC to apply for such certification.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

As used in this article:

(1) "Adult protective services agency" means any public or nonprofit private agency, corporation, board, or organization furnishing protective services to adults;

(2) "Adult protective services" means services provided to vulnerable adults as the secretary may specify and may include, but are not limited to, services such as:

(A) Receiving reports of adult abuse, neglect, or exploitation;

(B) Investigating the reports of abuse, neglect, or exploitation;

(C) Case planning, monitoring, evaluation, and other case work and services; and

(D) Providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services;

(3) "Abuse" means the infliction or threat of physical or psychological harm, including the use of undue influence or the imprisonment of any vulnerable adult or facility resident;

(4) "Neglect" means the unreasonable failure by a caregiver to provide the care necessary to maintain the safety or health of a vulnerable adult or self-neglect by a vulnerable adult, including the use of undue influence by a caregiver to cause self-neglect;

(5) "Vulnerable adult" means any person over the age of 18, or an emancipated minor, who by reason of physical or mental condition is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection;

(6) "Emergency" or "emergency situation" means a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to a vulnerable adult;

(7) "Financial exploitation" means the intentional misappropriation, misuse, or use of undue influence to cause the misuse of funds or assets of a vulnerable adult or facility resident, but does not apply to a transaction or disposition of funds or assets where a person made a good-faith effort to assist the vulnerable adult or facility resident with the management of his or her money or other things of value;

(8) "Legal representative" means a person lawfully invested with the power, and charged with the duty, of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, durable power of attorney representative, springing power of attorney representative, financial power of attorney representative, medical power of attorney representative, trustee, or other duly appointed person;

(9) "Nursing home" or "facility" means any institution, residence, intermediate care facility for individuals with an intellectual disability, care home, or any other adult residential facility, or any part or unit thereof, that is subject to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.*, §16-5E-1 *et seq.*, or §16-5H-1 *et seq.* of this code;

(10) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the Bureau of Senior Services and meets the qualifications set forth in §16-5L-7 of this code;

(11) "Facility resident" means an individual living in a nursing home or other facility, as that term is defined in subdivision (9) of this section;

(12) "State long-term care ombudsman" means an individual who meets the qualifications of §16-5L-5 of this code and who is

employed by the State Bureau of Senior Services to implement the State Long-term Care Ombudsman Program;

(13) "Secretary" means the Secretary of the Department of Human Services;

(14) "Caregiver" means an individual who is responsible for the care of a vulnerable adult or a facility resident, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an adult with disabilities or a facility resident who needs supportive services in any setting; and

(15) "Fiduciary" means a person or entity with the legal responsibility to make decisions on behalf of and for the benefit of another person; to act in good faith and with fairness; and includes a trustee, a guardian, a conservator, an executor or an agent under a financial power of attorney.

§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

(a) There is continued within the Department of Human Services the system of adult protective services.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code regarding the organization and duties of the adult protective services system and the procedures to be used by the department to effectuate the purposes of this article. The rules may be amended and supplemented from time to time.

(c) The secretary shall design and arrange such rules to attain, or move toward the attainment of, the following goals to the extent that the secretary believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) Assisting vulnerable adults who are abused, neglected, or financially exploited in achieving or maintaining self-sufficiency

and self-support and preventing, reducing, and eliminating their dependency on the state;

(2) Preventing, reducing, and eliminating neglect, financial exploitation, and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected, or financially exploited vulnerable adults to institutional care only where other available services are inappropriate;

(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

(6) Preventing, reducing, and eliminating the exploitation of vulnerable adults and facility residents through the joint efforts of the various agencies, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, and county prosecutors;

(7) Preventing, reducing, and eliminating abuse, neglect, and financial exploitation of residents in nursing homes or facilities; and

(8) Coordinating investigation activities for complaints of financial exploitation, abuse, and neglect of vulnerable adults and facility residents among various agencies, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as appropriate.

(d) An adult protective services caseworker may not be held personally liable for any professional decision or action arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated: *Provided*, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any

loss caused by willful and wanton misconduct or intentional misconduct.

(e) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state, and other agencies to fulfill the objectives of the system of adult protective services.

§9-6-9. Mandatory reporting of incidences of abuse, neglect, financial exploitation, or emergency situation.

(a) If any medical, dental, or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, any employee of any nursing home or other residential facility, has reasonable cause to believe that a vulnerable adult or facility resident is or has been neglected, abused, financially exploited or placed in an emergency situation, or if such person observes a vulnerable adult or facility resident being subjected to conditions that are likely to result in abuse, neglect, financial exploitation, or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of §9-6-11 of this code: *Provided*, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse, neglect, or financial exploitation of a vulnerable adult or facility resident, or the existence of an emergency situation, any other person may make such a report.

(c) The Department of Human Services shall develop and implement a procedure to notify any person mandated to report suspected abuse and neglect of a vulnerable adult or facility resident of whether an investigation into the reported suspected abuse, neglect, or financial exploitation has been initiated and when the investigation is completed.

(d) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4(13) of this

code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

§9-6-11. Reporting procedures.

(a) A report of neglect, abuse, or financial exploitation of a vulnerable adult or facility resident, or of an emergency situation involving such an adult, shall be made immediately, and not more than 48 hours after suspecting abuse, neglect or financial exploitation, to the department's adult protective services agency by a method established by the department. The department shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department shall receive reports on its 24-hour, seven-day-a-week, toll-free number established to receive calls reporting cases of suspected or known adult abuse or neglect.

(b) A copy of any report of abuse, neglect, financial exploitation, or emergency situation shall be immediately filed with the following agencies:

(1) The Department of Human Services;

(2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

(3) In case of a death, to the appropriate medical examiner or coroner's office.

(c) If the person who is alleged to be abused, neglected, or financially exploited is a resident of a nursing home or other residential facility, a copy of the report shall also be filed with the

state or regional long-term care ombudsman and the administrator of the nursing home or facility.

(d) Reports of known or suspected institutional abuse, neglect, or financial exploitation of a vulnerable adult or facility resident, or the existence of an emergency situation in an institution, nursing home, or other residential facility shall be made, received, and investigated in the same manner as other reports provided for in this article. In the case of a report regarding an institution, nursing home, or residential facility, the department shall immediately cause an investigation to be conducted.

§9-6-16. Compelling production of information.

(a)(1) In order to obtain information regarding the location of an adult who is the subject of an allegation of abuse, neglect, or financial exploitation, the Secretary may serve, by certified mail, personal service, or facsimile, an administrative subpoena on any corporation, partnership, business, or organization for production of information leading to determining the location of the adult. In case of disobedience to the subpoena, the Division of Adult Protective Services may petition any circuit court to require the production of information.

(2) In case of disobedience to the subpoena, in compelling the production of information, the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party, if the entity served is located in this state; or (B) the circuit court of the county in which the local protective services office conducting the investigation is located, if the entity served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the Division of Adult Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the Division of Adult Protective Services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of an adult who is the subject of an allegation of abuse, neglect, or financial exploitation, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

ARTICLE 7. FRAUD AND ABUSE IN THE MEDICAID PROGRAM.

§9-7-1. Legislative purpose and findings; powers and duties of fraud control unit; transfer to the Office of the Attorney General; legislative report.

(a) The Medicaid Fraud Control Unit shall have the following powers and duties:

(1) The investigation and referral for prosecution of all violations of applicable state and federal laws pertaining to the provision of goods or services under the medical programs of the state including the Medicaid program.

(2) The investigation of abuse, neglect, or financial exploitation of residents in board and care facilities and patients in health care facilities which receive payments under the medical programs of the state.

(3) To cooperate with the federal government in all programs designed to detect and deter fraud and abuse in the medical programs of the state.

(4) To employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors, and clerical support personnel and such other personnel as are deemed necessary from time to time to accomplish the purposes herein.

(b) The Medicaid Fraud Control Unit shall be within the Office of the Attorney General. All rights, responsibilities, powers, and duties of the unit shall be transferred to the Office of the Attorney

General, including the administration and authority of the Medicaid Fraud Control Fund.

§9-7-2. Definitions.

For the purposes of this article:

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

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

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

"Claim" means an application for payment for goods or services provided under the medical programs of the Department of Human Services.

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

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

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

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

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

"Provider" means any individual or entity furnishing goods or services under the medical programs of the Department of Human Services.

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

§9-7-3. Investigations; procedure.

(a) When the unit has credible information that indicates a person has engaged in an act or activity which is subject to prosecution under this article, the unit may make an investigation to determine if the act has been committed and, to the extent necessary for such purpose, the Attorney General, or an employee of the unit designated by the Attorney General, may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition, and location of any book, record, documents, or other tangible thing and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution under this article, or §61-2-29 of this code, either before, during, or after an investigation pursuant to this section, the Attorney General, or an employee of the unit designated by the Attorney General, may request search warrants and present and swear or affirm criminal complaints.

(b) If documents necessary to an investigation of the unit shall appear to be located outside the state, the documents shall be made available by the person or entity within the jurisdiction of the state having control over the documents either at a convenient location within the state or, upon payment of reasonable and necessary

expenses to the unit for transportation and inspection, at the place outside the state where the documents are maintained.

(c) Upon failure of a person to comply with a subpoena or subpoena duces tecum or failure of a person to give testimony without lawful excuse and upon reasonable notice to all persons affected thereby, the unit may apply to the circuit court of the county in which compliance is sought for appropriate orders to compel obedience with the provisions of this section.

(d) The unit shall not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts disclosed in such investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this article or any other provision of this code.

(e) The Secretary Department of Human Services shall fully cooperate with the Office of the Attorney General on any investigation, prosecution, or civil action conducted pursuant to this article. The secretary shall promptly provide the Attorney General with any information or document requested for the purposes of carrying out this article, to the extent permitted under federal law.

§9-7-4. Applications for medical assistance; false statements or representations; criminal penalties.

(a) A person shall not knowingly make or cause to be made a false statement or false representation of any material fact in an application for medical assistance under the medical programs of the department.

(b) A person shall not knowingly make or cause to be made a false statement or false representation of any material fact necessary to determine the rights of any other person to medical assistance under the medical programs of the department.

(c) A person shall not knowingly and intentionally conceal or fail to disclose any fact with the intent to obtain medical assistance

under the medical programs of the department to which the person or any other person is not entitled.

(d) Any person found to be in violation of subsection (a), (b) or (c) of this section is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or shall be fined not to exceed \$10,000 or both fined and imprisoned.

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

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

(b) A person shall not make or present or cause to be made or presented to the department a claim under the medical programs of the department knowing the claim to be false, fraudulent, or fictitious.

(c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the department.

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

(e) Any provider who, having submitted a claim for or received a benefit, payment, or allowance under the medical programs of the department, knowingly fails to maintain such records as are necessary to disclose fully the nature of a good or service for which a claim was submitted or benefit, payment, or allowance was

received, or such records as are necessary to disclose fully all income and expenditures upon which rate of payment were based, for a period of at least five years following the date on which payment was received, shall be guilty of a misdemeanor and, upon conviction, may be imprisoned in a state correctional facility not to exceed one year or may be fined up to \$1,000, or both fined and imprisoned. Any person who knowingly destroys such records within five years from the date the benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned in a state correctional facility not less than one nor more than 10 years or may be fined not to exceed \$10,000, or both fined and imprisoned.

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

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

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

(c) A civil action under this section may be prosecuted and maintained on behalf of the department by the Attorney General, the Attorney General's assistants, or by any attorney in contract with or employed with the Office of the Attorney General to provide such representation. If the Attorney General declines to do so, the civil action shall be maintained either by a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed by the department to provide such representation.

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

§9-7-6a. Liability of employees of the department; Office of the Attorney General.

There shall be no civil liability on the part of, and no cause of action shall arise against the department, the Office of the Attorney General, or employees or agents of the aforementioned for any action taken by them in good faith and in the lawful performance of their powers and duties under this article.

§9-7-8. Remedies and penalties not exclusive.

The remedies and penalties provided in this article governing the operation of the medical programs of the department are in addition to those remedies and penalties provided elsewhere by law.

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

§9-8-1. Definitions.

As used in this article:

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

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

"Department" means the Department of Human Services.

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

"Good cause" means circumstances beyond the household's control, including, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.

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

- (A) Supplemental Nutrition Assistance Program, or SNAP;
- (B) Medicaid; and
- (C) Temporary Assistance to Needy Families, or TANF.

"Secretary" means the Secretary of the Department of Human Services.

"Work" or "working" means:

- (A) Work in exchange for money;
- (B) Work in exchange for goods or services ("in kind" work);
- (C) Unpaid work, verified under standards established by the department in rule; or
- (D) Any combination thereof.

ARTICLE 9. WV WORKS ACT.

§9-9-3. Definitions.

In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent, work eligible individuals or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) "Caretaker-relative" means grandparents or other nonparental caretakers not included in the assistance group or receiving cash assistance directly;

(d) "Cash assistance" means temporary assistance for needy families;

(e) "Challenge" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(f) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

(g) "Department" means the state Department of Human Services;

(h) "Education and training" means hours spent regularly attending and preparing for classes in any approved course of schooling or training;

(i) "Family assessments" means evaluation of the following: Work skills, prior work experience, employability, education and challenges to becoming self-sufficient such as mental health and physical health issues along with lack of transportation and child care;

(j) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: *Provided*, That income does not include:

(1) Supplemental security income paid to any member or members of the at-risk family;

(2) Earnings of minor children;

(3) Payments received from earned income tax credit or tax refunds;

(4) Earnings deposited in an individual development account approved by the department;

(5) Any educational grant or scholarship income regardless of source; or

(6) Any moneys specifically excluded from countable income by federal law;

(k) "Minor child head of household" means an emancipated minor under the age of eighteen years;

(l) "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or state law from receiving cash assistance;

(m) "Personal responsibility contract" means a written agreement entered into by the department and a beneficiary for purposes of participation in the West Virginia Works Program;

(n) "Secretary" means the Secretary of the Department of Human Services;

(o) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the

department for the creation and maintenance of the employment position;

(p) "Support services" includes, but is not limited to, the following services: Child care; Medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(q) "Temporary assistance to needy families" is the federal program funded under Part A, Title IV of the Social Security Act, codified at 42 U.S.C. §601, *et. seq.*;

(r) "Transitional assistance" may include medical assistance, food stamp assistance, child care and supportive services as defined by the secretary and as funding permits;

(s) "Two-parent family" means two parents with a common child residing in the same household and included in a common West Virginia Works grant payment or, two parents with a common child residing in the same home and one or both of the parents are "work eligible individuals", as that term is defined in this section, but are excluded from the West Virginia Works payments unless the exclusion is due to an exemption as provided in section eight of this article.

(t) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the department for the creation and maintenance of the employment position;

(u) "Vocational educational training" means organized educational programs, not to exceed twelve months for any individual, that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advance degree;

(v) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development and education and training;

(w) "Work eligible individual" means an adult or minor child head-of-household receiving assistance under the West Virginia Works Program or a nonrecipient parent living with a child receiving the assistance; and

(x) "Work experience" means a publicly assisted work activity, including work associated with the refurbishing of publicly assisted housing, performed in return for program benefits that provide general skills, training, knowledge and work habits necessary to obtain employment. This activity must be supervised daily and on an ongoing basis by an employer, work site sponsor or other responsible party.

§9-9-16. Intergovernmental coordination.

(a) The commissioner of the Bureau of Employment Programs and the superintendent of the Department of Education shall assist the secretary in the establishment of the WV works program. Before implementation of this program, each department shall address in its respective plan the method in which its resources will be devoted to facilitate the identification of or delivery of services for participants and shall coordinate its respective programs with the department in the provision of services to participants and their families. Each county board of education shall designate a person to coordinate with the local Department of Human Services office the board's services to participant families and that person shall work to achieve coordination at the local level.

(b) The secretary and the superintendent shall develop a plan for program implementation to occur with the use of existing state facilities and county transportation systems within the project areas whenever practicable. This agreement shall include, but not be limited to, the use of buildings, grounds and buses. Whenever possible, the supportive services, education and training programs should be offered at the existing school facilities.

(c) The commissioner shall give priority to participants of the WV works program within the various programs of the Bureau of

Employment Programs. The secretary and the commissioner shall develop reporting and monitoring mechanisms between their respective agencies.

§9-9-21. West Virginia Works Separate State College Program; eligibility; special revenue account.

(a) There is established the West Virginia Works Separate State College Program. The program shall provide funding for participants who are enrolled in post-secondary courses leading to a two- or four-year degree. There is created within the state Treasury a special revenue account to be known as the West Virginia Works Separate State College Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible adults attending post-secondary courses leading to a two- or four-year degree and who are not participating in vocational education training, as that term is defined in this article, shall be enrolled in the West Virginia Works Separate State College Program. Participants in the program shall not be required to engage in more than ten hours per week of federally defined work activities. The work, education and training requirements of this article are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. All other requirements of West Virginia Works apply to program administration for adults enrolled in the program.

(c) The Department of Human Services shall work with the Higher Education Policy Commission, as set forth in article one-b,

chapter eighteen-b of this code, and the Council for Community and Technical College Education, as set forth in article two-b, chapter eighteen-b of this code, to develop and implement a plan to use and expend funds for the programs available at the state's community and technical colleges and colleges and universities to assist participants who are enrolled, or wish to become enrolled, in two- and four-year degree programs of post-secondary education to meet the work requirements of this article.

ARTICLE 10. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND.

§9-10-1. Definitions.

As used in this article, the term:

(1) "Secretary" means the Secretary of the West Virginia Department of Human Services or his or her designee.

(2) "Fund" means the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund.

(3) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. "Traumatic brain injury" does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma.

(4) "Spinal cord injury" means a traumatic injury to the spinal cord that results in a permanent loss of sensation and voluntary movement below the level of the lesion.

§9-10-2. Fund continued under department.

(a) The special revenue account in the State Treasury known as the "West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund," which was previously authorized by §18-10K-1 *et seq.* of this code, is continued.

(b) All powers and duties of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board are transferred to the Secretary.

(c) All powers and duties of the West Virginia Division of Rehabilitation Services related to administration of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund are transferred to the Secretary.

§9-10-3. Administration of Fund; administrative fees; Fund use.

(a) The West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund is subject to the annual appropriation of funds by the Legislature. The West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the Fund.

(b) All moneys collected, received and deposited into the State Treasury and credited to the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund shall be expended by the Secretary exclusively in accordance with the uses and criteria set forth in this article. Expenditures from this Fund for any other purposes are void.

(c) The Fund shall be administered by the Department of Human Services: *Provided*, That the Department may not charge a fee to administer the Fund.

(d) Nothing in this article may be construed to mandate funding for the Fund or to require any appropriation by the Legislature.

(e) Moneys in the Fund shall be used to pay for services that will increase opportunities for and enhance the achievement of functional independence, and a return to a productive lifestyle for individuals who have suffered a traumatic brain injury or a spinal cord injury.

(f) Services that are eligible for payment by the Fund shall include, but not be limited to:

- (1) Case management;
- (2) Rehabilitative therapies and services;
- (3) Attendant care;
- (4) Home accessibility modifications;
- (5) Equipment necessary for activities; and
- (6) Family support services.

(g) Funds shall be expended according to the priorities and criteria for disbursement established by the secretary under section four of this article, and pursuant to legislative rules authorized in section five of this article.

§9-10-6. Legislative Audit.

[Repealed]

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5u. Disclosure of persons making retail sales of tobacco products.

Notwithstanding any provision of this article to the contrary, the Tax Commissioner shall, at least semiannually, provide to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the Secretary of the Department of Health by April 1 and October of each year, a list of the names and business locations of each person who indicates on a new application for a business registration certificate or on a current application for renewal of a business registration certificate that the person sells or intends to sell cigarettes or other tobacco products to consumers: *Provided*, That when available, the Tax Commissioner will provide the name of the business owner, county of location, and the business description code: *Provided, however*, That the Tax Commissioner

may also file a copy of the list provided to the commissioner of the West Virginia alcohol beverage control administration, the superintendent of the West Virginia state police and the Secretary of the Department of Health in the state register maintained by the Secretary of State, who shall make the list available for inspection and copying: *Provided further*, That the results of the inspections of retail establishments which sell tobacco products may be reported to the federal government by the commissioner of the West Virginia alcohol beverage control administration.

**ARTICLE 13I. TAX CREDIT FOR EMPLOYING FORMER
EMPLOYEES OF COLIN ANDERSON CENTER WHO
LOST THEIR JOBS DUE TO THE CLOSURE OF
COLIN ANDERSON CENTER.**

**§11-13I-3. Application of credit; limitation of credit; tax
commissioner to promulgate forms and legislative rule;
notice of credit.**

(a) The credit allowed in this article shall be first applied to a taxpayer's business franchise tax liability, and then to either the taxpayer's personal income tax liability or corporation net income tax liability, as the case may be.

(b) The credit allowed in this article shall not exceed \$10,000 per year and shall not be refundable, nor carried forward nor backward to other tax years.

(c) The State Tax Commissioner shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code regarding the applicability, method of claiming of the credit, recapture of the credit and documentation necessary to claim the credit herein allowed.

(d) The State Tax Commissioner shall develop a written notice setting forth the availability of this credit and shall transmit this notice to the Department of Health to be distributed to potential employers of the Colin Anderson Center to make such employers aware of the tax credit allowed herein. The Department of Health

shall distribute notice of the credit allowed herein as widely as possible to potential employers.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-3. Definitions.

(a) General. — When used in this article, words defined in subsection (b) of this section have the meaning ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the word is used clearly indicates that a different meaning is intended.

(b) Definitions. —

"Business" includes all health care activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity. "Business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership, and services by a member of any other business entity on behalf of that entity, are the business of the employer, or partnership, or other business entity, as the case may be, and reportable as such for purposes of the taxes imposed by this article.

"Broad-based health care related tax" means a broad-based health care related tax as defined in Section 1903 of the Social Security Act, including a health-care related tax for which a waiver from the broad-based or uniformity requirements has been granted and is in effect by the federal Centers for Medicare and Medicaid Services pursuant to the provisions of Section 1903 of the Social Security Act and implementing regulations.

"Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engaged in activities taxable under this article.

"Department" means the Department of Human Services.

"Includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

"Partner" includes a member in a "partnership", as defined in this section.

"Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised, and which is not within the meaning of this article a trust or estate or corporation. It includes a limited liability company when such company is treated as a partnership for federal income tax purposes.

"Person" means any individual, partnership, association, company, corporation or other entity engaging in a privilege taxed under this article.

"Secretary" means the Secretary of Department of Human Services.

"Social Security Act" means the Social Security Act of the United States, as amended by Public Law 109-171, and codified in Title 42, Section 1396b of the United States Code.

"Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, includes any interest, additions to tax or penalties imposed with respect thereto under article 10 of this chapter.

"Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the tax imposed by this article is computed. In the case of a return made under this article, or regulations of the Tax Commissioner, for a fractional part of a year, the term "taxable year" means the period for which such return is made.

"Taxpayer" means any person subject to any tax imposed by this article.

"This code" means the Code of West Virginia, 1931, as amended.

"This state" means the State of West Virginia.

§11-27-30. Exchange of information to facilitate compliance.

Notwithstanding the provisions of section five-d, article ten of this chapter, or any other provision of this code to the contrary, the Tax Commissioner and the commissioner of the bureau of administration and finance of the department, or any successor agency thereto, may, by written agreement, provide for the exchange of information from their respective files, databases, or audits of health care providers, which the Tax Commissioner deems relevant to determining provider compliance with the provisions of this article, in a cost effective and efficient manner. Such agreement may provide for the sharing, or reimbursement, of costs incurred by either party to gather or provide information under this section.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-15. Reserves for public employees insurance program.

(a) There is continued a special revenue account in the State Treasury, designated the "Public Employees Insurance Reserve Fund", which is an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund.

(b) The fund shall consist of moneys appropriated by the Legislature and moneys transferred annually pursuant to the provisions of subsection (c) of this section. These moneys shall be held in reserve and appropriated by the Legislature only for the support of the programs provided by the Public Employees Insurance Agency: *Provided*, That the moneys held in the fund may be appropriated to the Bureau for Medical Services.

(c) Annually each state agency, except for the higher education central office created in article four, chapter eighteen-b of this code; the higher education governing boards as defined in articles two and three of said chapter; and the state institutions of higher education as defined in section two, article one of said chapter shall transfer one percent of its annualized expenditures from state funds, excluding federal funds based on filled full-time equivalents as determined by the state budget office as of the first day of April for that fiscal year, to the Public Employees Insurance Reserve Fund. The secretary may exempt that transfer only upon a showing by the requesting agency that the continued operation of that agency is dependent upon receipt of the exemption.

(d) Annually the secretary shall provide a report to the Governor and the Legislature on the amount of reserves established pursuant to the provisions of this section, the number of exemptions granted and the agencies receiving those exemptions.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

There is created a Purchasing Card Advisory Committee to enhance the development and implementation of the purchasing card program. The committee shall solicit input from state agencies and make recommendations to improve the performance of the Purchasing Card Program. The committee consists of fourteen members to be appointed as follows:

(1) The Auditor shall serve as chairperson of the committee and shall appoint four members from the state College System of West Virginia and the University System of West Virginia, one member from the Department of Human Services one member from the Division of Highways and two additional members at large from any state agency;

(2) The Secretary of the Department of Administration shall appoint one member from the Information Services and Communications Division, one member from the Financial Accounting and Reporting Section and one member from the Purchasing Division;

(3) The Secretary of the Department of Revenue shall appoint one member from the Department of Revenue; and

(4) The State Treasurer shall appoint one member from that office. Committee members shall be appointed for a term of one year, commencing on July 1, 1998. Committee members shall receive reimbursement for expenses actually incurred in the performance of their duties on the committee.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-4. Payment by a West Virginia pay card.

The State Auditor and the State Treasurer may jointly establish a state-stored value debit card program known as the "West Virginia Pay Card" for recipients of employee payroll, retirement benefits, entitlement programs, vocational rehabilitation services funds disbursed pursuant to §18-10A-6 of this code, foster care and adoption stipends, subsidies, and other payments made under programs administered by the Department of Human Services, payments to contractors of the state, or other eligible payees of state funds, who do not possess a federally insured depository institution account. The State Auditor and the State Treasurer shall use every reasonable effort to encourage all identified unbanked recipients to obtain a federally insured depository account. The State Auditor shall include an unbanked recipient in the program upon determining that good cause exists. Once an unbanked recipient is included in the program, the State Auditor shall provide the State Treasurer with an electronic file containing the necessary unbanked recipient information. The State Treasurer shall issue a request for proposals in accordance with §12-3A-3 of this code to aid in the administration of the program. The State Auditor shall assist in the review of pay card proposals. In carrying out the purposes of this

article, the State Treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special purposes and circumstances relating to certain public assistance payments.

(a) The State Treasurer shall have authority to contract with banking institutions and other entities to establish point of sale terminals ("POS terminals"), as defined in section twelve-b, article eight, chapter thirty-one-a of this code, that accept the West Virginia check card and the cards issued by state spending units to recipients of state or federal funds, food or other benefits. If other entities decline to provide the POS terminals in a manner that meets the requirements of this section, the treasurer is authorized to establish, own and operate POS terminals. The treasurer may place the POS terminals and associated equipment at any location within this state where he or she or the Department of Human Services determines the equipment is needed to provide reasonable access to users of the cards. The POS terminals authorized pursuant to this section may be used to provide any amount of cash payment or allowable purchase of retail items or other benefits as determined by the State Treasurer, pursuant to state law and rules and, where necessary, in cooperation with any appropriate federal agencies.

(b) POS terminals established pursuant to this section may be jointly owned and operated with private sector financial institutions and may be established for the sole purpose of providing access to electronically transmitted government benefits or payments. However, if the State Treasurer establishes POS terminals, they shall be made available for use by the general public and the retailer shall reimburse the state for each transaction as per an agreement entered into at the time the POS terminals are established.

(c) Any retailer, agency or other person providing cash withdrawal services for state administered electronic cards from its own funds through POS terminals established pursuant to this section are limited to charging a fee for the service in the amount of the higher of \$1 or one percent of the amount of cash withdrawn.

(d) There is created in the State Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "Point of Sale Terminals Collection Account". The account shall contain any funds received from transactions on POS terminals installed by the State Treasurer and any other funds authorized by the Legislature. Moneys in the account shall be used by the treasurer to pay the fees and costs associated with the POS terminals and related equipment, and for such other purposes as determined by the Legislature.

(e) In carrying out the purposes of this article, the treasurer shall not compete with private sector providers of POS terminals, banks or other financial institutions, or for profit. If a private sector provider, bank or other financial institution certifies to the treasurer that it can provide POS terminals to meet the requirements contained within this article, the treasurer shall not establish or maintain equipment in the locations identified in the certification. Nothing in this article shall authorize the treasurer to establish or operate automatic teller machines.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1E. CODE OF MILITARY JUSTICE.

§15-1E-76b. Lack of mental capacity or mental responsibility: Commitment of accused for examination and treatment.

(a) Persons incompetent to stand trial.

(1) In the case of a person determined under this article to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Department of Human Services.

(2) The department shall take action in accordance with the state statute applicable to persons incompetent to stand trial. If at the end of the period for hospitalization provided in the state statute

applicable to persons incompetent to stand trial, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with the state statute applicable to persons incompetent to stand trial.

(3)(A) When the director of a facility in which a person is hospitalized pursuant to subdivision (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the department and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this article. If the person is no longer subject to this article, the department shall take any action within its authority it considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than thirty days after transmitting the notifications required by subdivision (3), subsection (a).

(4) In the application of the state statute applicable to persons incompetent to stand trial to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this article at a time relevant to the application of such section to the person, the state trial court with felony jurisdiction in the county where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) Persons found not guilty by reason of lack of mental responsibility.

(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this article.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with the state statute applicable to persons incompetent to stand trial.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find, by the standard specified in the state statute applicable to persons incompetent to stand trial, that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect:

(A) The general court-martial convening authority may commit the person to the custody of the department; and

(B) The department shall take action in accordance with the state statute applicable to persons incompetent to stand trial.

(5) The state statute applicable to persons incompetent to stand trial, shall apply in the case of a person hospitalized pursuant to paragraph (B), subdivision (4), except that the state trial court with felony jurisdiction in the county where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) General provisions.

(1) Except as otherwise provided in this subsection and subdivision (1), subsection (d), the state statute most closely comparable to 18 U.S.C. 4247(d), apply in the administration of this section.

(2) In the application of the state statute most closely comparable to 18 U.S.C. 4247(d), to hearings conducted by a court-martial under this section or by order of a general court-martial

convening authority under this article, the reference in that section to article 3006A of such title does not apply.

(d) Applicability.

(1) The state statute most closely comparable to chapter 313 of title 18, United States Code, [10 U.S.C. §4241 *et seq.*] referred to in this section apply according to the provisions of this section notwithstanding article 4247(j) of title 18.

(2) If the status of a person as described in section two of this article, terminates while the person is, pursuant to this section, in the custody of the department, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this article shall continue to apply to that person notwithstanding the change of status.

ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.

§15-11-2. Legislative findings.

(a) The purpose of "The Child Protection Act of 2006" is to put in place a series of programs, criminal law revisions, and other reforms to provide and promote the ability of the children of this state to live their lives without being exposed and subjected to neglect and physical and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-release supervision, and new approaches toward the state's child protection system will, in the aggregate, strengthen government's ability to address this most serious problem. The Legislature finds that the broad reaching measures encompassed in this Act will provide for greater intervention among and punishment and monitoring of individuals who create a risk to our children's safety and well-being.

(b) The Legislature further finds that the following reforms implemented as part of this Act will provide protections to the children of this state and are all important to eliminate risks to

children and are essential elements of "The Child Protection Act of 2006":

(1) Creating a special unit in the State Police specializing in the investigation of child abuse and neglect — §15-2-15 of this code;

(2) Modifying the Sex Offender Registration Act to ensure more effective registration, identification, and monitoring of persons convicted of sexual offenses — §15-12-1 *et seq.* of this code;

(3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose information to certain state and local officials — §15-13-1 *et seq.* of this code;

(4) Providing for coded driver's licenses and nondriver identification cards to more easily identify sexually violent predators — §17B-2-3 of this code;

(5) Prohibiting contractors and service providers convicted of certain offenses from accessing school grounds and providing for the release of criminal history information by the central abuse registry to county school boards — §18-5-15c of this code;

(6) Establishing a task force to study the feasibility of constructing separate correctional facilities for the incarceration and treatment of sex offenders — §25-1-22 of this code;

(7) Requiring the State Police and the Department of Human Services to maintain statewide child abuse and neglect statistical indices of all convictions and allegations, respectively — §15-2-15 and §49-2-813 of this code;

(8) Providing for increased terms of incarceration for first degree sexual assault and first degree sexual abuse committed against children under the age of 12 — §61-8B-3 and §61-8B-7 of this code;

(9) Eliminating eligibility of certain sex offenders for probation, home incarceration, and alternative sentences and providing for enhanced terms of incarceration for certain

subsequent sex offenses committed by recidivist sex offenders — §61-8B-9a and §61-8B-9b of this code;

(10) Providing for polygraph examinations for certain sex offenders on probation, parole, or supervised release — §62-11D-1 *et seq.* of this code;

(11) Providing for electronic monitoring of certain sex offenders on probation, parole, and supervised release — §62-11D-1 *et seq.* of this code;

(12) Establishing a task force to develop measures aimed at managing sexually violent predators released from confinement — §62-11E-1 *et seq.* of this code;

(13) Making psychiatric evaluations a condition of probation eligibility for certain sex offenders (- §62-12-2 of this code;

(14) Authorizing the Department of Human Services to establish qualifications for sex offender treatment programs and counselors — §62-12-2 and §62-12-26 of this code;

(15) Providing for extended supervision of certain offenders and supervised release requirements for sexually violent offenders — §62-12-26 of this code; and

(16) Providing for prerelease risk assessments of certain sex offenders — §62-12-27 of this code.

(c) In addition, the Legislature finds that those enhanced terms of incarceration and post-conviction measures provided for in this Act which impact certain offenders convicted of sexual offenses against adults are necessary and appropriate to protect children from neglect and physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage of sexual offenders "cross over" among age groups in selecting their victims; (2) many of the risk factors prevalent among sex offenders that "cross over" (e.g., substance abuse, lack of empathy toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-conviction supervision, monitoring,

and treatment measures will enable the criminal justice system to identify and address those "cross over" offenders before they can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-55. Referral program for substance abuse treatment.

(a) The State Police shall create a program and may, in collaboration with the Office of Drug Control Policy and existing state government programs to refer persons to treatment for substance use who voluntarily seek assistance from the State Police.

(b) A person voluntarily seeking assistance through a program created pursuant to this section and who is not under arrest or the subject of a search warrant:

(1) Shall not be placed under arrest;

(2) Shall not be prosecuted for the possession of any controlled substance or drug paraphernalia surrendered to the State Police. Items surrendered pursuant to this subdivision shall be recorded by the State Police at the time of surrender and shall be destroyed; and

(3) Shall be promptly referred to a community mental health center, medical provider, or other entity for substance use treatment.

(c) A person is ineligible for placement through a program established pursuant to this section if the person:

(1) Has an outstanding arrest warrant issued by a West Virginia court or an extraditable arrest warrant issued by a court of another state;

(2) Places law enforcement or its representatives in reasonable apprehension of physical injury; or

(3) Is under the age of 18, is not a danger to self or others, or does not have the consent of a parent or guardian.

(d) Information gathered by a program created pursuant to this section related to a person who has voluntarily sought assistance under this section is exempt from disclosure under the provisions of chapter 29B of this code.

(e) Except for willful misconduct, the State Police and any employee of the State Police that provides referrals or services in accordance with subsection (b) of this section shall be immune from civil liability.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

The following terms when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Central abuse registry" or "registry" means the registry created by this article which contains the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in §49-1-201 of this code, and shall include any act with respect to a child which is a crime against the person pursuant to §61-2-1 *et seq.* of this code, any act which is unlawful pursuant to §61-8D-1 *et seq.* of this code and any offense with respect to a child which is enumerated in §15-2C-3 of this code.

(c) "Abuse or neglect of an incapacitated adult" means "abuse," "neglect," and "incapacitated adult" as those terms are defined in §9-6-1 of this code, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 *et seq.* of this code, and any offense with respect to an incapacitated adult which is enumerated in §15-2C-3 of this code.

(d) "Adult receiving behavioral health services" means a person over the age of 18 years who is receiving any behavioral

health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or Medicare.

(e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(f) "Residential care facility" means any facility where a child or an incapacitated adult or an adult receiving behavioral health services resides which is subject to registration, licensure, or certification by the Office of Health Facility Licensure and Certification, and includes nursing homes, personal care homes, residential board and care homes, adult family care homes, group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes, and intermediate care facilities for the mentally retarded.

(g) "Misappropriation of property" means any act which is a crime against property under §61-3-1 *et seq.* of this code with respect to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services.

(h) "Home care" or "home care services" means services provided to children or incapacitated adults or adults receiving behavioral health services in the home through a hospice provider, a community care provider, a home health agency, through the Medicaid waiver program, or through any person when that service is reimbursable under the state Medicaid program.

(i) "Requester" means the West Virginia Department of Education, any residential care facility, any state licensed day care center, any qualified entity as defined in this section, or any provider of home care services or an adult receiving behavioral health services, providing to the Central Abuse Registry the name of an individual and other information necessary to identify that individual, and either: (1) Certifying that the individual is being

considered for employment or service as a volunteer by the requester or for a contractual relationship with the requester where the individual will provide services to a child or an incapacitated adult or an adult receiving behavioral health services for compensation; or contractors and vendors who have or may have unsupervised access to the child, disabled, or elderly person for whom the qualified entity provides care; or (2) certifying that an allegation of abuse, neglect, or misappropriation of property has been made against the individual.

(j) "Qualified entity" means any business, agency, or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children, the elderly, or individuals with disabilities and is a public, private, or not-for-profit entity within the State of West Virginia and meets the definition of qualified entity under the federal National Child Protection Act of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

§15-2C-2. Central Abuse Registry; required information; procedures.

(a) The Criminal Identification Bureau of the West Virginia State Police shall establish a Central Abuse Registry, to contain information relating to criminal convictions involving child abuse or neglect, abuse or neglect of an incapacitated adult or an adult receiving behavioral health services and misappropriation of property by individuals specified in subsection (b) of this section and information relating to individuals required to be registered as a sex offender.

(b) The Central Abuse Registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual's employment or contract to provide services, in a residential care facility, in a licensed day care center in connection with providing behavioral health services, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in subsection (a), section

three of this article with respect to a child or an incapacitated adult or an adult receiving behavioral health services; information relating to all individuals required to register with the Child Abuse and Neglect Registry established pursuant to article thirteen, chapter fifteen of this code; and information relating to all individuals required to register with the West Virginia State Police as sex offenders pursuant to the provisions of article twelve, chapter fifteen of this code. The Central Abuse Registry shall contain the following information:

- (1) The individual's full name;
 - (2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints if available;
 - (3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services;
 - (4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a day care center, or of a child or an incapacitated adult or an adult receiving behavioral health services receiving home care services, sufficient information to identify the location where the documentation of any investigation by the Department of Human Services is on file and the location of pertinent court files; and
 - (5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.
- (c) Upon conviction in the criminal courts of this state of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult or an adult receiving behavioral health services, the individual so convicted shall be placed on the Central Abuse Registry.

§15-2C-4. Disclosure of information.

- (a) The information contained in the central abuse registry is confidential, and may not be disclosed except as specifically

provided in this section. The criminal identification bureau shall disclose the information described in subdivisions (1) through (3) and subdivision (5), subsection (b), section two of this article to any requester, except that the name of the victim of the act alleged shall not appear on the information disclosed and shall be stricken from any statement filed by an individual. The Department of Human Services shall certify, not later than fifteen days following the effective date of this section, the list of requesters authorized to obtain registry information, and shall inform the criminal identification bureau promptly of subsequent additions and deletions from the list. The information contained in the registry with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The criminal identification bureau may disclose registry information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign states and of the State of West Virginia upon proper request stating that the information requested is necessary in the interest of and will be used solely in the administration of official duties and the criminal laws. Agreements with other states providing for the reciprocal sharing of abuse registry information are specifically authorized.

(b) An active file on requests for information by requesters shall be maintained by the criminal identification bureau for a period of one year from the date of a request. If an individual who is the subject of the request is placed on the registry with respect to any conviction within one year of the date of the request, that information shall promptly be disclosed to the requester.

§15-2C-7. Registration of home care agencies required; form of registration; information to be provided.

(a) In order to permit providers of home care services not otherwise required to be licensed, certified or registered with the Office of Health Facility Licensure and Certification by other provision of this code to access information in the central abuse registry, all home care service providers not currently licensed,

certified or registered by the department shall register with the office of health facilities licensure and certification. No fee may be charged for registration. Registration information shall be provided on a registration form, but no provision of information shall be deemed to meet the registration requirement until the signature of the service provider is recorded on the registration form.

(b) Information required for registration shall include the following:

(1) Name, address and telephone number of the service provider;

(2) The geographic area where services are provided to consumers, the number of homes where services are provided and the number of consumers provided service; and

(3) The services, such as nursing care or personal assistance, provided to consumers.

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-3. Definitions.

For the purposes of this article:

(1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System, which allows for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term "CODIS" includes the National DNA Index System or NDIS, administered and operated by the Federal Bureau of Investigation.

(2) "Complainant" means a person who contacts law enforcement to report that a person is missing.

(3) "Electronic communication device" means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

(4) "Juvenile" means any person under 18 years of age.

(5) "Law-enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

(6) "Lead law-enforcement agency" means the law-enforcement agency that initially receives a missing persons complaint or, after the fulfillment of all requirements of this article related to the initial receipt of a missing persons complaint and transmission of information to required databases, the law-enforcement agency with the primary responsibility for investigating a missing or unidentified persons complaint.

(7) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Human Services.

(8) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

(9) "Missing person" means any person who is reported missing to a law-enforcement agency.

(10) "NamUs" means the database of the National Missing and Unidentified Persons System.

(11) "NCIC" means the database of the National Crime Information Center, the nationwide, online computer

telecommunications system maintained by the Federal Bureau of Investigation to assist authorized agencies in criminal justice and related law-enforcement objectives.

(12) "NCMEC" means the database of the National Center for Missing and Exploited Children.

(13) "Unidentified person" means any person, living or deceased, who has not been identified through investigation for over 30 days.

(14) "Violent Criminal Apprehension Program" or "ViCAP" is a unit of the Federal Bureau of Investigation responsible for the analysis of serial violent and sexual crimes.

(15) "WEAPON system" means the West Virginia Automated Police Network.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

(a) The provisions of this article apply both retroactively and prospectively.

(b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation, or addiction of an offense under any of the following provisions of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in §15-12-2(d) of this code and according to the internal management rules promulgated by the superintendent under authority of §15-2-25 of this code:

(1) §61-8A-1 *et seq.* of this code;

(2) §61-8B-1 *et seq.* of this code, including the provisions of former §61-8B-6 of this code, relating to the offense of sexual assault of a spouse, which was repealed by an act of the Legislature during the 2000 legislative session;

(3) §61-8C-1 *et seq.* of this code;

(4) §61-8D-5 and §61-8D-6 of this code;

(5) §61-2-14(a) of this code;

(6) §61-8-6, §61-8-7, §61-8-12, and §61-8-13 of this code;

(7) §61-3C-14b of this code, as it relates to violations of those provisions of chapter 61 listed in this subsection; or

(8) §61-14-2, §61-14-5, and §61-14-6 of this code: *Provided*, That as to §61-14-2 of this code only those violations involving human trafficking for purposes of sexual servitude require registration pursuant to this subdivision.

(c) Any person who has been convicted of a criminal offense where the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

(d) A person required to register under the provisions of this article shall register in person at the West Virginia State Police detachment responsible for covering the county of his or her residence, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames, or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical residential address, the name and address of the registrant's employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

(3) The registrant's Social Security number;

(4) A full-face photograph of the registrant at the time of registration;

(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) The registrant's fingerprints and palm prints;

(7) Information related to any motor vehicle, trailer, or motor home owned or regularly operated by a registrant, including vehicle make, model, color, and license plate number: *Provided*, That for the purposes of this article, the term "trailer" means travel trailer, fold-down camping trailer, and house trailer as those terms are defined in §17A-1-1 of this code;

(8) Information relating to any Internet accounts the registrant has and the screen names, user names, or aliases the registrant uses on the Internet;

(9) Information related to any telephone or electronic paging device numbers that the registrant has or uses, including, but not limited to, residential, work, and mobile telephone numbers;

(10) A photocopy of a valid driver's license or government-issued identification card, including a tribal identification card;

(11) A photocopy of any passport and immigration documents;

(12) A photocopy of any professional licensing information that authorizes the registrant to engage in an occupation or carry out a trade or business; and

(13) Any identifying information, including make, model, serial number, and photograph, regarding any unmanned aerial vehicle owned or operated by a registrant.

(e) (1) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation, or addiction of any of the crimes listed in §15-12-2(b) of this code, hereinafter referred to as a "qualifying offense", including those persons who are

continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, regional jail administrator, city official, or sheriff operating a jail or Secretary of the Department of Health Facilities who releases the person and any parole or probation officer who releases the person or supervises the person following the release shall obtain all information required by §15-12-2(d) of this code prior to the release of the person, inform the person of his or her duty to register, and send written notice of the release of the person to the State Police within three business days of receiving the information. The notice must include the information required by §15-12-2(d) of this code. Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer, or other change in disposition status. Any person currently registered who is incarcerated for any offense shall re-register within three business days of his or her release.

(2) Notwithstanding any provision of this article to the contrary, a court of this state shall, upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of mental illness, mental retardation, or addiction of a qualifying offense, cause, within 72 hours of entry of the commitment or sentencing order, the transmittal to the sex offender registry for inclusion in the registry all information required for registration by a registrant as well as the following nonidentifying information regarding the victim or victims:

- (A) His or her sex;
- (B) His or her age at the time of the offense; and
- (C) The relationship between the victim and the perpetrator.

The provisions of this subdivision do not relieve a person required to register pursuant to this section from complying with any provision of this article.

(f) For any person determined to be a sexually violent predator, the notice required by §15-12-2(d) of this code must also include:

- (1) Identifying factors, including physical characteristics;
- (2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation, or addiction in a court of this state of the crimes set forth in §15-12-2(b) of this code, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(h) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article. The information required to be made public by the State Police by §15-12-5(b)(2) of this code is to be accessible through the Internet. Information relating to telephone or electronic paging device numbers a registrant has or uses may not be released through the Internet.

(i) For the purpose of this article, "sexually violent offense" means:

(1) Sexual assault in the first degree as set forth in §61-8B-3 of this code, or of a similar provision in another state, federal, or military jurisdiction;

(2) Sexual assault in the second degree as set forth §61-8B-4 of this code, or of a similar provision in another state, federal, or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of §61-8B-6 of this code, which was repealed by an act of the Legislature during the 2000 legislative session, or of a similar provision in another state, federal, or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in §61-8B-7 of this code, or of a similar provision in another state, federal, or military jurisdiction;

(j) For purposes of this article, the term "sexually motivated" means that one of the purposes for which a person committed the crime was for any person's sexual gratification.

(k) For purposes of this article, the term "sexually violent predator" means a person who has been convicted or found not guilty by reason of mental illness, mental retardation, or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term "predatory act" means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(n) For the purposes of this article, the term "business days" means days exclusive of Saturdays, Sundays, and legal holidays as defined in §2-2-1 of this code.

ARTICLE 13. CHILD ABUSE AND NEGLECT REGISTRATION.

§15-13-2. Registration.

(a) The provisions of this article apply both retroactively and prospectively.

(b) Any person who has been convicted of an offense or has been found not guilty solely by reason of mental illness, mental retardation or addiction of an offense under any of the provisions of sections two, two-a, three, three-a, four and four-a, article eight-d, of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (e) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter.

(c) The clerk of the court in which a person is convicted for an offense described in subsection (b) of this section, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section, shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register.

(1) If the conviction is the judgment of a magistrate court, mayor, police court judge or municipal court judge, the clerk or recorder shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register when the person convicted has not requested an appeal within thirty days of the sentencing for such conviction.

(2) If the conviction is the judgment of a circuit court, the circuit clerk shall submit, at a minimum, the required information to the superintendent regarding the person convicted within thirty days after the judgment was entered.

(d) If a person has been convicted of any criminal offense against a child in his or her household or of whom he or she has custodial responsibility, and the sentencing judge makes a written finding that there is a continued likelihood that the person will continue to have regular contact with that child or other children and that as such it is in the best interest of the child or children for that person to be monitored, then that person is subject to the reporting requirements of this article.

(e) In addition to any other requirements of this article, persons required to register under the provisions of this article shall provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the name and address of the registrant's employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend: *Provided*, That a post office box or other address that does not have a physical street address of residence may not be provided in lieu of a physical residence address;

(3) The registrant's social security number;

(4) Ages and names of any children in the household of the registrant, and any children currently living or subsequently born to the registrant.

(5) A brief description of the offense or offenses for which the registrant was convicted; and

(6) A complete set of the registrant's fingerprints.

(f) On the date that any person convicted or found not guilty solely by reason of mental illness, mental retardation or addiction of any of the offenses listed in subsection (b) of this section, hereinafter referred to as a "qualifying offense", including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, Regional Jail Administrator, city or sheriff operating a jail or Secretary of the Department of Health Facilities who releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall inform the person of his or her duty to register and send written notice of the release to the superintendent within three business days of release, and provide any other information as directed by rule of the State Police. The notice must include, at a minimum, the information required by subsection (e) of this section.

(g) Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status.

(h) At the time the person is convicted or found not guilty solely by reason of mental illness, mental retardation or addiction in a court of this state of the offenses set forth in subsection (b) of this section, the person shall sign in open court a notification statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant

understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(i) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article.

(j) The superintendent shall provide forms to law-enforcement agencies, circuit clerks and parole officers to facilitate submission of appropriate information necessary to administer the child abuse and neglect registry established by this article.

(k) For the purposes of this article, the term "business days", means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

§15-13-5. Distribution and disclosure of information.

(a) Within five business days after receiving any notification as described in this article, the State Police shall transmit a copy of the notification statement to the Department of Human Services as provided in section two of this article.

(b) Within five business days after receiving any notification statement pursuant to the provisions of subsection (a) of this section, the Secretary of the Department of Human Services shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, is employed or attends school or a training facility;

(2) The county superintendent of schools where the registrant resides, is employed or attends school or a training facility; and

(3) The Child Protective Services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility.

(c) The State Police may furnish information and documentation required in connection with the registration to authorized law enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the records will be used solely for law-enforcement-related purposes. The State Police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks.

(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

(e) The information contained in the child abuse and neglect registry is confidential, and may not be disclosed except as specifically provided in this article. The information contained in the registry with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The State Police and the Department of Human Services may disclose registry information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign states and of the State of West Virginia upon proper request stating that the information requested is necessary in the interest of and will be used solely in the administration of official duties and the criminal laws. Agreements with other states providing for the reciprocal sharing of abuse and

neglect registry information are specifically authorized. Nothing in this article would preclude disclosure of information authorized pursuant to article two-c of this chapter.

(f) An active file on requests for information by requesters shall be maintained by the State Police and the Department of Human Services for a period of one year from the date of a request.

(g) Information on the registry shall be exempt from disclosure under the freedom of information act in article one, chapter twenty-nine-b of this code.

ARTICLE 14. THE STATEWIDE INTEROPERABLE RADIO NETWORK.

§15-14-5. The Statewide Interoperability Executive Committee.

(a) The Statewide Interoperability Executive Committee shall consist of the following members or their designee:

- (1) The Director of the WVDHSEM;
- (2) The Superintendent of the West Virginia State Police;
- (3) The President of the West Virginia Emergency Management Council;
- (4) The Adjutant General of the West Virginia National Guard;
- (5) The West Virginia Chief Technology Officer;
- (6) The President of the West Virginia Enhanced 911 Council;
- (7) The President of the West Virginia Sheriffs' Association;
- (8) The West Virginia State Fire Marshal;
- (9) The President of the West Virginia County Commissioners' Association;
- (10) The President of the West Virginia Municipal League;

(11) The Secretary of the Department of Transportation;

(12) The Director of the Office of Emergency Medical Services;

(13) One representative from each of the agencies which own one of the SIRN's zoned master site switches not otherwise represented;

(14) The chairman of each of the Regional Interoperability Committees;

(15) A representative of the West Virginia Chapter of the Association of Public Safety Communications Officials;

(16) The Director of the West Virginia Parkways Authority; and

(17) The Statewide Interoperability Coordinator who shall serve in a nonvoting Ex officio capacity.

(b) The director shall serve as the chairman of the Executive Committee.

(c) Members of the Executive Committee shall serve without compensation. However, each member of the Executive Committee may receive reimbursement from the Statewide Interoperable Radio Network Account, for actual expenses, including travel expenses, in accordance with state travel guidelines.

(d) The Executive Committee may appoint, as nonvoting members, individuals with technical expertise that may assist with its mission.

§15-14-7. Maintenance and Operations of the Statewide Interoperable Network; personnel; assets; agreements.

(a) The director may employ such technical, clerical, legal counsel, stenographic and other personnel, fix their compensation and make expenditures within the appropriation to the agency or from other funds made available for the purpose of providing

interoperable communications services to carry out the purpose of this article.

(b) All equipment, structures, property, and personnel along with their equipment and vehicles, owned, managed, directed, controlled, and governed by the Department of Health associated with the statewide interoperable radio and/or microwave network and medical command radio system, are transferred to, incorporated in and administered as a part of the WVDHSEM: *Provided*, That medical command radio system communication equipment, not including the microwave and SIRM equipment, and personnel located in the medical coordination center at Flatwoods, West Virginia shall continue to be managed, directed, controlled, and governed by the Department of Health and are not included in the transfer authorized by this subsection.

(c) The director may acquire in the name of the state by purchase, lease or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing Radio Network employees, equipment or infrastructure.

(d) The director or his or her designee may enter into cooperative agreements, land and tower leases, memorandums of understanding/agreement, training contracts or service contracts with political subdivisions of the state, other states, federal agencies, and with public or private agencies for use by the radio network.

(e) The WVDHSEM is exempt from the requirements and associated fees of any local ordinances of any political subdivision of the state relating to the construction of towers or other infrastructure for use by the Radio Network to enhance interoperable communications.

(f) The WVDHSEM shall support a unified approach to interoperable communications across state, county, and municipal government, to include:

(1) Providing ongoing assistance and support to the state's Medical Command System; and

(2) Providing ongoing assistance and support to state agencies in the development of interoperable and emergency communications plans or projects.

§15-14-9. Creation of the Statewide Interoperable Radio Network account; purpose; funding; disbursements.

(a) There is hereby created in the State Treasury a special revenue account to be known as the Statewide Interoperable Radio Network Account to be administered by the director. The special revenue account shall consist of appropriations made by the Legislature; income derived from the lease of property, towers or tower space owned, operated or controlled by the WVDHSEM or any other state agency managed as part of the SIRN; moneys received by the Department of Health or WVDHSEM as proceeds of any claims for damages to structures, equipment or property of any kind, including moneys in the Insurance Property Loss Claims Fund administered by the Department of Health; income from the investment of moneys held in the special revenue account; grant money and all other sums available for deposit to the special revenue account from any source, public or private; and moneys received from the sale of recycled two-way telecommunications equipment pursuant to §15-14-6(10) of this code.

(b) Expenditures from the Statewide Interoperable Radio Network Account shall be for the purposes set forth in this article and used exclusively, to pay costs, fees and expenses incurred, or to be incurred for the following purposes: (1) The maintenance, upkeep, and repair of the SIRN; (2) operations of the Executive Committee; (3) payment of salaries for the SWIC and any personnel required to operate and maintain the SIRN; (4) the design, implementation, and management of the SIRN; (5) all other related SIRN activities approved by the Executive Committee; and (6) all costs incurred in the administration of the Statewide Interoperable Radio Network Account. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in

accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2018, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(c) Disbursements from the Statewide Interoperable Radio Network Account shall be authorized by the director or his or her designee. Moneys in the Statewide Interoperable Radio Network Account are not available for the payment of any personal injury claims, workers' compensation claims or other types of disability claims.

(d) Quarterly, the director shall prepare an accounting of all moneys disbursed from and any deposits made to the Statewide Interoperable Radio Network Account. This accounting shall include the reason for the withdraw, the recipients of any withdraw, and the source of any deposit.

CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-11. Financial responsibility program for inmates.

(a) The Legislature finds that:

(1) There is an urgent need for vigorous enforcement of child support, restitution, and other court-ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the division shall assist each inmate in developing a financial plan for meeting the inmate's child support obligations, if any exist. At subsequent program reviews, the division shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility.

(c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate court-ordered financial obligations. The superintendent shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The commissioner shall develop a policy that outlines the formula for the distribution of the offender's income and the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for any court-ordered victim restitution, court fees, and child support obligations owed under a support order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code, to support the division's administration of this financial service;

(2) If the inmate worker's income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and garnishment;

(3) The division shall develop the necessary administrative structure to record inmates' wages and keep records of the amount inmates pay for child support; and

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement from taking collection action against an inmate's moneys, assets, or property.

(d) If an inmate is awarded a civil judgment, or settles a civil matter, which awards him or her monetary damages, the court in which those damages are awarded or settled shall enter an order which deducts attorney fees and litigation costs owed the inmate's

legal counsel and deducts all known outstanding child support, restitution, spousal support, and court costs from the award to the inmate, and satisfies those obligations, prior to releasing any funds to the inmate.

(e) Notwithstanding the failure of a court to act in accordance with subsection (d) of this section, the division may honor any outstanding court-ordered obligations of which it is aware, to satisfy all known orders of child support, restitution, spousal support, or court costs and shall deduct from any civil judgment or civil settlement such amounts necessary to pay such obligations of the inmate, if any, arising from orders of child support, restitution, spousal support, or court costs prior to depositing funds from such civil judgment or civil settlement in the inmate's account. The provisions of this subsection shall apply to civil actions filed after July 1, 2019.

(f) The accumulation of the total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or as appropriate, through the West Virginia Municipal Bond Commission, in short-term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the State Treasurer. The earnings from investments so made shall be reported to the principal officer of each institution, from time to time, as earned, and shall be credited to the respective accounts of the institutions by the West Virginia Municipal Bond Commission. When the earnings are transferred to the respective institutions, they shall be credited by the superintendent to the credit of, and for the benefit of, the inmate, or resident, benefit fund.

§15A-4-12. Limitation on reimbursement rate to medical service providers for services outside division facilities.

The division, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for an adult inmate residing in a jail or correctional facility greater than the reimbursement rate applicable to service providers established in the Medicaid plan by the Bureau for Medical Services: *Provided*, That critical access hospitals shall be reimbursed at 75 percent of

the billed charges. These limitations apply to all medical care services, goods, prescription drugs, and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of a correctional facility: *Provided, however,* That the Department of Military Affairs and Public Safety and the Department of Human Services effectuate an interagency agreement for the electronic processing and payment of medical services.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

As used in this article:

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

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

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

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

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

(6) "Department" means the Department of Health.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Local health officer" has the meaning ascribed in §16-2-2 of this code.

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

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

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

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

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

(17) "Public surface water influenced groundwater supply source" means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir, or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area;

(18) "Public water system" means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of 25

individuals per day for at least 60 days per year, or which has at least 15 service connections, and shall include:

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

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

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

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

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

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

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

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

(20) "Secretary" means the secretary of the department;

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

(22) "Zone of critical concern" for a public surface water supply is a corridor along streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient, and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the

streams to the water intake, plus an additional one-fourth mile below the water intake. The width of the zone of critical concern is 1000 feet measured horizontally from each bank of the principal stream and 500 feet measured horizontally from each bank of the tributaries draining into the principal stream.

§16-1-20. Definitions and purpose.

(a) For the purpose of this code:

"English" means and includes spoken English, written English, or English with the use of visual supplements;

"Language developmental milestones" means milestones of development aligned with the existing state instrument used to meet the requirements of federal law for the assessment of children from birth to five years of age, inclusive; and

"Language" includes American Sign Language (ASL) and English.

(b) For the purposes of developing and using language for a child who is deaf or hard-of-hearing, the following modes of communication may be used as a means for acquiring language: American Sign Language (ASL) services, spoken language services, dual language services, cued speech and tactile, or a combination thereof.

(c) This section shall apply only to children from birth to five years of age, inclusive.

(d) Implementation of this code is subject to an appropriation by the legislature.

(e) Federal regulations for children age birth through two do not require reporting of measures specific to language and literacy. However, this data is reported for children age three to five and the Department of Health and the West Virginia Department of Education shall make this report available to the advisory committee, and available to others upon request.

(f) The Department of Health and the West Virginia Department of Education through their agencies that serve children ages birth to five and their families shall jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families, providers, early interventionists, speech pathologists, educators, and other service providers to understand and monitor deaf and hard-of-hearing children's receptive and expressive language acquisition and progress toward English literacy development. This family resource shall include:

(1) Language that provides comprehensive and neutral, unbiased information regarding different modes used to learn and access language (e.g., English, American Sign Language (ASL), or both) and services and programs designed to meet the needs of children who are deaf or hard-of-hearing;

(2) Language developmental milestones selected pursuant to the process specified in this section;

(3) Language appropriate for use, in both content and administration, with deaf and hard-of-hearing children from birth to five years of age, inclusive, who use both or one of the languages of American Sign Language (ASL) or English;

(4) Developmental milestones in terms of typical development of all children, by age range;

(5) Language written for clarity and ease of use by families;

(6) Language that is aligned with the Department of Health and the West Virginia Department of Education's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and state standards in language and literacy;

(7) Clarification that the parent(s) have the right to select which language (American Sign Language (ASL), English, or both) for their child's language(s) acquisition and developmental milestones;

(8) Clarification that the family resource is not a formal assessment of language and literacy development, and that a family's observations of their children may differ from formal assessment data presented at an individualized family service plan (IFSP) or individual education program (IEP) meeting; and

(9) Clarification that the family resource may be used during an individualized family service plan (IFSP) or individual education program (IEP) meeting for purposes of sharing the family's observations about their child's development.

(g) The Department of Health and the West Virginia Department of Education shall also prepare a list of valid and reliable existing tools or assessments for providers, early interventionists, speech pathologists, educators, and other service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children. These educator tools and assessments:

(1) Shall be in a format that shows stages of language development;

(2) Shall be used by providers, early interventionists, speech pathologists, educators, and other service providers to determine the progressing development of deaf and hard-of-hearing children's receptive and expressive language acquisition and developmental stages toward English literacy;

(3) Shall be selected from existing instruments or assessments used to assess the development of all deaf and hard-of-hearing children from birth to five years of age, inclusive;

(4) Shall be appropriate, in both content and administration, for use with children who are deaf and hard-of-hearing;

(5) May be used, in addition to the assessment required by federal law, by the individualized family service plan (IFSP) team and individual education program (IEP) team, as applicable, to track deaf and hard-of-hearing children's progress, and to establish or modify individualized family service plans (IFSPs) and individual education programs (IEPs); and

(6) May reflect the recommendations of the advisory committee established pursuant to §16-1-20(e) of this code.

(h) To promote the intent of this code, the Department of Health and the West Virginia Department of Education shall:

(1) Disseminate the family resource developed to families of deaf and hard-of-hearing children, as well as providers, early interventionists, speech pathologists, educators, and related service personnel; and

(2) Disseminate the educator tools and assessments selected to local educational agencies for use in the development and modification of individualized family service plans (IFSPs) and individual education programs (IEPs);

(3) Provide informational materials on the use of the resources, tools, and assessments to assist deaf and hard-of-hearing children in becoming linguistically ready for formal school entry (either itinerant services, West Virginia Universal PreK/PreK Special Needs, or Kindergarten) using the mode(s) of communication and language(s) chosen by the parents.

(i) If a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills, as measured by one of the educator tools or assessments, or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, as applicable, the child's individualized family service plan (IFSP) team and individual education program (IEP) team shall, as part of the process required by federal law, explain in detail the reasons why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy development.

(j) The Department of Health and the West Virginia Department of Education shall establish an advisory committee to solicit input from stakeholders identified herein on the selection of language developmental milestones for children who are deaf or

hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing, for inclusion in the family resource developed pursuant to this section.

(k) The advisory committee shall be comprised of volunteer individuals representing all known modes of communication, specifically including the following:

(1) One parent of a child who is hard-of-hearing who uses the dual languages of American Sign Language (ASL) and English;

(2) One parent of a child who is deaf or hard-of-hearing who uses assistive technology to communicate with spoken English;

(3) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service providers of deaf or hard-of-hearing children who are knowledgeable in the use of the dual languages of English and American Sign Language (ASL);

(4) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service provider of deaf or hard-of-hearing children who are knowledgeable in the use of assistive technology to communicate with spoken English;

(5) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using American Sign Language (ASL) or English;

(6) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using assistive technology to communicate with spoken English;

(7) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in American Sign Language (ASL) and English;

(8) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in assistive technology to communicate with spoken English;

(9) One advocate for the teaching and use of the dual languages of American Sign Language (ASL) and English;

(10) One advocate for the teaching and use of instruction in assistive technology to communicate with spoken English; and,

(11) One educational audiologist who can address the issues of aural habilitation and assistive technology to advocate for children using spoken language in mainstream environments.

(l) The advisory committee may also advise the Department of Health and the West Virginia Department of Education on the content and administration of the existing instrument used to assess the development of children with disabilities pursuant to federal law, as used to assess deaf and hard-of-hearing children's language and literacy development to ensure the appropriate use of that instrument with those children, and make recommendations regarding future research to improve the measurement of progress of deaf and hard-of-hearing children in language and literacy.

(m) The Department of Health and the West Virginia Department of Education shall provide the advisory committee with a list of existing language developmental milestones from existing standardized norms, along with any relevant information held by the departments regarding those language developmental milestones for possible inclusion in the family resource developed pursuant to this section.

(n) After reviewing, the advisory committee shall recommend to the Department of Health and the West Virginia Department of Education language developmental milestones for selection.

(o) Commencing on or before July 31, 2021, and on or before each July 31 thereafter, the West Virginia Department of Education shall annually produce an aggregated report, using existing data reported in compliance with the federally required state performance plan on children with disabilities, that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age, inclusive, including those who are deaf or hard-of-hearing

and have other disabilities, relative to their peers who are not deaf or hard-of-hearing. The departments shall make this report available to the advisory committee, the Legislative Oversight Commission on Education Accountability, the Legislative Oversight Commission on Health and Human Resources Accountability, and available to others upon request.

(p) All activities of the Department of Health and the West Virginia Department of Education in implementing this code shall be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A-1. Legislative findings; purpose.

(a) The Legislature finds:

(1) Credentialing, required by hospitals, insurance companies, prepaid health plans, third party administrators, provider networks and other health care entities, is necessary to assess and verify the education, training and experience of health care practitioners to ensure that qualified professionals treat the citizens of this state.

(2) Although uniform credentialing and recredentialing application forms have been created to reduce duplication and increase efficiency, each credentialing entity continues to perform primary source verification for the practitioners who apply to that entity for affiliation. Moreover, because credentialing entities do not follow a common calendar, practitioners are required to respond to requests throughout the year from various credentialing entities seeking essentially similar information. This duplication of primary source verification is time consuming and costly.

(3) The Secretary of the Department of Human Services and the Insurance Commissioner share regulatory authority over the entities requiring credentialing.

(b) The purpose of this article is to continue the advisory committee previously established to assist in developing a uniform

credentialing process through the development of legislative rules to govern how a single credentialing verification organization will operate in this state and, except with respect to health care facilities, the establishment of a common credentialing calendar.

§16-1A-2. Development of uniform credentialing application forms and the credentialing process.

Notwithstanding any provision of this code to the contrary, the Secretary of the Department of Human Services and the Insurance Commissioner shall jointly propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the development and use of uniform application forms for credentialing, recredentialing or updating information of health care practitioners required to use the forms and the improvement of the credentialing process, including creation of a credentialing verification organization and a uniform recredentialing calendar.

§16-1A-3. Definitions.

For the purposes of this article, the following definitions apply:

(a) "Credentialing" means the process used to assess and validate the qualifications of a health care practitioner, including, but not limited to, an evaluation of licensure status, education, training, experience, competence and professional judgment.

(b) "Credentialing entity" means any health care facility, as that term is defined in subsection (j), section two, article two-d of this chapter, or payor or network that requires credentialing of health care practitioners.

(c) "Credentialing Verification Organization" means an entity that performs primary source verification of a health care practitioner's training, education, experience; "statewide credentialing verification organization" means the credentialing verification organization selected pursuant to the provisions of section five of this article.

(d) "Health care practitioner" or "practitioner" means a person required to be credentialed using the uniform forms set forth in the rule promulgated pursuant to the authority granted in section two, article one-a of this chapter.

(e) "Insurance Commissioner" or "Commissioner" means the Insurance Commissioner of the State of West Virginia as set forth in article two, chapter thirty-three of this code.

(f) "Joint Commission" formerly known as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO, is a private sector, United States-based, not-for-profit organization that operates voluntary accreditation programs for hospitals and other health care organizations.

(g) "National Committee for Quality Assurance" or "NCQA" is a private, 501(c)(3) not-for-profit organization that evaluates and certifies credentialing verification organizations.

(h) "Network" means an organization that represents or contracts with a defined set of health care practitioners under contract to provide health care services to a payor's enrollees.

(i) "Payor" means a third party administrator as defined in section two, article forty-six, chapter thirty-three of this code and including third party administrators that are required to be registered pursuant to section thirteen, article forty-six, chapter thirty-three of this code, any insurance company, health maintenance organization, health care corporation or any other entity required to be licensed under chapter thirty-three of this code and that, in return for premiums paid by or on behalf of enrollees, indemnifies such enrollees or reimburses health care practitioners for medical or other services provided to enrollees by health care practitioners.

(j) "Primary source verification procedure" means the procedure used by a credentialing verification organization to, in accordance with national committee for quality assurance standards, collect, verify and maintain the accuracy of documents and other credentialing information submitted in connection with a health care practitioner's application to be credentialed.

(k) "Secretary" means the Secretary of the Department of Human Services.

(l) "Uniform application form" or "uniform form" means the blank uniform credentialing or recredentialing form developed and set forth in a joint procedural rule promulgated pursuant to section two of this article.

§16-1A-4. Advisory committee.

(a) The secretary and the Insurance Commissioner shall jointly establish an advisory committee to assist them in the development and implementation of the uniform credentialing process in this state. The advisory committee shall consist of fourteen appointed members. Six members shall be appointed by the secretary: One member shall represent a hospital with one hundred beds or less; one member shall represent a hospital with more than one hundred beds; one member shall represent another type of health care facility requiring credentialing; one member shall be a person currently credentialing on behalf of health care practitioners; and two of the members shall represent the health care practitioners subject to credentialing. Five members shall be representative of the entities regulated by the Insurance Commissioner that require credentialing and shall be appointed by the Insurance Commissioner: One member shall represent an indemnity health care insurer; one member shall represent a preferred provider organization; one member shall represent a third party administrator; one member shall represent a health maintenance organization accredited by URAC; and one member shall represent a health maintenance organization accredited by the national committee on quality assurance. The secretary and the Insurance Commissioner, or the designee of either or both, shall be nonvoting ex officio members. Upon the effective date of this legislation, the state hospital association, the state association of licensing boards and state medical association shall each designate to the department one person to represent their respective associations and members and those designees shall be appointed to the advisory committee by the secretary.

(b) At the expiration of the initial terms, successors will be appointed to terms of three years. Members may serve an unlimited number of terms. When a vacancy occurs as a result of the expiration of a term or otherwise, a successor of like qualifications shall be appointed. Representatives of the hospital association, the association of licensing boards and the state medical association shall serve for three-year terms.

(c) The advisory committee shall meet at least annually to review the status of uniform credentialing in this state, and may make further recommendations to the secretary and the Insurance Commissioner as are necessary to carry out the purposes of this article. Any uniform forms and the list of health care practitioners required to use the uniform forms as set forth in legislative rule proposed pursuant to section two of this article may be amended as needed by procedural rule.

ARTICLE 1C. HEALTH CARE PROVIDER TRANSPARENCY ACT.

§16-1C-1. Definitions.

(a) "Direct patient care" means health care that provides for the physical, diagnostic, emotional or rehabilitation needs of a patient or health care that involves examination, treatment or preparation for diagnostic tests or procedures.

(b) "Employee" means an employee or contractor of a health care provider or a person who is granted privileges by a health care provider who delivers direct patient care.

(c) "Health care provider" means an individual, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to a patient during that patient's medical, remedial or behavioral health care, treatment or confinement.

(d) "Secretary" means the Secretary of the Department of Health. The secretary may define in rules any term or phrase used in this article which is not expressly defined.

§16-1C-4. Rules.

The secretary, in consultation with appropriate health care provider professional licensing boards, shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article. These rules shall include, at a minimum:

(1) The contents of the identification badge, which shall at least include the name of the employee and title of the employee;

(2) The title to be used to identify employee licensure information;

(3) The appearance of the identification badge, which shall have the title of the employee as large as possible in block type: *Provided*, That health care facilities providing identification badges prior to enactment of this article shall not be required to issue new badges;

(4) The process and procedure for seeking an exemption from the requirements of this article; and

(5) Such other rules as may be deemed necessary to effectuate the purposes of this article.

ARTICLE 2. LOCAL BOARDS OF HEALTH.**§16-2-2. Definitions.**

Unless the context used clearly requires a different meaning, as used in this article:

"Appointing authority" means the county commission or municipality, or combination thereof, that authorized the creation or combination of the local board of health, in whatever form it presently exists;

"Basic public health services" means those services that are necessary to protect the health of the public and that a local board of health must provide;

"Bureau" means the Bureau for Public Health;

"Clinical and categorical programs" means those services provided to individuals of specified populations and usually focus on health promotion or disease prevention. These services are not considered comprehensive health care but focus on specific health issues such as breast and cervical cancer, prenatal and pediatric health services, and home health services;

"Combined local board of health" is one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

"Commissioner" means the Commissioner of the Bureau for Public Health, who is the state health officer;

"Communicable and reportable disease prevention and control" means disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of communicable and reportable diseases;

"Community health promotion" mean assessing and reporting community health needs to improve health status, facilitating community partnerships including identifying the community's priority health needs, mobilization of a community around identified priorities, and monitoring the progress of community health education services;

"County board of health" is one form of organization for a local board of health and means a local board of health serving a single county;

"Department" means the Department of Health;

"Enforcement activity" means the implementation or enforcement of applicable state rules, local rules, and local health department rules;

"Enhanced public health services" means services that focus on health promotion activities to address a major health problem in a

community, are targeted to a particular population and assist individuals in this population to access the health care system;

"Environmental health protection" means efforts to protect the community from environmental health risks including, inspection of housing, institutions, recreational facilities, sewage, and wastewater facilities; inspection and sampling of drinking water facilities; and response to disease outbreaks or disasters;

"Guidance" means providing advice to a person, the public, a business, school board, or governmental entity regarding a public health issue or matter. Guidance is not a health order;

"Health order" means an order issued by the local health officer or local health board to protect the public health of the citizens by directing an individual or a discreet group of individuals to take a specific action to protect the health of the public or stop the spread of a communicable disease;

"Imminent public health emergency" means any immediate acute threat, hazard, or danger to the health of the population of the jurisdiction, whether specific or general, whether or not officially declared;

"Local board of health", "local board", or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

"Local health department" means the staff of the local board of health;

"Local health department rule" means a rule issued by the local board of health that has been approved by the appointing authority or was adopted prior to March 4, 2021, or a rule issued by the local board of health that may immediately go into effect because of an imminent public health emergency under §16-2-1(b)(3)(H) of this code;

"Local health officer" means the individual physician with a current West Virginia license to practice medicine or a licensed advanced practice registered nurse that has the ability to

independently practice who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health;

"Local rule" means an order adopted by a county commission or an ordinance adopted by a city that properly directs the local health department to implement or enforce the order or ordinance;

"Municipal board of health" is one form of organization for a local board of health and means a board of health serving a single municipality;

"Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which a local health department's level of performance can be measured;

"Primary care services" means health care services, including medical care, that emphasize first contact patient care and assume overall and ongoing responsibility for the patient in health maintenance and treatment of disease. Primary care services are services that local boards of health may offer if the board has determined that an unmet need for primary care services exists in its service area. Basic public health services funding may not be used to support these services;

"Secretary" means the Secretary of the Department of Health;

"Service area" means the territorial jurisdiction of the local board of health; and

"State Rule" means a state statute, legislative rule promulgated by a state agency, or an order of the secretary relating to public health that is to be enforced by a local health department.

ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-1. Family planning and child spacing; authorized functions; funds.

(a) The Bureau for Public Health may provide printed material, guidance, advice, financial assistance, appliances, devices, drugs, approved methods, and medicines to local boards of health and other entities requesting the same for use in the operation of family planning and child spacing clinics to the extent of funds appropriated by the Legislature and any federal funds made available for such purpose.

(b) The Bureau for Medical Services shall not require multiple office visits or prior authorization for a woman who selects long-acting reversible contraceptive (LARC) methods unless medically necessary. The bureau shall provide payment for LARC devices and their insertion, maintenance, removal, and replacement. The Bureau for Medical Services shall update the managed care contract to include language that the contracted managed care company may not present barriers that delay or prevent access, such as prior authorizations or step-therapy failure requirements; and should receive patient-centered education and counseling on all FDA-approved birth control methods.

(c) The Bureau for Public Health may make LARC products available in practitioner offices without upfront practitioner costs.

(d) The Bureau for Public Health shall develop a statewide plan with the goal of reducing exposure of a fetus to illicit substances by increasing the number of clients served and enabling access to LARC and other family planning methods. The plan shall include strategies for increasing LARC accessibility and training of health care providers, and shall provide a fiscal analysis of plan implementation and potential impact.

(e) The Department of Health shall report annually to the Legislative Oversight Commission on Health and Human Resources Accountability. The report shall include, at a minimum, the number of LARC treatments provided and the number of children born with intrauterine substance exposure and neonatal abstinence syndrome in West Virginia during the past three years.

§16-2B-2. Local boards of health authorized to establish clinics; supervision; purposes; abortion not approved; approval by state board of programs.

A local board of health, created and maintained pursuant to the provisions of article two or article two-a of this chapter, is authorized to establish and operate within its jurisdiction, one or more family planning and child spacing clinics under the supervision of a licensed physician for the purpose of disseminating information, conducting medical examinations and distributing family planning and child spacing appliances, devices, drugs, approved methods and medication without charge to indigent and medically indigent persons on request and with the approval of said licensed physician. Such information, appliances, devices, drugs, approved methods and medication shall be dispensed only in accordance with the recipients' expressed wishes and beliefs and in accordance with all state and federal laws for the dispensing of legend drugs: *Provided*, That the procedure of abortion shall not be considered an approved method of family planning and child spacing within the intent of this section and is expressly excluded from the programs herein authorized. All local boards of health receiving state or federal funds for family planning or child spacing programs shall first receive approval by the Bureau for Public Health of their general plan of operation of such programs.

§16-2B-3. State and local health and welfare agency employees to advise indigent and medically indigent of availability of services; compulsory acceptance of services prohibited; acceptance not condition to receiving other services and benefits.

The Secretary of Health and the Secretary of Human Services are directed to instruct their employees who work with the indigent and medically indigent to advise such indigent persons of the availability of the family planning and child spacing services offered by the state and local health departments: *Provided, however*, That no employee of the State of West Virginia or any employee of its agencies or of its political subdivisions, including but not limited to local health, or welfare agencies may compel any

individual or family, either directly or indirectly, to accept or practice family planning, or any particular family planning method as a condition for receiving other public services or governmental benefits in any form nor shall any such employee or person represent to any individual or family, either directly or indirectly, that the acceptance or practice of family planning is a condition for receiving any public services or governmental benefits. Any violation of this section shall be grounds for dismissal or other appropriate disciplinary action.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

As used in this article:

(1) "Affected person" means:

(A) The applicant;

(B) An agency or organization representing consumers;

(C) An individual residing within the geographic area but within this state served or to be served by the applicant;

(D) An individual who regularly uses the health care facilities within that geographic area;

(E) A health care facility located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(F) A health care facility located within this state which, before receipt by the authority of the proposal being reviewed, has formally indicated an intention to provide similar services within this state in the future;

(G) Third-party payors who reimburse health care facilities within this state; or

(H) An organization representing health care providers;

(2) "Ambulatory health care facility" means a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis;

(3) "Ambulatory surgical facility" means a facility not physically attached to a health care facility that provides surgical treatment to patients not requiring hospitalization;

(4) "Applicant" means a person applying for a certificate of need, exemption or determination of review;

(5) "Authority" means the West Virginia Health Care Authority as provided in §16-29B-1 *et seq.* of this code;

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

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

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

(9) "Campus" means the physical area immediately adjacent to the hospital's main buildings, other areas, and structures that are not strictly contiguous to the main buildings, but are located within 250 yards of the main buildings;

(10) "Capital expenditure" means:

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

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

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

(ii) (I) Exceeds the expenditure minimum;

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

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

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

(C) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the authority to be a single capital expenditure subject to review. In making this determination, the authority shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

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

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

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

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

(15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting at and above \$100 million;

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

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

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

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

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

(F) Medical social services to persons in their place of residence on a part-time or intermittent basis.

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

(21) "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 *et seq.* of this code and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled, or sick persons under the supervision of physicians.

(22) "Hospital services" means services provided primarily to an inpatient to include, but not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various departments on a hospital's campus;

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

(24) "Inpatient" means a patient whose medical condition, safety, or health would be significantly threatened if his or her care was provided in a less intense setting than a hospital. This patient stays in the hospital overnight.

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

(26) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. § 1395x. In determining whether medical equipment is major medical

equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

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

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

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

(30) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of this code.

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

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

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

(34) "Physician" means an individual who is licensed to practice allopathic medicine by the Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathic Medicine.

(35) "Proposed health service" means any service as described in §16-2D-8 of this code.

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

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

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

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

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

(41) "Secretary" means the Secretary of the West Virginia Department of Health;

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

(43) "Standard" means a health service guideline developed by the authority and instituted under §16-2D-6 of this code.

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

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

(46) "Substantial change to the health services" means:

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service was first offered; or

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

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

(48) "Third-party payor" means an individual, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

(49) "To develop" means to undertake those activities which upon their completion will result in the offer of a proposed health service or the incurring of a financial obligation in relation to the offering of such a service.

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

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

(1) File an exemption application; and

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

(b) Notwithstanding §16-2D-8 of this code and §16-2D-10 of this code and except as provided in §16-2D-9 of this code, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum 75 percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed tomography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of 75 percent, shall be reduced to 75 percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than 20 locations in the state on April 8, 2017.

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

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

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

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

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

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

(3) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (15) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least 10 years.

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

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

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

(7) A behavioral health service selected by the Department of Human Services in response to its request for application for services intended to return children currently placed in out-of-state

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

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

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

(10) Renovations to a skilled nursing facility;

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

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

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

(14) The construction, renovation, maintenance, or operation of a state-owned veterans skilled nursing facilities established pursuant to the provisions of §16-1B-1 *et seq.* of this code;

(15) To develop and operate a skilled nursing facility with no more than 36 beds in a county that currently is without a skilled nursing facility;

(16) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria,

previously licensed as a hospital and subsequently closed, if it reopens within 10 years of its closure;

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

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

(19) Providing behavioral health facilities and services;

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

(21) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Human Service or the Office of Health Facility Licensure and Certification may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

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

(23) The construction, development, acquisition, or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development,

acquisition, or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of §16-2D-9 of this code;

(24) Assisted living facilities and services;

(25) The creation, construction, acquisition, or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration; and

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

ARTICLE 2H. PRIMARY CARE SUPPORT PROGRAM.

§16-2H-2. Primary Care Support Program.

(a) There is created the Primary Care Support Program within the Bureau of Public Health. The program shall provide technical and organizational assistance to community-based primary care services.

(b) The Primary Care Support Program shall create and administer a Primary Care Grant Fund to grant money to federally qualified health centers and federally qualified health center look-alikes, and secure federal medical assistance percentage funding. Federally qualified health center look-alikes already receiving grant funding at the time this program is created shall continue to receive grant funding annually. Upon approval by the secretary, federally qualified health centers in need of immediate financial assistance may be granted funding annually. All funds designated to federally qualified health centers may be transferred to Medicaid for the purpose of securing federal medical assistance percentage funding.

Additionally, the secretary may use certain portions of funds within this account for activities in support of rural and primary care. There is created a special revenue fund in the State Treasury to be known as the Primary Care Support Fund into which all

appropriations, payments, and interest to the fund created herein shall be deposited, to be held and disbursed according to law.

(c) The Primary Care Support Program shall conduct and make available upon request an annual primary care report which shall consist of total West Virginia Medicaid primary care expenditures as a percentage of total West Virginia Medicaid expenditures.

(d) The Department of Health shall promulgate rules in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this article, and shall approve all loans, grants, and disbursements of money authorized by this article.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

When used in this article:

(a) "AIDS" means acquired immunodeficiency syndrome.

(b) "Bureau" means the Bureau for Public Health.

(c) "Commissioner" means the Commissioner of the Bureau for Public Health.

(d) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial, or a trial to a court and an adjudicated juvenile offender as defined in §49-1-202 of this code.

(e) "Department" means the Department of Health.

(f) "Funeral director" has the same meaning ascribed to that term in §30-6-3 of this code.

(g) "Funeral establishment" has the same meaning ascribed to that term in §30-6-3 of this code.

(h) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration, or the Centers for Disease Control and Prevention.

(j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank, blood center, sperm bank, laboratory, or other health care institution.

(k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, or other health care services of any kind.

(l) "Health Information Exchange" means the electronic movement of health-related information in accord with law and nationally recognized standards.

(m) "High risk behavior" means behavior by a person including, but not limited to: (i) Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

(n) "Medical or emergency responders" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other emergency service personnel, providers, or entities acting within the usual course of their duties; good samaritans and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral directors; health care providers; the commissioner of the Bureau for Public Health; and all of their employees and volunteers.

(o) "Patient" or "test subject" or "subject of the test" means the person upon whom an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

(p) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability and Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient or test subject.

(q) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(r) "Release of test results" means a permitted or authorized disclosure of HIV-related test results.

(s) "Significant exposure" means:

(1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery, or traumatic events;

(2) Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the national Centers for Disease Control and Prevention, and laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

(3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(t) "Source patient" means any person whose body fluids have been the source of a significant exposure to a medical or emergency responder.

(u) "Targeted testing" means performing an HIV-related test for sub-populations at higher risk, typically defined on the basis of behavior, clinical, or demographic characteristics.

(v) "Victim" means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest, or sexual molestation occurred or was likely to have occurred in the commission of such crimes.

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-2. Definitions.

As used in this article:

(1) "Active Tuberculosis" or "Tuberculosis" means a communicable disease caused by the bacteria, *Mycobacterium tuberculosis*, which is demonstrated by clinical, bacteriological, radiographic or epidemiological evidence. An infected person whose tuberculosis has progressed to active disease may experience symptoms such as coughing, fever, fatigue, loss of appetite and weight loss and is capable of spreading the disease to others if the tuberculosis germs are active in the lungs or throat.

(2) "Bureau" means the Bureau for Public Health;

(3) "Commissioner" means the Commissioner of the Bureau for Public Health, who is the state health officer;

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

(5) "Local health department" means the staff of the local board of health; and

(6) "Local health officer" means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the commissioner.

(7) "Tuberculosis suspect" means a person who is suspected of having tuberculosis disease due to any or all of the following

medical factors: the presence of symptoms, the result of a positive skin test, risk factors for tuberculosis, or findings on an abnormal chest x ray, during the time period when an active tuberculosis disease diagnosis is pending.

ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.

§16-4-1. Diseases designated as sexually transmitted.

Sexually transmitted diseases, as designated by the secretary of the Department of Health in rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, are declared to be infectious, contagious, communicable and dangerous to the public health. If a conflict exists between a provision of this article and a provision of article three-c of this chapter, the provision of article three-c prevails.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

***§16-4C-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(a) "Ambulance" means any privately or publicly-owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients, including, but not limited to, emergency medical services vehicles; rotary and fixed wing air ambulances; gsa kkk-A-1822 federal standard type I, type II and type III vehicles; and specialized multipatient medical transport vehicles operated by an emergency medical services agency;

(b) "Commissioner" means the Commissioner of the Bureau for Public Health;

(c) "Council" means the Emergency Medical Service Advisory Council created pursuant to this article;

***NOTE:** This section was also amended by S. B. 533 (Chapter 214), which passed subsequent to this Act.

(d) "Director" means the Director of the Office of Emergency Medical Service in the Bureau for Public Health.

(e) "Emergency Medical Services" means all services which are set forth in Public Law 93-154 "The Emergency Medical Services Systems Act of 1973" and those included in and made a part of the emergency medical services plan of the Department of Health inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury;

(f) "Emergency medical service agency" means any agency licensed under section six-a of this article to provide emergency medical services;

(g) "Emergency medical service personnel" means any person certified by the commissioner to provide emergency medical services as set forth by legislative rule;

(h) "Emergency medical service provider" means any authority, person, corporation, partnership or other entity, public or private, which owns or operates a licensed emergency medical services agency providing emergency medical service in this state;

(i) "Governing body" has the meanings ascribed to it as applied to a municipality in subdivision (1), subsection (b), section two, article one, chapter eight of this code;

(j) "Line officer" means the emergency medical service personnel, present at the scene of an accident, injury or illness, who has taken the responsibility for patient care;

(k) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical service personnel for the purpose of providing appropriate patient care;

(l) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code;

(m) "Patient" means any person who is a recipient of the services provided by emergency medical services;

(n) "Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical service personnel certified to render those services by a neighboring state;

(o) "Small emergency medical service provider" means any emergency medical service provider which is made up of less than twenty emergency medical service personnel; and

(p) "Specialized multipatient medical transport" means a type of ambulance transport provided for patients with medical needs greater than those of the average population, which may require the presence of a trained emergency medical technician during the transport of the patient: *Provided*, That the requirement of "greater medical need" may not prohibit the transportation of a patient whose need is preventive in nature.

§16-4C-4. Office of Emergency Medical Services created; requiring appointment of a Director of the Office of Emergency Medical Services; staffing.

(a) There is created under the Commissioner of the Bureau of Public Health an office to be known as the Office of Emergency Medical Services. A Director of the Office of Emergency Medical Services shall be appointed by the Secretary of the Department of Health to manage the office in a manner consistent with the purposes of this article. The director shall have experience in the delivery and administration of emergency medical services and related pre-hospital care. The director shall serve at the will and pleasure of the secretary and shall not be actively engaged or employed in any other business, vocation, or employment, serving full time as the Director of the Office of Emergency Medical Services.

(b) The commissioner may employ any technical, clerical, stenographic, and other personnel as may be necessary to carry out

the purposes of this article. The personnel may be paid from funds appropriated therefor or from other funds as may be made available for carrying out the purposes of this article.

(c) The Office of Emergency Medical Services, as created by former §16-4D-4 of this code, shall continue in existence as the Office of Emergency Medical Services established by this section.

***§16-4C-24. Emergency Medical Services Equipment and Training Fund; establishment of grant program for equipment and training of emergency medical service providers and personnel.**

(a) There is created in the State Treasury a special revenue fund to be known as the Emergency Medical Services Equipment and Training Fund. Expenditures from the fund by the Office of Emergency Medical Services and the Bureau for Public Health, are authorized from collections. The fund may only be used for the purpose of providing grants to equip emergency medical services providers and train emergency medical services personnel, as defined in §16-4C-3 of this code. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund but remains in the special revenue fund.

(b) The Commissioner of the Bureau for Public Health shall establish a grant program for equipment and training of emergency medical services providers and personnel. Such grant program shall be open to all emergency medical services personnel and providers, but priority shall be given to rural and volunteer emergency medical services providers.

(c) The Commissioner of the Bureau for Public Health shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the grant program established pursuant to this section.

***NOTE:** This section was also amended by H. B. 5347 (Chapter 225), which passed subsequent to this Act.

ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.**§16-4D-2. Definitions.**

(a) "Anticipated operator" means any person trained in accordance with section three of this article who utilizes an automated external defibrillator which was placed through an early defibrillation program.

(b) "Automated external defibrillator", hereinafter referred to as AED, means a medical device heart monitor and defibrillator that: (1) Has undergone the premarket approval process pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §360, as amended; (2) is capable of recognizing the presence or absence of ventricular fibrillation; (3) is capable of determining, without intervention by the operator, whether defibrillation should be performed; and (4) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

(c) "Early defibrillation program" means a coordinated program that meets the requirements of section three of this article and one that provides early public access to defibrillation for individuals experiencing sudden cardiac arrest through the use of an automated external defibrillator.

(d) "Emergency medical services (EMS)" means all services established by the Emergency Medical Services Act of 1973 in article four-c of this chapter, including, but not limited to, the emergency medical services plan of the Department of Health providing a response to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury.

(e) "Entity" means a public or private group, organization, business, association or agency that meets the requirements of section three of this article. "Entity" does not include emergency medical services operational programs or licensed commercial ambulance services.

(f) "Medical director" means a duly licensed physician who serves as the designated medical coordinator for an entity's early defibrillation program.

(g) "Unanticipated operator" means any person rendering emergency medical care involving the use of an AED.

ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.

§16-4E-2. Establishment of an advisory council on maternal risk assessment.

(a) There is created within the Office of Maternal, Child and Family Health an advisory council on maternal risk assessment to provide assistance in the development of a uniform maternal risk screening tool.

(b) The office shall convene the advisory council at least annually and providing administrative and technical assistance to the advisory council as needed. The members of the advisory council shall be appointed by the Commissioner of the Bureau for Public Health.

(c) The advisory council shall be comprised of:

(1) At least one private provider of maternity services;

(2) At least one public provider of maternity services;

(3) One representative from each of the state's three medical schools;

(4) The Commissioner of the Bureau for Public Health or his or her designee;

(5) The Director of the Office of Maternal, Child and Family Health or his or her designee;

(6) At least one representative of a tertiary care center;

(7) At least one representative of a facility with a level I or II obstetrical unit;

(8) At least one certified nurse midwife;

(9) At least one allopathic or osteopathic physician who is a private provider of maternity services at a facility with a level I or level II obstetrical unit.

§16-4E-4. Legislative rule-making authority.

The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The legislative rules shall include a uniform maternal risk screening tool to identify women at risk for a preterm birth or other high-risk condition.

§16-4E-6. Confidentiality of screening tool.

(a) The uniform maternal screening tool shall be confidential and shall not be released or disclosed to anyone, including any state or federal agency for any reason other than data analysis of high-risk and at-risk pregnancies for planning purposes by public health officials: *Provided*, That managed care organizations, with respect to their Medicaid or CHIP plans or contracts, which are reviewed and approved by the Bureau for Medical Services, and the Bureau for Medical Services may be provided data from the screening tool regarding their own covered members. The contracted managed care companies and the Bureau for Medical Services must maintain the confidentiality of the data received.

(b) Proceedings, records, and opinions of the advisory council are confidential and are not subject to discovery, subpoena, or introduction into evidence in any civil or criminal proceeding. Nothing in this subsection is to be construed to limit or restrict the right to discover, or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the advisory council.

(c) Members of the advisory council may not be questioned in any civil or criminal proceeding regarding information presented in, or opinions formed as a result of, a meeting of the panel. Nothing in this subsection may be construed to prevent a member

of the advisory council from testifying to information obtained independently of the panel or which is public information.

ARTICLE 4F. EXPEDITED PARTNER THERAPY.

§16-4F-1. Definitions.

As used in this article, unless the context otherwise indicates, the following terms have the following meanings:

(1) "Department" means the Department of Health.

(2) "Expedited partner therapy" means prescribing, dispensing, furnishing or otherwise providing prescription antibiotic drugs to the sexual partner or partners of a person clinically diagnosed as infected with a sexually transmitted disease without physical examination of the partner or partners.

(3) "Health care professional" means:

(A) An allopathic physician licensed pursuant to article three, chapter thirty of this code;

(B) An osteopathic physician licensed pursuant to article fourteen, chapter thirty of this code;

(C) A physician assistant licensed pursuant to §30-3E-4 of this code;

(D) An advanced practice registered nurse authorized with prescriptive authority pursuant to §03-7-15a of this code; or

(E) A pharmacist licensed pursuant to article five, chapter thirty of this code.

(4) "Sexually transmitted disease" means a disease that may be treated by expedited partner therapy as determined by rule of the department.

§16-4F-5. Rulemaking.

The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to designate certain diseases as sexually transmitted diseases which may be treated by expedited partner therapy. The department shall consider the recommendations and classifications of the federal Department of Health and Human Services, Centers for Disease Control and Prevention and other nationally recognized medical authorities in making these designations.

ARTICLE 5. VITAL STATISTICS.

§16-5-1. Definitions.

As used in this article, unless the context otherwise requires, the following terms have the following meanings:

(1) "Bureau" means the Bureau for Public Health.

(2) "Commissioner" means the Commissioner of the Bureau for Public Health.

(3) "Date of filing" means the date a vital record is accepted for registration by the section of vital statistics of the state Bureau for Public Health.

(4) "Dead body" means a human body or parts of a human body or bones from the condition of which it reasonably may be concluded that death occurred.

(5) "Department" means the Department of Health.

(6) "Deputy local registrar" means a person appointed by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be performed in and for the county or other district of the local registrar.

(7) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy, such death being indicated by the fact that after such expulsion or extraction the fetus does not

breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.

(8) "Filing" means the presentation and acceptance of a vital record or report provided in this article for registration by the section of vital statistics of the state Bureau for Public Health.

(9) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(10) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant, and which does not result in live birth. The definition excludes management of prolonged retention of products of conception following fetal death.

(11) "Institution" means any establishment, public or private, which provides inpatient or outpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care to two or more unrelated individuals or to which persons are committed by law.

(12) "Licensed health professional" means an individual who is licensed by the State of West Virginia to practice a health profession.

(13) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(14) "Local registrar" means the person appointed by the state Registrar of Vital Statistics for a county or other district to perform the vital statistics functions specified to be performed in and for the county or other district.

(15) "Physician" means a person licensed to practice medicine or osteopathy pursuant to the laws of this state.

(16) "Registration" means the process by which vital records are completed, filed and incorporated into the official records of the section of vital statistics.

(17) "Research" means a systematic investigation designed primarily to develop or contribute to general knowledge.

(18) "System of vital statistics" means the registration, collection, preservation, amendment, certification of vital records, the collection of other reports required by this article, and related activities, including, but not limited to, the tabulation, analysis, publication and dissemination of vital statistics.

(19) "Vital records" means certificates or reports and data related to birth, death, and marriage, including divorce, dissolution of marriage, and annulment.

(20) "Vital reports" means reports and related data designated in this article and in rules.

(21) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, marriage, divorce, annulment and related records and reports.

§16-5-3. Department of Health to propose legislative rules.

(a) The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for:

(1) Adequate standards of security and confidentiality of vital records;

(2) Requirements for individuals in the state who may be designated by the state Registrar to aid in the administration of the system of vital statistics;

(3) Criteria for registration districts throughout the state;

(4) Requirements for the completion, filing, correction and amendment of certificates, reports and other documents required by this article;

(5) Requirements for registering a delayed certificate of birth, including provisions for dismissing an application which is not actively pursued;

(6) Inspection of evidence of adoption, annulment of adoption, legitimation or court determination of paternity;

(7) Completion of the medical certification of the cause of death;

(8) Record keeping requirements for receipt, removal, delivery, burial, cremation or other final disposition of a dead body or a fetus;

(9) Authorization for the disinterment and reinterment of a dead body or a fetus;

(10) Extension of prescribed time periods for the filing of certificates of death, reports of fetal death and authorizations for disposition and disinterment and reinterment, including authorization for disposition prior to filing a certificate of death;

(11) Disposal of original records from which permanent reproductions have been made;

(12) Disclosure of confidential information for administrative, statistical or research purposes;

(13) Release of records of birth, death, fetal death, marriage, divorce or annulment, subject to the provisions of section twenty-seven of this article;

(14) Authorization for preparing, issuing or obtaining copies of vital records;

(15) Requirements for matching and marking certificates of birth and death for the purpose of preventing the fraudulent use of birth certificates;

(16) Utilization of social security numbers to meet requirements of federal law;

(17) Requirements for a statewide system of registering, indexing and preserving records of marriage, divorce and annulment of marriage; and

(18) Any other purpose to carry out the requirements of this article.

(b) Any rules in effect as of the passage of this article will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this article are interpreted to mean provisions of this article.

ARTICLE 5A. CANCER CONTROL.

§16-5A-5. Care of needy patients.

The Bureau of Public Health may prescribe rules and regulations specifying to what extent and on what terms and conditions needy cancer patients may receive financial aid for the diagnosis and treatment of cancer in any approved hospital in this state. The director is authorized to furnish aid, within the limits of available funds, to such patients and shall have the power to administer such aid in any manner which in his or her judgment will afford the greatest benefit to cancer patients throughout the state.

In determining whether a particular patient is entitled to such assistance the director may call upon the Department of Human Services for such investigation as may be required. In order to receive such aid, however, the patient need not qualify for public assistance as administered by the Department of Human Services.

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-2. Definitions.

Unless the context clearly otherwise indicates, as used in this article:

(a) "Bureau" means the Bureau for Children and Families Public Health.

(b) "Council" means the Governor's Early Intervention Interagency Coordinating Council.

(c) "Department" means the Department of Health.

(d) "Early intervention services" means developmental services which:

(1) Are designed to meet the developmental needs of developmentally delayed infants and toddlers and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided under public supervision in conformity with an individualized family service plan;

(4) Are provided either at no charge, fees based on a sliding scale, or charges to third party payers and do not restrict access or services because of a client's financial limitations;

(5) Meet the state's early intervention standards, as established by the department with the assistance of the Governor's Early Intervention Interagency Coordinating Council;

(6) Include assistive technology, audiology, audiology case management, family training, counseling and home visits, health services necessary to enable a child to benefit from other early intervention services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational therapy, physical therapy, psychological services, social work services, special instruction, speech-language pathology, vision and transportation; and

(7) Are provided by licensed or otherwise qualified personnel, including audiologists, family therapists, nurses, nutritionists,

occupational therapists, orientation and mobility specialists, physical therapists, physicians, psychologists, social workers, special educators, speech-language pathologists and paraprofessionals appropriately trained and supervised.

(e) "Infants and toddlers with developmental delay" means children from birth to thirty-six months of age who need early intervention services for any of the following reasons:

(1) They are experiencing developmental delays, as measured by appropriate methods and procedures, in one or more of the following areas: Cognitive, physical, including visual and hearing, communicative, adaptive, social, language and speech, or psychosocial development or self-help skills; or

(2) They have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or

(3) They are at risk of having substantial developmental delays if early intervention services are not provided.

§16-5K-3. Responsibilities of the Department of Health.

(a) The department is the administering agency for the development of a statewide, comprehensive, coordinated, interagency system of early intervention services.

(b) Consistent with the provisions of Public Law 99-457, as enacted by the Congress of the United States, the department has the following responsibilities:

(1) To carry out the general administration, supervision and monitoring of early intervention programs and activities;

(2) To resolve complaints regarding the requirements of Public Law 99-457;

(3) To identify and coordinate all available resources within the state from federal, state, local and private sources;

(4) To enter into formal interagency agreements with other state agencies involved in early intervention;

(5) To resolve intraagency and interagency disputes and to ensure that early intervention services are provided in a timely manner pending the resolution of such disputes; and

(6) To coordinate and implement a comprehensive system of personnel development, including the certification and credentialing of qualified personnel pursuant to federal regulations or requirements.

(c) The department may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to carry out the purposes of this article.

(d) The department and the Department of Education shall enter into a formal interagency agreement regarding early intervention services. The agreement shall define the financial responsibility of each agency, describe the transition of services to children and their families between service systems, and establish procedures for resolving disputes.

§16-5K-4. Interagency coordinating council.

(a) The Governor's Early Intervention Interagency Coordinating Council is continued. The council is composed of at least fifteen members appointed by the Governor with additional ex officio members representing specific agencies serving infants and toddlers with developmental delays.

(b) The membership of the council shall consist of the following:

(1) At least three parents of children, ages birth through six years of age, who have developmental delays;

(2) At least three persons representative of the public or private service providers;

(3) At least one member of the House of Delegates recommended by the Speaker of the House of Delegates and one member of the Senate recommended by the Senate President;

(4) At least one person from higher education involved in training individuals to provide services under this article; and

(5) A representative of each of the agencies involved in the provision of or payment for early intervention services to infants and toddlers with developmental delays and their families.

(c) The council shall meet at least quarterly and in such place as it considers necessary.

(d) The council is responsible for the following functions:

(1) To advise and assist the department in the development and implementation of early intervention policies;

(2) To assist the department in achieving the full participation of all relevant state agencies and programs;

(3) To collaborate with the Bureau for Children and Families in the coordination of early intervention services with other programs and services for children and families;

(4) To assist the department in the effective implementation of a statewide system of early intervention services;

(5) To assist the department in the resolution of disputes;

(6) To advise and assist the department in the preparation of grant applications; and

(7) To prepare and submit an annual report to the Governor, the Legislature and the United States Secretary of Education on the status of early intervention programs within the state.

§16-5K-6. West Virginia Birth-to-Three Fund.

(a) There is created in the state Treasury a fund to be known as the "West Virginia Birth-to-Three Fund" that shall be an interest-bearing account established and maintained to pay costs, fees and expenses incurred, or to be incurred, for early intervention services for children who are developmentally delayed.

(b) Funds deposited into this account shall be derived from the following sources:

(1) Any appropriations by the Legislature;

(2) Fund transfers from any fund of the divisions of the Department of Health that, in whole or in part, supports early intervention services;

(3) All public funds transferred by any public agency as permitted by applicable law;

(4) Any private funds contributed, donated or bequeathed by corporations, individuals or other entities; and

(5) All proceeds from fees paid by the client or third party payers; and

(6) All interest or return on investments accruing to the fund.

(c) Moneys deposited in this fund shall be used exclusively to provide early intervention services to accomplish the purposes of this article. Expenditures of moneys deposited in this fund are to be made in accordance with appropriation by the Legislature and in accordance with article three, chapter twelve of this code and upon the fulfillment of the provisions of article two, chapter five-a of this code: *Provided*, That for the fiscal year ending June 30, 2003, expenditures are authorized from deposits rather than pursuant to appropriation by the Legislature.

(d) Any balance remaining in this fund at the end of any state fiscal year shall not revert to the state Treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

§16-5L-5. State long-term care ombudsman; qualifications; duties.

(a) The state commission on aging shall employ a state long-term care ombudsman to effect the purposes of this article. The state long-term care ombudsman shall have at least a master's degree in gerontology, social work, health or a related field and shall have demonstrated experience in one of the following areas: (1) The field of aging; (2) health care; (3) community programs; (4) long-term care issues; (5) working with health care providers; (6) working with an involvement in volunteer programs; and (7) administrative and managerial experience. In lieu of the above educational and experience qualifications, the state long-term care ombudsman shall have a four-year degree in gerontology, social work, health or a related field, plus five years of full-time equivalent experience in gerontology, social work, health or a related field. The state long-term care ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities. The state long-term care ombudsman shall not have been employed within the past two years prior to the date of his or her employment under this section by a long-term care facility, or by any association of long-term care facilities, or by any organization or corporation that directly or indirectly regulates, owns, or operates a long-term care facility.

(b) Neither the state long-term care ombudsman nor any member of his or her immediate family shall have, or have had within the two years preceding his or her employment under this section, any pecuniary interest in the provision of long-term care. For the purposes of this section, the term "immediate family" shall mean the spouse, children, natural mother, natural father, natural brothers or natural sisters of the state long-term care ombudsman.

(c) The duties of the state long-term care ombudsman shall include, but are not limited to, the following:

(1) Establishing a mandatory statewide procedure to receive, investigate, and resolve complaints filed on behalf of a resident, or filed on the state or regional long-term care ombudsman's own initiative on behalf of residents, relating to action, inaction or decisions of providers of long-term care services, or the representatives of such providers, of public agencies, or of social

service agencies, which may adversely affect the health, safety, welfare and rights of such residents;

(2) Monitoring the development and implementation of federal, state and local legislation, regulations and policies with respect to long-term care facilities;

(3) Advocating for the rights of residents in long-term care facilities;

(4) Establishing a mandatory statewide training program and certification procedures for regional long-term care ombudsmen, excluding clerical staff, which shall include training in the following areas: (i) The review of medical records; (ii) regulatory requirements for long-term care facilities; (iii) confidentiality of records; (iv) techniques of complaint investigation; (v) the effects of institutionalization; and (vi) the special needs of the elderly;

(5) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems faced by residents as a class. Such data shall be submitted to the office of health facility licensure and certification on a regular basis;

(6) Promulgating mandatory statewide rules, regulations and training related to the use of long-term care ombudsman volunteers in the program, including procedures to assure that the responsibility and authority of ombudsman volunteers shall be restricted to activities which do not involve access to confidential resident or facility records, which do not involve complaint investigation other than information gathering to ascertain the nature and facts of a complaint, and which do not involve the initiation or pursuit of legal proceedings, actions or remedies; and

(7) Other duties as mandated by the Older Americans Act of 1965, as amended.

§16-5L-10. Investigation of complaints.

(a) Upon receipt of a complaint filed on behalf of a resident, or on his or her own initiative, a state or regional long-term care ombudsman shall investigate any act, practice, policy or procedure of any long-term care facility or government agency which affects the health, safety, welfare or rights of any resident.

(b) Investigative activities of the state or regional long-term care ombudsman shall include, but shall not be limited to: Information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The state or regional long-term care ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the long-term care ombudsman program; or

(5) A real or apparent conflict of interest exists and no other ombudsman is available to investigate the complaint in an impartial manner.

If a determination is made by a regional long-term care ombudsman not to investigate any complaint, then the complaint shall be referred to the state long-term care ombudsman who shall make a final decision as to whether the matter warrants further investigation.

(d) State and regional long-term care ombudsmen may institute actions on behalf of residents to obtain injunctive and declaratory

relief, but not damages. In order to enable ombudsman to bring such actions, the Director of the Office of Health Facility Licensure and Certification shall either:

(1) Establish an administrative hearing process under the procedures for contested cases defined at article five, chapter twenty-nine-a of this code to be available to any state or regional ombudsmen bringing an action on behalf of a resident against a long-term care facility or governmental agency; or

(2) Ensure that state and regional ombudsmen have sufficient access to legal counsel to bring actions on behalf of residents in civil court: *Provided:* That nothing in this subsection shall be construed to prevent a resident of a long-term care facility from filing directly, on his or her own behalf, a suit for relief of any sort in any state or federal court.

(e) The state commission on aging and other appropriate state governmental agencies shall establish and implement cooperative agreements for receiving, processing, responding to and resolving complaints involving state governmental agencies under the provisions of this section.

§16-5L-14. Cooperation among government departments or agencies.

(a) The state or regional long-term care ombudsman shall have access to publicly disclosable records of any state government department, agency, or office reasonably necessary to any investigation carried out pursuant to section ten of this article. The regional long-term care ombudsman shall be notified of and be allowed to observe any survey conducted by a government agency affecting the health, safety, welfare or rights of residents of a long-term facility.

(b) The state long-term care ombudsman shall develop referral procedures to refer any complaint to any appropriate state government department, agency or office. The agency shall acknowledge receipt and disposition within thirty calendar days on

any complaint referred to it by a state or regional long-term care ombudsman.

(c) When abuse, neglect or exploitation of a resident of a long-term care facility is suspected, the state or regional long-term care ombudsman shall make a referral to the office of adult protective services and to the office of health facility licensure and certification. The state or regional long-term care ombudsman shall coordinate with the office of adult protective services and the office of health facility licensure and certification on any investigation of suspected abuse, neglect or exploitation undertaken by those offices under the provisions of this subsection.

(d) Any state government department, agency, or office which responds to a complaint referred to it by a state or regional long-term care ombudsman shall forward to the long-term care ombudsman copies of publicly disclosable inspection reports and plans of correction, and notices of any citations and sanctions levied against the long-term care facility identified in the complaint.

(e) The state or regional long-term care ombudsman shall seek to establish coordination with programs which provide legal services for the elderly, including, but not limited to, programs funded by the federal legal services corporation or under the Older Americans Act of 1965, as amended.

§16-5L-15. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint pursuant to section ten of this article that contains the identity of the complainant or resident shall remain confidential except:

(1) Where disclosure is authorized in writing by the complainant, or resident or the guardian, committee, attorney in fact or representative of the resident;

(2) Where disclosure is necessary to the office of adult protective services in order for such office to determine the appropriateness of initiating an investigation regarding potential

abuse, neglect or emergency circumstances as defined in article six, chapter nine of this code;

(3) Where disclosure is necessary to the office of health facility licensure and certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure and/or certification; or

(4) Upon order of any appropriate county circuit court after the judge in term or vacation thereof has conducted a hearing following adequate notice to all parties and rendered a determination as the interests of justice may require.

(b) Notwithstanding any other section within this article, all information, records and reports received by or developed by a state or regional long-term care ombudsman which relate to a resident of a facility, including written material identifying a resident, are confidential and are not subject to the provisions of chapter twenty-nine-b of this code, and shall not be disclosed or released by the long-term care ombudsman, except under the circumstances enumerated in this section.

(c) Nothing in subsection (a) or (b) of this section shall be construed to prohibit the preparation and submission by any state or regional long-term ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any resident or complainant.

(d) The executive director of the state commission on aging shall have access to the records and files of the long-term care ombudsman program to verify its effectiveness and quality where the identity of any complainant or resident is not disclosed.

ARTICLE 5P. SENIOR SERVICES.

§16-5P-7. Creation and composition of the West Virginia council on aging; terms of citizen representative; vacancies; officers; meetings.

(a) There is created the West Virginia Council on Aging, which shall be composed of five government members and ten citizen members, and shall serve as an advisory board to the commissioner.

(b) The five government members shall be: (1) The director of the bureau of health; (2) the director of the bureau of medical services; (3) one administrator designated by the secretary of the Department of Health; (4) one administrator designated by the superintendent of the West Virginia state police; and (5) the director of the Division of Rehabilitation Services.

(c) The citizen members shall be appointed by the Governor with the advice and consent of the Senate. No more than five of the citizen members shall belong to the same political party, and no more than six members shall be of the same gender. The members shall be selected in a manner to provide balanced geographical distribution.

(d) The designated administrators and the citizen representatives of the council shall be appointed for terms of four years each, and shall serve until their successors are appointed and qualified. The citizen representatives appointed to staggered terms pursuant to section two, article fourteen, chapter twenty-nine of this code to the state commission on aging shall continue to serve the remainder of their term or until their successors are appointed and qualified.

(e) A majority of the members of the council shall constitute a quorum for the transaction of business. The council shall elect a chair, a vice-chair, and such other officers as it deems necessary. The council shall meet at least two times each year. Each government representative shall designate a person with the authority to attend meetings and act on behalf of the government representative, who shall be considered a member of the council for the purpose of obtaining a quorum for the transaction of business.

ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND.

§16-5Q-2. Catastrophic illness commission; composition; meetings.

(a) The catastrophic illness commission shall consist of six members appointed for terms of five years by the Governor, by and with the advice and consent of the Senate, and the long term care ombudsman, who shall serve as a nonvoting ex officio member. One member shall be a medical doctor licensed to practice medicine in this state, one member shall be an attorney licensed to practice law in this state, two members shall be from the public at large who are active in community affairs, one member shall be a nurse licensed to practice in this state, and one member shall be a social worker licensed in this state. The terms of office of the first appointments to the catastrophic illness commission shall be as follows: The medical doctor and attorney shall be appointed for an initial term of three years; the initial term of the nurse appointee and the licensed social worker appointee shall be four years; the initial term of the remaining members of the commission appointed by the Governor shall be five years. No more than five of the members appointed by the Governor may be from the same political party. Members of the catastrophic illness commission, other than the ex officio member, may receive expenses only up to \$125 per day, not to exceed \$15,000 in the aggregate per year. The commission shall meet at least quarterly and annually elect a chairperson. Meetings shall be conducted in accordance with the provisions of article nine-a, chapter six of this code. Special meetings may be called. Before discharging any duties, members shall comply with the oath or affirmation requirements of article one, chapter six of this code. Members are subject to the ethical standards and financial disclosure requirements of the West Virginia governmental ethics act in chapter six-b of this code and serve at the will and pleasure of the Governor as provided in section four, article six, chapter six of this code.

(b) The catastrophic illness commission shall make an annual recommendation to the Legislature regarding appropriations from the catastrophic illness fund. This recommendation shall be made annually, in writing, to the Legislature no later than the second Wednesday of January.

(c) The commission shall appoint an executive director whose compensation shall be fixed by the commission within its budgetary appropriation. The executive director shall be classified exempt and may not be a member of the commission. The executive director may attend all meetings of the commission, as well as its committees, but has no vote on decisions or actions of the commission or its committees. The executive director shall carry out the decisions and actions of the commission, administer all affairs of the commission in accordance with its policies and discharge other duties as the commission shall from time to time determine. The commission may employ other officers, employees and clerical assistants as it considers necessary and may fix their compensation within the amounts made available by appropriation.

(d) The secretary of the Department of Human Services shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to accomplish the purpose of the James "Tiger" Morton catastrophic illness fund including, but not limited to, establishing eligibility standards for the distribution of moneys from the fund. The secretary may propose emergency rules to establish the eligibility standards.

(e) The secretary shall assist the commission in the investigation of any suspected fraud related to an application for assistance through the catastrophic illness fund.

§16-5Q-4. Assignment of rights; right of subrogation by the James "Tiger" Morton Catastrophic Illness Commission to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) (1) Submission of an application to the Catastrophic Illness Commission for medical assistance is, as a matter of law, an assignment of the right of the applicant, or legal representative thereof, to recovery from personal insurance or other sources, including, but not limited to, liable third parties, to the extent of the cost of medical services paid for by the Catastrophic Illness Commission's Medical Assistance Program.

(2) At the time the application is made, the Catastrophic Illness Commission shall include a statement along with such application that explains that the applicant has assigned all such rights to the Catastrophic Illness Commission, and the legal implications of making such assignment as provided in this section.

(3) If medical assistance is paid or will be paid by the Catastrophic Illness Commission to a provider of medical care on behalf of a recipient of medical assistance because of a "catastrophic illness", as defined by this article, and another person is legally liable for such expense, either pursuant to contract, negligence or otherwise, the Department of Human Services, on behalf of the Catastrophic Illness Commission, shall have the right to recover full reimbursement from any award or settlement for such medical assistance from such other person, or from the recipient of such assistance if he or she has been reimbursed by the other person. The Department of Human Services shall be legally assigned the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the catastrophic illness for which the recipient has received damages.

(4) When an action or claim is brought by a medical assistance recipient, or by someone on his or her behalf, against a third party who may be liable for the catastrophic illness or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the Department of Human Services, on behalf of the Catastrophic Illness Commission for reimbursement of an amount sufficient to reimburse the Department of Human Services the full amount of benefits paid on behalf of the recipient under the Catastrophic Illness Commission's Medical Assistance Program for the catastrophic illness of the medical assistance recipient. The claim of the Department of Human Services on behalf of the Catastrophic Illness Commission, assigned by such recipient shall not exceed the amount of medical expenses for the catastrophic illness of the recipient paid by the Department of Human Services on behalf of the recipient. The right of subrogation created in this section includes all portions of the cause of action, by either settlement, compromise, judgment or award,

notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to the subrogation. Any settlement, compromise, judgement or award that excludes or limits the cost of actual medical services or care shall not preclude the Department of Human Services from enforcing its rights under this section. The Secretary of the Department of Human Services may compromise, settle and execute a release of any such claim in whole or in part.

(b) (1) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by him or her against any other person and from including therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses, even though such person received medical assistance in the payment of such medical expenses in whole or in part.

(2) If the action be tried by a jury, the jury shall not be informed as to the interest of the Department of Human Services on behalf of the Catastrophic Illness Commission, if any, and such fact shall not be disclosed to the jury at any time. The trial judge shall, upon the entry of judgment on the verdict, direct that an amount equal to the amount of medical assistance given by the commission be withheld and paid over to the Department of Human Services on behalf of the commission. Irrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the Department of Human Services on behalf of the Catastrophic Illness Commission, there shall be deducted the attorney fees attributable to such amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the Department of Human Services shall bear the pro rata portion of such attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he or she may have against another person and delivering to the Department of Human Services from the proceeds of such settlement the sums received by him or her from the commission or paid by the commission for his or her medical

assistance. If such other person is aware of or has been informed of the interest of the Department of Human Services on behalf of the commission in the matter, it shall be the duty of the person to whose benefit the release inures to withhold so much of the settlement as may be necessary to reimburse the Department of Human Services, to the extent of its interest in the settlement. No judgment, award of or settlement in any action or claim by a medical assistance recipient or his or her representative to recover damages for a catastrophic illness or death, in which the Department of Human Services on behalf of the commission has an interest, shall be satisfied without first giving the Department of Human Services notice and reasonable opportunity to establish its interest. The Department of Human Services shall have sixty days from the receipt of such written notice to advise the recipient or his or her representative in writing of its desire to establish its interest through the assignment. If no such written intent is received within the sixty-day period, then the recipient may proceed and in the event of full recovery forward to the Department of Human Services the portion of the recovery proceeds less the Department of Human Services' share of attorney's fees and costs expended in the matter. In the event of less than full recovery the recipient and the Department of Human Services shall agree as to the amount to be paid to it for its claim. If there is no recovery, the Department of Human Services shall under no circumstances be liable for any costs or attorney fees expended in the matter. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney or personal representative for failure to subrogate the Department of Human Services, a recipient, his or her guardian, attorney or personal representative disposes of the funds representing the judgment, settlement or award without the written approval of the Department of Human Services, that person shall be liable to the Department of Human Services for any amount that, as a result of the disposition of the funds, is not recoverable by the Department of Human Services. In the event that a controversy arises concerning the subrogation claims by the Department of Human Services, an attorney shall interplead, pursuant to Rule 22 of the Rules of Civil Procedure, the portion of the recipient's settlement that will satisfy the Department of Human

Services exclusive of attorney fees and costs regardless of any contractual arrangement between the client and the attorney.

(c) Nothing contained herein shall authorize the Department of Human Services or the Catastrophic Illness Commission to institute a class action or multiple plaintiff action against any manufacturer, distributor or vendor of any product to recover medical care expenditures paid for by the Catastrophic Illness Commission's Medical Assistance Program.

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-3. Definition of alzheimer's special care unit/program.

For the purposes of this article, the following definitions apply:

(a) "Alzheimer's disease" means a diagnosis of presenile dementia or senile dementia-Alzheimer type (SDAT), characterized by confusion, memory failure, disorientation, restlessness, agnosia, speech disturbances, inability to carry out purposeful movements and hallucinosis.

(b) "Alzheimer's Special Care Unit or Program," means any facility that secures, segregates or provides a special program or special unit for residents with a diagnosis of probable alzheimer's disease or a related disorder and that advertises, markets or otherwise promotes the facility as providing specialized alzheimer's or dementia care services.

(c) "Department" means the Department of Health.

(d) "Facility" means any nursing home or facility, residential board and care home, personal care home, assisted living facility, adult congregate living facility, home health agency, adult day care center, hospice or adult foster home situate or operating in this state.

(e) "Resident" means an individual living in a facility that offers an alzheimer's special care unit or program.

(f) "Secretary" means the secretary of the Department of Health.

§16-5R-4. Alzheimer's special care disclosure required.

(a) Any facility which offers to provide or provides care for a person with alzheimer's disease through an alzheimer's special care unit or special care program shall disclose in writing the form of care or treatment that distinguishes the unit or program as being especially applicable to or suitable for such persons. The disclosure shall be provided to the department, to any person seeking placement within an alzheimer's special care unit or program, and to any legal guardian or relative acting on behalf of a resident or person seeking placement.

(b) The department shall examine all disclosures provided to it as part of the facility's license renewal procedure and verify the accuracy of the disclosures.

(c) The disclosure required by this section shall include the following information:

(1) A statement of the overall treatment philosophy and mission of the special care unit or program which reflects the needs of residents afflicted with alzheimer's disease or dementia;

(2) A description of the facility's screening, admission and discharge procedures, assessment, care planning and implementation, staffing patterns and training ratios unique to the program or unit;

(3) A description of the physical environment and design features and an explanation of how they are appropriate to support the functioning of cognitively impaired adult residents;

(4) A description of activities available to residents, the frequency and types of resident activities, and how they are specialized for residents who suffer from alzheimer's disease;

(5) A statement that describes the involvement of families in the care of residents and the availability of family support programs;

(6) The costs of care and any additional fees unique to the alzheimer's special care unit or program.

ARTICLE 5S. OLDER WEST VIRGINIANS ACT.

§16-5S-5. Powers and duties of the Bureau of Senior Services.

The bureau shall be the designated state agency to:

(a) Develop and administer the state plan as required by the federal administration on aging;

(b) Be the primary agency responsible for the planning, policy development, administration, coordination, priority setting and evaluation of activities related to this article;

(c) Serve as an effective and visible advocate for older West Virginians;

(d) Divide the state into distinct planning and service areas and designate for each area a public or private nonprofit agency or organization as the area agency on aging as required by the federal administration on aging;

(e) Provide technical assistance and information to area agencies on aging and local service providers as appropriate and conduct monitoring of area agencies on aging to ensure compliance with applicable rules, regulations and standards;

(f) Maintain client and service data using a standardized computer client tracking system through which all providers shall report required information;

(g) Maintain letters of agreement with the Department of Human Services to provide program operations of the personal care and aged and disabled waiver programs; and

(h) Maintain a registry of companies and organizations that provide free medications or provide assistance to persons in securing medications, and make this information available to consumers through all local senior programs.

ARTICLE 5T. OFFICE OF DRUG CONTROL POLICY.

§16-5T-2. Office of Drug Control Policy.

(a) The Office of Drug Control Policy is continued. The Director of the Office of Drug Control Policy shall be appointed by the Governor, by and with the advice and consent of the Senate. The director of the office is administratively housed in the Department of Human Services and directly reports to the Office of the Governor, and works in cooperation with the State Health Officer, the Bureau of Public Health, and the Bureau for Behavioral Health.

(b) The Office of Drug Control Policy shall create a state drug control policy in coordination with the bureaus of the department and other state agencies. This policy shall include all programs which are related to the prevention, treatment, and reduction of substance abuse use disorder.

(c) The Office of Drug Control Policy shall:

(1) Develop a strategic plan to reduce the prevalence of drug and alcohol abuse and smoking by at least 10 percent;

(2) Monitor, coordinate, and oversee the collection of data and issues related to drug, alcohol, and tobacco access, substance use disorder policies, and smoking cessation and prevention, and their impact on state and local programs;

(3) Make policy recommendations to executive branch agencies that work with alcohol and substance use disorder issues, and smoking cessation and prevention, to ensure the greatest efficiency and consistency in practices will be applied to all efforts undertaken by the administration;

(4) Identify existing resources and prevention activities in each community that advocate or implement emerging best practice and evidence-based programs for the full substance use disorder continuum of drug and alcohol abuse education and prevention, including smoking cessation or prevention, early intervention, treatment, and recovery;

(5) Encourage coordination among public and private, state and local agencies, organizations, and service providers, and monitor related programs;

(6) Act as the referral source of information, using existing information clearinghouse resources within the Department, relating to emerging best practice and evidence-based substance use disorder prevention, cessation, treatment and recovery programs, and youth tobacco access, smoking cessation and prevention. The Office of Drug Control Policy will identify gaps in information referral sources;

(7) Apply for grant opportunities for existing programs;

(8) Observe programs in other states;

(9) Make recommendations and provide training, technical assistance, and consultation to local service providers;

(10) Review existing research on programs related to substance use disorder prevention and treatment and smoking cessation and prevention, and provide for an examination of the prescribing and treatment history, including court-ordered treatment, or treatment within the criminal justice system, of persons in the state who suffered fatal or nonfatal opiate overdoses;

(11) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;

(12) Establish a mechanism to coordinate the distribution of funds to support a local program based on the strategic plan that

could encourage substance use prevention, early intervention, treatment, and recovery through efficient, effective and research-based strategies;

(13) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement school-based anti-drug and anti-tobacco programs;

(14) Coordinate media campaigns designed to demonstrate the negative impact of substance use disorder, smoking and the increased risk of tobacco addiction and the development of other diseases;

(15) Review Drug Enforcement Agency and the West Virginia scheduling of controlled substances and recommend changes that should be made based on data analysis;

(16) Develop recommendations to improve communication between health care providers and their patients about the risks and benefits of opioid therapy for acute pain, improve the safety and effectiveness of pain treatment, and reduce the risks associated with long-term opioid therapy, including opioid use disorder and overdose;

(17) Develop and implement a program, in accordance with the provisions of §16-5T-3 of this code, to collect data on fatal and nonfatal drug overdoses caused by abuse and misuse of prescription and illicit drugs, from law enforcement agencies, emergency medical services, health care facilities and the Office of the Chief Medical Examiner;

(18) Develop and implement a program that requires the collection of data on the dispensing and use of an opioid antagonist from law enforcement agencies, emergency medical services, health care facilities, the Office of the Chief Medical Examiner and other entities as required by the office;

(19) Develop a program that provides assessment of persons who have been administered an opioid antagonist;

(20) Report semi-annually to the Joint Committee on Health on the status of the Office of Drug Control Policy.

(d) Notwithstanding any other provision of this code to the contrary, and to facilitate the collection of data and issues, the Office of Drug Control Policy may exchange necessary data and information with the bureaus within, the Department of Health, the Department of Human Services, the Department of Military Affairs and Public Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center, Office of National Drug Control Policy and the Board of Pharmacy. The data and information may include, but is not limited to: data from the Controlled Substance Monitoring Program; the criminal offender record information database; and the court activity record information.

§16-5T-5. Promulgation of rules.

The director may propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this section. The Legislature finds that for the purposes of §29A-3-15 of this code, an emergency exists requiring the promulgation of emergency rules to preserve the public peace, health, safety or welfare and to prevent substantial harm to the public interest.

ARTICLE 5CC. WEST VIRGINIA ADVISORY COUNCIL ON RARE DISEASES.

§16-5CC-1. Establishment and composition of the West Virginia Council on Rare Diseases.

(a) There is established the West Virginia Advisory Council on Rare Diseases to advise state agencies on research, diagnosis, treatment, and education relating to rare diseases.

(b) The council shall consist of 12 voting members, constituted as follows:

(1) The Secretary of the Department of Health or his or her designee; and

(2) Eleven members who shall be appointed by the Governor as follows:

(A) Three physicians licensed and practicing in the state with experience researching, diagnosing, or treating rare diseases;

(B) Three persons over the age of 18 who either have a rare disease or are a family member of a person with a rare disease;

(C) A registered nurse or advanced practice registered nurse licensed and practicing in the state with experience treating rare disease;

(D) A person with an advanced degree in public health or other health-related field; and

(E) Three representatives from a patient-based organization or advocacy group for rare disease, with preference given to organizations based in West Virginia.

Appointments to the advisory council are for terms of three years.

(c) The chairperson and vice-chairperson of the council shall be elected from the council's membership by a simple majority vote of the total membership of the council.

(d) Members serve without compensation. Travel expenses may only be reimbursed if travel is related to activities provided for under a grant or private donation.

§16-5CC-2. Definitions.

As used in this article:

"Department" means the West Virginia Department of Health;

"Rare disease" means any disease which affects fewer than 200,000 people in the United States and is known to be substantially under-diagnosed and unrecognized as a result of lack of adequate diagnostic and research information, including diseases known as "orphan diseases" for research purposes; and

"Secretary" means the Secretary of the West Virginia Department of Health.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-3. Inspection and analysis of foods and drugs; certificate of result as prima facie evidence in prosecution.

Whenever the state health officer, the West Virginia Board of Pharmacy, or any county or municipal health officer has reason to believe that any food or drug manufactured for sale, offered for sale, or sold within this state, is adulterated, the state health officer or Board of Pharmacy, by its authorized agents, or such county or municipal health officer shall have the power, and it shall be his or her duty, to enter, during the usual hours of business, into any creamery, factory, store, salesroom, drugstore, laboratory or other place where he or she has reason to believe such food or drug is manufactured, prepared, sold or offered for sale, within the county or municipality, as the same may be, and to open any case, tub, jar, bottle or package containing, or supposed to contain, any such food or drug, and take a specimen thereof for examination and analysis. If less than a whole package is taken, the specimen shall be sealed and properly prepared for shipment to the person who shall make the analysis hereinafter provided for. No whole or less than a whole package taken and prepared for shipment shall be opened before it has been received by the analyst aforesaid.

It shall be the duty of a qualified chemist to test and analyze any such specimen, to record the result of his or her analysis among the records of the department, and to certify such findings to the state health officer, the West Virginia Board of Pharmacy, or to the county or municipal health officers, as the case may be. If the analysis indicates that the said food or drug is adulterated, a certificate of such result, sworn to by the person making the analysis, who shall also state in his or her certificate the reasonable cost and expense of such analysis, shall be prima facie evidence of such adulteration in any prosecution under this article.

§16-7-8. Resale of certain food, drug, and medical devices prohibited; definitions; source documentation required;

confiscation of food, drugs or medical devices; penalty and exceptions; rules.

(a) The Legislature finds that food manufactured and packaged for sale for consumption by a child under the age of two and nonprescription drugs sold by transient vendors at places such as flea markets and swap meets, where the sources of the food and nonprescription drugs are unknown, may be adulterated and thus constitute a hazard to the public's health and welfare. It further finds that these foods, nonprescription drugs or medical devices are likely to have been stolen. The Legislature determines that it is the policy of this state to prohibit the sale of these foods, nonprescription drugs and medical devices if the transient vendor cannot provide and document the sources of the merchandise.

(b) For the purposes of this section:

(1) The term "babyfood" or "food" means any food manufactured and packaged for sale for consumption by a child under the age of two;

(2) The term "nonprescription drugs" does not include natural or herbal nonprescription drugs;

(3) The term "medical device" means any apparatus or tool which is defined by federal law as a medical device and which has been specified by the Secretary of the Department of Health through legislative rules as a device which may be marketed or sold by transient vendors.

(c) Any transient vendor who sells babyfood, nonprescription drugs or medical devices at any flea market or swap meet in this state shall keep and make available records of the sources of such babyfood, nonprescription drugs or medical devices offered for sale or sold. The records may be receipts or invoices from the persons who sold the babyfood, nonprescription drugs or medical devices to the transient vendor or any other documentation that establishes the sources of the babyfood, nonprescription drugs or medical devices. The transient vendor shall keep those records with the babyfood, nonprescription drugs or medical devices being offered for sale so long as such goods are in his or her possession

and shall maintain those records for a period of two years after the babyfood, nonprescription drugs or medical devices are sold.

(d) Upon the request of a law-enforcement agent or a representative of the state department of health, a transient vendor shall produce records of the sources of babyfood, nonprescription drugs or medical devices offered for sale or sold. If the transient vendor fails to immediately produce the requested records for goods offered for sale, the law-enforcement agent or representative for the state department of health may confiscate the babyfood, nonprescription drugs or medical devices then in possession of the vendor. If the transient vendor fails to produce the requested records for goods previously sold within a reasonable time, the law-enforcement agent or representative for the state department of health may confiscate any babyfood, nonprescription drugs or medical devices then in the possession of the vendor.

(e) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200 for each babyfood item, nonprescription drug or medical device offered for sale or sold.

(f) The provisions of this section do not apply to a merchant who is licensed by the state Department of Tax and Revenue; who sells food or nonprescription drugs or medical devices by sample, catalog or brochure for future delivery; or who sells at a residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.

(g) The secretary of the Department of Health shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the designation and authorized sale of medical devices sold by transient vendors pursuant to this subdivision.

ARTICLE 8. ELECTROLOGISTS.

§16-8-2. Regulations by state board of health; and minimum requirements.

The Commissioner of the Bureau of Public Health shall adopt rules and regulations, as in their judgment are necessary, to provide for the safe practice of electrology or electrolysis in this state, and

when promulgated, these rules and regulations shall be the minimum requirements to be enforced by local health authorities throughout the state. All rules and regulations shall be promulgated in the manner provided by the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

***§16-9A-7. Enforcement of youth smoking laws and youth nicotine restrictions; inspection of retail outlets where tobacco, tobacco products, vapor products or alternative nicotine products are sold; use of minors in inspections; annual reports; penalties; defenses.**

(a) The Commissioner of the West Virginia Alcohol Beverage Control Administration, the Superintendent of the West Virginia State Police, the sheriffs of the counties of this state and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections at locations where tobacco products or tobacco-derived products, are sold or distributed to ensure compliance with the provisions of sections two and three of this article and in such manner as to conform with applicable federal and state laws, rules and regulations. Persons under the age of eighteen years may be enlisted by such commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof to test compliance with these sections: *Provided*, That the minors may be used to test compliance only if the testing is conducted under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and written consent of the parent or guardian of such person is first obtained and such minors shall not be in violation of section three of this article and chapter when acting under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and with the written consent of the parent or guardian. It is unlawful for any person to use persons under the age of eighteen years to test compliance in any manner not set forth herein and the person so using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in section two of this article.

***NOTE:** This section was also amended by H. B. 5084 (Chapter 223), which passed subsequent to this Act.

(b) A person charged with a violation of section two or three of this article as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the cigarette, other tobacco product or tobacco-derived product, or cigarette wrapper, was sold, delivered, bartered, furnished or given:

(1) The buyer or recipient falsely evidenced that he or she was eighteen years of age or older;

(2) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be eighteen years of age or older; and

(3) Such person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was eighteen years of age or older.

(c) Any fine collected after a conviction of violating section two of this article shall be paid to the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of the court upon receiving the fine shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the collection of the fine: *Provided, however*, That any community service penalty imposed after a conviction of violating section three of this article shall be recorded by the clerk of the court in which the conviction was obtained: *Provided further*, That the clerk of the court upon being advised that community service obligations have been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the satisfaction of imposed community service penalty.

(d) The Commissioner of the West Virginia Alcohol Beverage Control Administration or his or her designee shall prepare and submit to the Governor on the last day of September of each year a report of the enforcement and compliance activities undertaken

pursuant to this section and the results of the same, with a copy to the Secretary of the Department of Health. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.

ARTICLE 22A. TESTING OF NEWBORN INFANTS FOR HEARING IMPAIRMENTS.

§16-22A-3. Fees for testing; payment of same.

(a) Testing required under this article shall be a covered benefit reimbursable by all health insurers except for health insurers that offer only supplemental coverage policies or policies which cover only specified diseases. All policies issued pursuant to articles fifteen, sixteen, twenty-four and twenty-five-a of chapter thirty-three of this code shall provide coverage for the testing required under this article.

(b) The Department of Human Services shall pay for testing required under this article when the newborn infant is eligible for medical assistance under the provisions of §9-5-12 of this code.

(c) In the absence of a third-party payor, the parents of a newborn infant shall be informed of the testing availability and its costs and they may refuse to have the testing performed. Charges for the testing required under this article shall be paid by the hospital or other health care facility where the infant's birth occurred: *Provided*, That nothing contained in this section may be construed to preclude the hospital or other health care facility from billing the infant's parents directly.

§16-22A-4. Hearing impairment testing advisory committee established.

(a) There is established a West Virginia hearing difficulties testing advisory committee which shall advise the Commissioner of the Bureau of Public Health regarding the protocol, validity, monitoring and cost of testing procedures required under this article. This committee is to meet four times per year for the initial two years and on the call of the director thereafter. The director

shall serve as the chair and shall appoint 12 members, one representing each of the following groups:

- (1) A representative of the health insurance industry;
- (2) An otolaryngologist or otologist;
- (3) An audiologist with experience in evaluating infants;
- (4) A neonatologist;
- (5) A pediatrician;
- (6) A hospital administrator;
- (7) A speech or language pathologist;
- (8) A teacher or administrative representative from the West Virginia school of the deaf;
- (9) A parent of a deaf or hard of hearing child;
- (10) A representative from the office of early intervention services;
- (11) A representative from the state Department of Education;
and
- (12) A representative from the West Virginia Commission for the Deaf and Hard-of-Hearing.

(b) Members of this advisory committee shall serve without compensation. A majority of members constitutes a quorum for the transaction of all business. Members shall serve for two-year terms and may not serve for more than two consecutive terms.

ARTICLE 22B. BIRTH SCORE PROGRAM.

§16-22B-2. Birth score program established.

(a) The Bureau of Public Health may establish and implement a birth score program designed to combat postneonatal mortality

and to detect debilitating conditions and possible developmental delays in newborn infants in the state.

(b) The purpose and goals of the birth score program are to reduce the incidence of postneonatal mortality and disease by:

(1) Identifying newborns at greatest risk for death between one month and one year of age; and

(2) Linking these infants with physicians for close follow-up during the first year of life.

(c) The birth score of a newborn infant shall be determined pursuant to the program established by the division of health by trained hospital or birthing facility personnel immediately after the infant is delivered.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-2. Effective Date.

All powers, duties and functions of the West Virginia Health Care Authority shall be transferred to the West Virginia Department of Health.

§16-29B-3. Definitions.

(a) Definitions of words and terms defined in article two-d of this chapter are incorporated in this section unless this section has different definitions.

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

(1) "Authority" means the Health Care Authority created pursuant to the provisions of this article;

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

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

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

(5) "Covered facility" means a hospital, behavioral health facility, kidney disease treatment center, including a free-standing hemodialysis unit; ambulatory health care facility; ambulatory surgical facility; home health agency; rehabilitation facility; or community mental health or intellectual disability facility, whether under public or private ownership or as a profit or nonprofit organization and whether or not licensed or required to be licensed, in whole or in part, by the state: *Provided*, That nonprofit, community-based primary care centers providing primary care services without regard to ability to pay which provide the Secretary with a year-end audited financial statement prepared in accordance with generally accepted auditing standards and with governmental auditing standards issued by the Comptroller General of the United States shall be deemed to have complied with the disclosure requirements of this section.

(6) "Executive Director" or "Director" means the administrative head of the Health Care Authority as set forth in section five-a of this article;

(7) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual's medical, remedial, or behavioral health care, treatment or confinement. For purposes of this article, "health care provider" shall not include the private office practice of one or more health care professionals licensed to

practice in this state pursuant to the provisions of chapter thirty of this code;

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

(9) "Person" means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, a state or political subdivision or instrumentality thereof or any legal entity recognized by the state;

(10) "Purchaser" means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a health care provider, but does not include third-party payers;

(11) "Rates" means all value given or money payable to health care providers for health care services, including fees, charges and cost reimbursements;

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

(13) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures.

For the purposes of this subsection family members means brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendants;

(14) "Secretary" means the Secretary of the Department of Health; and

(15) "Third-party payor" means any natural person, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

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

(a) The "West Virginia Health Care Authority" is continued. Any references in this code to the West Virginia Health Care Cost Review Authority means the West Virginia Health Care Authority.

(b) There is created a board of review to serve as the adjudicatory body of the authority and shall conduct all hearings as required in this article, article two-d of this chapter.

(1) The board shall consist of five members, appointed by the Governor, with the advice and consent of the Senate. The board members are not permitted to hold political office in the government of the state either by election or appointment while serving as a member of the board. The board members are not eligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code. The board members shall be citizens and residents of this state.

(2) No more than three of the board members may be members of the same political party. One board member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields, one board member shall have previous experience in the administration of a health care facility, one board member shall have previous experience as a provider of health care services, and one board

member shall be a consumer of health services with a demonstrated interest in health care issues.

(3) Each member appointed by the Governor shall serve staggered terms of six years. Any member whose term has expired shall serve until his or her successor has been appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be filled by the Governor in the same manner as the original appointment.

(4) Each board member shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the Constitution of the State of West Virginia, which oath shall be filed in the office of the Secretary of State.

(5) The Governor shall designate one of the board members to serve as chairman at the Governor's will and pleasure.

(6) The Governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article.

(7) No person while in the employ of, or holding any official relation to, any hospital or health care provider subject to the provisions of this article, or who has any pecuniary interest in any hospital or health care provider, may serve as a member of the board. Nor may any board member be a candidate for or hold public office or be a member of any political committee while acting as a board member; nor may any board member or employee of the board receive anything of value, either directly or indirectly, from any third-party payor or health care provider. If any of the board members become a candidate for any public office or for membership on any political committee, the Governor shall remove the board member from the board and shall appoint a new board member to fill the vacancy created. No board member or former board member may accept employment with any hospital or health care provider subject to the jurisdiction of the board in violation of the West Virginia governmental ethics act, chapter six-

b of this code: *Provided*, That the act may not apply to employment accepted after termination of the board.

(8) The concurrent judgment of three of the board members shall be considered the action of the board. A vacancy in the board does not affect the right or duty of the remaining board members to function as a board.

(9) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. No member may be reimbursed for expenses paid by a third party.

§16-29B-12. Certificate of need hearings; administrative procedures act applicable; hearings examiner; subpoenas.

(a) The board shall conduct such hearings as it deems necessary for the performance of its functions and shall hold hearings when required by the provisions of this chapter or upon a written demand by a person aggrieved by any act or failure to act by the board regulation or order of the board. All hearings of the board pursuant to this section shall be announced in a timely manner and shall be open to the public. In making decisions in the certificate of need process, the board shall be guided by the state health plan approved by the Governor.

(b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and administrative procedures in connection with and following the hearing except as specifically stated to the contrary in this article. General counsel for Department of Health or general counsel for the authority shall represent the interest of the authority at all hearings.

(c) Any hearing may be conducted by members of the board or by a hearing examiner appointed by the board for such

purpose. The chairperson of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served pursuant to the time, fee and enforcement specifications in section one, article five, chapter twenty-nine-a of this code.

(d) Notwithstanding any other provision of state law, when a hospital alleges that a factual determination made by the board is incorrect, the burden of proof shall be on the hospital to demonstrate that such determination is, in light of the total record, not supported by substantial evidence. The burden of proof remains with the hospital in all cases.

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code, and the copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

(f) Any interested individual, group or organization shall be recognized as affected parties upon written request from the individual, group or organization. Affected parties shall have the right to bring relevant evidence before the board and testify thereon. Affected parties shall have equal access to records, testimony and evidence before the board and shall have equal access to the expertise of the authority's staff. The authority, with the approval of the secretary, shall have authority to propose rules to administer provisions of this section.

(g) A decision of the board is final unless reversed, vacated or modified upon judicial review thereof, in accordance with the provisions of section thirteen of this article.

§16-29B-25. Data repository.

(a) The authority shall:

(1) Coordinate and oversee the health data collection of state agencies;

(2) Lead state agencies' efforts to make the best use of emerging technology to affect the expedient and appropriate exchange of health care information and data, including patient records and reports; and

(3) Coordinate database development, analysis, and report to facilitate cost management, review utilization review and quality assurance efforts by state payor and regulatory agencies, insurers, consumers, providers, and other interested parties.

(b) A state agency collecting health data shall work through the authority to develop an integrated system for the efficient collection, responsible use, and dissemination of data and to facilitate and support the development of statewide health information systems that will allow for the electronic transmittal of all health information and claims processing activities of a state agency within the state, and to coordinate the development and use of electronic health information systems within state government.

(c) The authority shall establish minimum requirements and issue reports relating to information systems of state health programs, including simplifying and standardizing forms and establishing information standards and reports for capitated managed care programs.

(d) The authority shall develop a comprehensive system to collect ambulatory health care data.

(e) The authority may access any health-related database maintained or operated by a state agency for the purposes of fulfilling its duties. The use and dissemination of information from that database shall be subject to the confidentiality provisions applicable to that database.

(f) A report, statement, schedule, or other filing may not contain any medical or individual information personally identifiable to a patient or a consumer of health services, whether directly or indirectly.

(g) A report, statement, schedule, or other filing filed with the authority is open to public inspection and examination during

regular hours. A copy shall be made available to the public upon request upon payment of a fee.

(h) The authority may require the production of any records necessary to verify the accuracy of any information set forth in any statement, schedule, or report filed under the provisions of this article.

(i) The authority may provide requested aggregate data to an entity. The authority may charge a fee to an entity to obtain the data collected by the authority. The authority may not charge a fee to a covered entity to obtain the data collected by the authority.

(j) The authority shall provide to the Legislative Oversight Commission on Health and Human Resources Accountability before July 1, 2018, and every other year thereafter, a strategic data collection and analysis plan:

- (1) What entities are submitting data;
- (2) What data is being collected;
- (3) The types of analysis performed on the submitted data;
- (4) A way to reduce duplicative data submissions; and

(5) The current and projected expenses to operate the data collection and analysis program.

(k) The Secretary of the Department of Health may assume the powers and duties provided to the authority in this section, if the secretary determines it is more efficient and cost effective to have direct control over the data repository program. To the extent that the secretary assumes the powers and duties in this section, the secretary shall inform the Legislative Oversight Commission on Health and Human Resources Accountability by July 1 of each year, regarding each program for which he or she is exercising such authority and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code within the time limit to be considered by the Legislature during its next regular session. In the event the secretary has already assumed

the powers and duties provided to the authority in this section, the secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code within the time limit to be considered by the Legislature during the regular session of the Legislature, 2023.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

(a) All departments and divisions of the state, including, but not limited to, the Bureau of Employment Programs; the Bureau of Medical Services; the Public Employees Insurance Agency within the Department of Administration; the Division of Rehabilitation Services; the Workers' Compensation Commission; or the other department or division as shall supervise or provide rehabilitation; and the University of West Virginia board of trustees, as the governing board for the state's medical schools, are authorized and directed to cooperate in order, among other things, to ensure the quality of the health care services delivered to the beneficiaries of the departments and divisions and to ensure the containment of costs in the payment for services.

(b) It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency which administers the state's Medicaid program. Thus, it is the intention of the Legislature that nothing contained in this article shall be interpreted, construed or applied to interfere with the powers and actions of the single state agency which, in keeping with applicable federal law, shall administer the state's Medicaid program as it perceives to be in the best interest of that program and its beneficiaries.

(c) The departments and divisions shall develop a plan or plans to ensure that a reasonable and appropriate level of health care is provided to the beneficiaries of the various programs including the Public Employees Insurance Agency and the workers' compensation fund, the Division of Rehabilitation Services and, to

the extent permissible, the state Medicaid program. The plan or plans may include, among other things, and the departments and divisions are hereby authorized to enter into:

(1) Utilization review and quality assurance programs;

(2) The establishment of a schedule or schedules of the maximum reasonable amounts to be paid to health care providers for the delivery of health care services covered by the plan or plans. The schedule or schedules may be either prospective in nature or cost reimbursement in nature, or a mixture of both: *Provided*, That any payment methods or schedules for institutions which provide inpatient care shall be institution-specific and shall, at a minimum, take into account a disproportionate share of Medicaid, charity care and medical education: *Provided, however*, That in no event may any rate set in this article for an institutional health care provider be greater than the institution's current rate established and approved by the health care cost review authority pursuant to article twenty-nine-b of this chapter;

(3) Provisions for making payments in advance of the receipt of health care services by a beneficiary, or in advance of the receipt of specific charges for the services, or both;

(4) Provisions for the receipt or payment of charges by electronic transfers;

(5) Arrangements, including contracts, with preferred provider organizations; and

(6) Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed-upon rates in exchange for controlled access to the beneficiary populations.

(d) The director of the Public Employees Insurance Agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the Public Employees Insurance Agency program, including, but not limited to, all branches of state government, all state departments or agencies

(including those receiving funds from the federal government or a federal agency), all county and municipal governments or any other similar entity for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each governmental entity.

(e) Nothing in this section shall be construed to give or reserve to the Legislature any further or greater power or jurisdiction over the operations or programs of the various departments and divisions affected by this article than that already possessed by the Legislature in the absence of this article.

(f) For the purchase of health care or health care services by a health care provider participating in a plan under this section on or after September 1, 1989, by the Public Employees Insurance Agency, the Division of Rehabilitation Services and the workers' compensation commission, a state check shall be issued in payment thereof within sixty-five days after a legitimate uncontested invoice is actually received by the division, commission or agency. Any state check issued after sixty-five days shall include interest at the current rate, as determined by the State Tax Commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code. The interest shall be calculated from the sixty-sixth day after the invoice was actually received by the commission or agency until the date on which the state check is mailed to the vendor.

§16-29D-7. Rules.

The secretary of the Department of Human Services shall promulgate rules to carry out the provisions of this article. The Governor shall establish an advisory committee consisting of at least five individuals representing: An administrator of a small rural hospital; an administrator of a hospital having a disproportionate share of Medicaid or charity care; a registered professional nurse; a physician licensed in this state; and beneficiaries of the plan or plans. The majority of this advisory committee shall consist of health care providers. The purpose of the advisory committee is to advise and assist in the establishment of reasonable payment methods, schedule or schedules and rates.

The advisory committee shall serve without compensation; however, the members thereof are entitled to reimbursement of their expenses. The policies and procedures of the rate schedule process setting forth the methodology for determination of rates, payments and schedules are subject to the legislative rule-making procedures of chapter twenty-nine-a of this code: *Provided*, That emergency rules may be utilized: *Provided, however*, That the actual rates, payments and schedules themselves shall not be subject to chapter twenty-nine-a of this code.

§16-29D-8. Civil penalties; removal as provider.

The Secretary of the Department of Human Services may assess a civil penalty for violation of this article. In addition to the assessments the secretary may remove the health care provider from any list of providers for whose services a department or division may pay. Upon the secretary determining there is probable cause to believe that a health care provider is knowingly violating any portion of this article, or any plan, order, directive, rule or regulation issued pursuant to this article, the secretary shall provide such health care provider with written notice which shall state the nature of the alleged violation and the time and place at which such health care provider shall appear to show cause why a civil penalty or removal from any list of providers should not be imposed, at which time and place such health care provider shall be afforded an opportunity to cross-examine the secretary's witnesses and afforded the opportunity to present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the administrative hearings provisions of section four, article five, chapter twenty-nine-a of this code. The hearing may be conducted by the secretary or a hearing officer appointed by the secretary. The secretary or hearing officer shall have the power to subpoena witnesses, papers, records, documents, and other data in connection with the alleged violations and to administer oaths or affirmations in any such hearing. If, after reviewing the record of such hearing, the secretary determines that such health care provider is in violation of this article or any plan, order, directive, rule, or regulation issued pursuant to this article, the secretary may assess a civil penalty of not less than \$1,000 nor

more than \$25,000, and may remove the health care provider. Any health care provider assessed or removed shall be notified of the assessment or removal in writing and the notice shall specify the reasons for the assessment and its amount or the reasons for removal. In any appeal by the health care provider in the circuit court, the scope of the court's review, which shall include a review of the amount of the assessment and any removal as a provider, shall be as provided in section four, article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases. The provider may be removed from any list of providers, based upon the final orders of the secretary, pending final disposition of any appeal. Such removal order or penalty assessment may be stayed by the circuit court after hearing, but may not be stayed in any ex parte proceeding. If the health care provider assessed or removed has not appealed such assessments or removal and fails to pay the amount of the assessment to the secretary within thirty days, the Attorney General may institute a civil action in the circuit court of Kanawha County to recover the amount of the assessment. Civil action under this section shall be handled in an expedited manner by the circuit court and shall be assigned for hearing at the earliest possible date. The remedies set forth in this section are intended only for violations of this article and shall not affect any other contractual relationship between any department or division and a health care provider.

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

§16-29G-1a. Transfer of West Virginia Health Information Network.

(a) As used in this article, the following mean:

(1) "Agreement" means a document that may be entered into between the network board and the corporation;

(2) "Assets" means the tangible and intangible personal property of the network on the transfer date, including all assignable grants, all obligated funds on deposit in the network account, agreements and contracts;

(3) "Corporation" means any nonstock, nonprofit corporation to be established under the chapter thirty-one;

(4) "Network" means the West Virginia Health Information Network; and

(5) "Network account" means the West Virginia Health Information Network Account.

(b) By December 31, 2017, the network board of directors shall transfer the existing network, the associated assets and liabilities to a private nonprofit corporation organized under chapter thirty-one e of this code.

(c) The network board of directors may enter into agreements as they determine are appropriate to implement the transfer. The agreements are exempt from the bidding and public sale requirements, from the approval of contractual agreements by the Department of Administration or the Attorney General and from the requirements of chapter five-a of this code.

(d) The initial corporation board of directors may consist of any current members of the network board of directors. The current appointed network directors shall continue to serve until the transfer is complete. Notwithstanding any other provisions of this code to the contrary, officers and employees of the network may be transferred considered for employment with to the corporation, and any such employment shall be deemed exempt from the requirements and limitations imposed by §6B-2-5 and any legislative rules promulgated thereunder.

(e) The corporation shall have all powers afforded to a nonprofit corporation by law and is limited to those powers enumerated in this article.

(f) The corporation shall not be a department, unit, agency or instrumentality of the state.

(g) The corporation is not subject to the provisions of article nine-a, chapter six of this code, Open Government Proceeding; the provisions of article two, chapter six-c of this code, the West

Virginia Public Employees Grievance Procedure; the provisions of article six, chapter twenty-nine of this code, Civil Service System; or the provisions of chapter twenty-nine-b of this code, Freedom of Information; article twelve, chapter twenty-nine of this code, State Insurance; article ten, chapter five, of this code, West Virginia Public Employees Retirement Act, or the provisions of article sixteen, chapter five, of this code, West Virginia Public Employees Insurance Act.

(h) The Secretary of the Department of Health may designate the corporation as the state's health information exchange, and shall have the authority to make sole source grants or enter into sole source contracts with the corporation pursuant to §5A-3-10c of this code.

(i) The Secretary of the Department of Health shall have access to the data free of charge subject to the provisions of applicable state and federal law.

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

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

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

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

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

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

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

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

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

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

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

(4) The Secretary of the Department of Health or his or her designee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.

§16-30-8. Selection of a surrogate.

(a) When a person is or becomes incapacitated, the attending physician or the advanced nurse practitioner with the assistance of other health care providers as necessary, shall select, in writing, a surrogate. The attending physician or advanced nurse practitioner shall reasonably attempt to determine whether the incapacitated person has appointed a representative under a medical power of attorney, in accordance with the provisions of section four of this article, or if the incapacitated person has a court-appointed guardian in accordance with the provisions of article one, chapter forty-four-a of this code. If no representative or court-appointed guardian is authorized or capable and willing to serve, the attending physician or advanced nurse practitioner is authorized to select a health care surrogate. In selecting a surrogate, the attending physician or advanced nurse practitioner must make a reasonable inquiry as to the existence and availability of a surrogate from the following persons:

- (1) The person's spouse;
- (2) The person's adult children;
- (3) The person's parents;
- (4) The person's adult siblings;

(5) The person's adult grandchildren;

(6) The person's close friends;

(7) Any other person or entity, including, but not limited to, public agencies, public guardians, public officials, public and private corporations and other persons or entities which the Department of Health may from time to time designate in rules promulgated pursuant to chapter twenty-nine-a of this code.

(b) After inquiring about the existence and availability of a medical power of attorney representative or a guardian as required by subsection (a) of this section and determining that such persons either do not exist or are unavailable, incapable or unwilling to serve as a surrogate, the attending physician or an advanced nurse practitioner shall select and rely upon a surrogate in the order of priority set forth in subsection (a) of this section, subject to the following conditions:

(1) Where there are multiple possible surrogate decisionmakers at the same priority level, the attending physician or the advanced nurse practitioner shall, after reasonable inquiry, select as the surrogate the person who reasonably appears to be best qualified. The following criteria shall be considered in the determination of the person or entity best qualified to serve as the surrogate:

(A) Whether the proposed surrogate reasonably appears to be better able to make decisions either in accordance with the known wishes of the person or in accordance with the person's best interests;

(B) The proposed surrogate's regular contact with the person prior to and during the incapacitating illness;

(C) The proposed surrogate's demonstrated care and concern;

(D) The proposed surrogate's availability to visit the incapacitated person during his or her illness; and

(E) The proposed surrogate's availability to engage in face-to-face contact with health care providers for the purpose of fully participating in the decision-making process;

(2) The attending physician or the advanced nurse practitioner may select a proposed surrogate who is ranked lower in priority if, in his or her judgment, that individual is best qualified, as described in this section, to serve as the incapacitated person's surrogate. The attending physician or the advanced nurse practitioner shall document in the incapacitated person's medical records his or her reasons for selecting a surrogate in exception to the priority order provided in subsection (a) of this section.

(c) The surrogate is authorized to make health care decisions on behalf of the incapacitated person without a court order or judicial involvement.

(d) A health care provider or health care facility may rely upon the decisions of the selected surrogate if the provider believes, after reasonable inquiry, that:

(1) A guardian or representative under a valid, applicable medical power of attorney is unavailable, incapable or unwilling to serve;

(2) There is no other applicable advance directive;

(3) There is no reason to believe that such health care decisions are contrary to the incapacitated person's religious beliefs; and

(4) The attending physician or advanced nurse practitioner has not received actual notice of opposition to any health care decisions made pursuant to the provisions of this section.

(e) If a person who is ranked as a possible surrogate pursuant to subsection (a) of this section wishes to challenge the selection of a surrogate or the health care decision of the selected surrogate, he or she may seek injunctive relief or may file a petition for review of the selection of, or decision of, the selected surrogate with the circuit court of the county in which the incapacitated person resides or the Supreme Court of Appeals. There shall be a rebuttable

presumption that the selection of the surrogate was valid and the person who is challenging the selection shall have the burden of proving the invalidity of that selection. The challenging party shall be responsible for all court costs and other costs related to the proceeding, except attorneys' fees, unless the court finds that the attending physician or advanced nurse practitioner acted in bad faith, in which case the person so acting shall be responsible for all costs. Each party shall be responsible for his or her own attorneys' fees.

(f) If the attending physician or advanced nurse practitioner is advised that a person who is ranked as a possible surrogate pursuant to the provisions of subsection (a) of this section has an objection to a health care decision to withhold or withdraw a life-prolonging intervention which has been made by the selected surrogate, the attending physician or advanced nurse practitioner shall document the objection in the medical records of the patient. Once notice of an objection or challenge is documented, the attending physician or advanced nurse practitioner shall notify the challenging party that the decision shall be implemented in seventy-two hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in subsection (e) of this section. In the event that the incapacitated person has been determined to have undergone brain death and the selected surrogate has authorized organ or tissue donation, the decision shall be implemented in twenty-four hours unless the attending physician receives a court order prohibiting or enjoining the implementation of the decision as provided in said subsection.

(g) If the surrogate becomes unavailable for any reason, the surrogate may be replaced by applying the provisions of this section.

(h) If a person who ranks higher in priority relative to a selected surrogate becomes available and willing to be the surrogate, the person with higher priority may be substituted for the identified surrogate unless the attending physician determines that the lower-ranked person is best qualified to serve as the surrogate.

(i) The following persons may not serve as a surrogate: (1) A treating health care provider of the person who is incapacitated; (2) an employee of a treating health care provider not related to the person who is incapacitated; (3) an owner, operator or administrator of a health care facility serving the person who is incapacitated; or (4) any person who is an employee of an owner, operator or administrator of a health care facility serving the person who is incapacitated and who is not related to that person.

§16-30-25. Portable orders for scope of treatment form.

(a) The Secretary of the Department of Health shall implement the statewide distribution of standardized portable orders for scope of treatment (POST) forms.

(b) Portable orders for scope of treatment forms shall be standardized forms used to reflect orders by a qualified physician, an advanced practice registered nurse, or a physician assistant for medical treatment of a person in accordance with that person's wishes or, if that person's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with that person's best interest. The form shall be bright pink in color to facilitate recognition by emergency medical services personnel and other health care providers and shall be designed to provide for information regarding the care of the patient, including, but not limited to, the following:

(1) The orders of a qualified physician, an advanced practice registered nurse, or a physician assistant regarding cardiopulmonary resuscitation, level of medical intervention in the event of a medical emergency, use of antibiotics, and use of medically administered fluids and nutrition and the basis for the orders;

(2) The signature of the qualified physician, an advanced practice registered nurse, or a physician assistant;

(3) Whether the person has completed an advance directive or had a guardian, medical power of attorney representative, or surrogate appointed;

(4) The signature of the person or his or her guardian, medical power of attorney representative, or surrogate acknowledging agreement with the orders of the qualified physician, an advanced practice registered nurse, or a physician assistant; and

(5) The date, location, and outcome of any review of the portable orders for scope of treatment form.

(c) The portable orders for scope of treatment form shall be kept as the first page in a person's medical record in a health care facility unless otherwise specified in the health care facility's policies and procedures and shall be transferred with the person from one health care facility to another.

ARTICLE 30C. DO NOT RESUSCITATE ACT.

§16-30C-13. Do-not-resuscitate order form; do-not-resuscitate identification; public education.

(a) The Secretary of the Department of Health shall implement the statewide distribution of do-not-resuscitate forms as described in section six of this article.

(b) Do-not-resuscitate identification as set forth in this article may consist of either a medical condition bracelet or necklace with the inscription of the patient's name, date of birth in numerical form and "WV do-not-resuscitate" on it. Such identification shall be issued only upon presentation of a properly executed do-not-resuscitate order form as set forth in section six of this article, a physician orders for scope of treatment form in which a qualified physician has documented a do-not-resuscitate order, or a do-not-resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

(c) The secretary shall be responsible for establishing a system for the distribution of the do-not-resuscitate identification bracelets and necklaces.

(d) The secretary shall develop and implement a statewide educational effort to inform the public of their right to accept or refuse cardiopulmonary resuscitation and to request their physician to write a do-not-resuscitate order for them.

ARTICLE 32. ASBESTOS ABATEMENT.**§16-32-2. Definitions.**

(a) "Asbestos" means the asbestiform varieties of chrysolite (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

(b) "Asbestos analytical laboratory" means a facility or place which analyzes asbestos bulk samples or asbestos air samples.

(c) "Asbestos abatement project designer" means a person who specifies engineering controls, methods and work practices to be used during asbestos abatement projects.

(d) "Asbestos abatement supervisor" means a person responsible for direction of asbestos abatement projects.

(e) "Asbestos clearance air monitor" means a person who performs air monitoring to confirm clearance levels to establish that an area is safe for reoccupancy after an asbestos abatement project.

(f) "Asbestos-containing material" means any material or product which contains more than one percent asbestos by weight.

(g) "Asbestos contractor" means a person who enters into contract for an asbestos abatement project.

(h) "Asbestos inspector" means a person employed to inspect for the presence of asbestos-containing materials, evaluate the condition of such materials and collect samples for asbestos content confirmation.

(i) "Asbestos management planner" means a person employed to interpret survey results, make hazard assessment, evaluation and selection of control options or develop an operation and maintenance plan.

(j) "Asbestos abatement project" means an activity involving the repair, removal, enclosure or encapsulation of asbestos-containing material. "Asbestos abatement project" does not include

removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds as described in subsection (d), section eleven of this article.

(k) "Asbestos worker" means a person who works on an asbestos abatement project.

(l) "Bureau" means the Bureau for Public Health.

(m) "Commissioner" means Commissioner of the Bureau for Public Health or his or her designee.

(n) "Competent person" means one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure and who has the authority to take prompt corrective measures to eliminate them.

(o) "Contained work area" means designated rooms, spaces or other areas where asbestos abatement activities are being performed, including decontamination structures. The contained work area shall be separated from the uncontaminated environment by polyethylene sheeting or other materials used in conjunction with the existing floors, ceilings and walls of the structure.

(p) "Encapsulate" means the application of any material onto any asbestos-containing material to bridge or penetrate the material to prevent fiber release.

(q) "Enclosure" means the permanent confinement of friable asbestos-containing materials with an airtight barrier in an area not used or designed as an air plenum.

(r) "Friable" means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure of which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

(s) "Good faith report" means a report of conduct defined in this article as wrongdoing or waste which is made without malice

or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

(t) "Intact" means that the asbestos-containing material has not crumbled, been pulverized or otherwise deteriorated so that the asbestos is no longer likely to be bound with its matrix.

(u) "License" means a document authorizing a person to perform certain specific asbestos-related work activities.

(v) "Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any individual or entity.

(w) "Resilient floor covering" means floor tile, sheet vinyl and associated adhesives which contain more than one percent asbestos by weight.

(x) "Resilient floor covering worker" means a person who is employed to remove resilient floor covering in single-family dwellings.

(y) "Waste" means an employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from federal, state or political subdivision sources.

(z) "Wrongdoing" means a violation which is not of a merely technical or minimal nature of a federal or state statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

ARTICLE 33. BREAST AND CERVICAL CANCER PREVENTION AND CONTROL ACT.

§16-33-2. Definitions.

As used in this article:

(a) "Advisory committee" means the medical advisory committee to the breast and cervical cancer detection and education

program coalition established pursuant to the provisions of section five of this article.

(b) "Approved organization" means an organization approved by the director to provide medical services under section four of this article.

(c) "Bureau" means the state bureau of public health established pursuant to the provisions of article one of this chapter.

(d) "Department" means the Department of Health.

(e) "Director" means the director of the division of health.

(f) "Unserved or underserved populations" means persons having inadequate access and financial resources to obtain breast and cervical cancer screening and detection services, including persons who lack health insurance or whose health insurance coverage.

(g) "Fund" means the breast and cervical cancer diagnostic and treatment fund.

(h) "Qualified applicant" means a person who meets the financial and medical eligibility guidelines of this article.

(i) "Provider" means a physician, hospital or medical provider currently licensed, operating or practicing in this state.

ARTICLE 34. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS AND LABORATORIES.

§16-34-2. Definitions.

(a) "Building" means a publicly or privately owned structure consisting of any combination of foundations, walls, columns, girders, beams, floors and roofs, with or without other elements of appurtenances.

(b) "Business entity" means a corporation, partnership, association, firm, sole proprietorship or other entity engaged in business.

(c) "Director" means the Commissioner of the Bureau for Health.

(d) "Mitigate" means to repair or alter an existing building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(e) "Radon" means the radioactive noble gas radon-222 and the short-lived radionuclides which are products of radon-222 decay, including polonium-218, lead-214, bismuth-214 and polonium-214.

(f) "Radon laboratory" means a business entity that offers its laboratory services for the purpose of studying air, soil samples or passive radon detection devices to determine the concentration of radon.

(g) "Radon mitigation contractor" means a business entity having at least one person licensed as a radon mitigation specialist.

(h) "Radon mitigation specialist" means a person holding a license to install or apply methods or materials to reduce airborne radon concentrations in a building or to prevent the entry of radon into the indoor atmosphere.

(i) "Radon testers" means a business entity or person licensed to examine a building, air, soil or water for the presence of radon, including taking air, soil or water samples, or the act of diagnosing the cause of radon contamination in a building.

(j) "Secretary" means the secretary of the Department of Health.

(k) "Test" means the act of examining a building, soil or air for the presence of radon, including taking air or soil samples, or the act of diagnosing the cause of radon contamination in a building.

§16-34-3. License required and exemptions.

(a) Except as otherwise provided in subsection (b) of this section:

(1) No individual may perform radon testing or hold himself or herself out as performing radon testing without a valid radon tester or mitigation specialist license;

(2) No individual may provide professional or expert advice on radon testing, radon exposure or the health risks related to radon exposure or hold himself or herself out as providing such advice without a valid radon tester or mitigation specialist license;

(3) No individual may provide on-site supervision of radon mitigation or hold himself or herself out as providing such supervision without a valid radon mitigation specialist license;

(4) No individual may provide professional or expert advice on radon mitigation or radon entry routes or hold himself or herself out as providing such advice without a valid radon mitigation specialist license;

(5) No business or government entity may perform or authorize any individual employed by it to perform radon mitigation or hold itself out as performing radon mitigation without a valid radon mitigation contractor license; and

(6) No laboratory shall perform analyses of radon air and soil samples or radon detection devices for the purpose of assessing radon content without a valid radon laboratory license.

(b) Subsection (a) of this section does not apply to any of the following:

(1) An individual, business entity or government entity performing its own radon tests or mitigation on a building or real property that the individual, business entity or government entity owns or leases;

(2) An individual, business entity or government entity conducting research regarding radon testing or mitigation in accordance with section four of this article; or

(3) Employees of the radiological health program.

§16-34-5. Powers and duties of the director.

(a) The director shall license radon testers, mitigation specialists, mitigation contractors and radon laboratories located within the state. Each applicant for a license shall submit a completed application to the director on a form prescribed and furnished by the director.

(b) The director shall issue the appropriate license to each applicant who pays the license fee, meets the licensing criteria and complies with any other licensing and training requirements established by the director. An individual business entity or government entity may hold more than one license issued under this section, but a separate application is required for each license.

(c) Notwithstanding subdivision (1), subsection (a), section three of this article, the director shall issue a radon mitigation contractor license on request to the holder of a radon mitigation specialist license if the license holder is the owner or chief stockholder of a business entity for which he or she is the only individual who will work as a radon mitigation specialist. The licensing criteria and any other licensing and training requirements that the individual was required to meet to qualify for the radon mitigation specialist license are hereby considered to satisfy any and all criteria and requirements for a radon mitigation contractor license. A license issued under this section expires at the same time as the individual's radon mitigation specialist license.

(d) A license issued under this section expires annually and may be renewed by the director in accordance with criteria and procedures established by the director under section six of this article and upon payment of the prescribed license renewal fee.

(e) The director may:

(1) Refuse to issue a license to an individual, business entity or government entity that does not meet the requirements of this article or the rules adopted under this article or that has violated the provisions of this article or of any rules promulgated under this article; or

(2) Suspend, revoke or refuse to renew the license of an individual, business entity or government entity that is or has been in violation of the requirements of this article or the rules adopted under this article.

(f) The director shall approve and assess fees for all of the following:

(1) Licenses for radon testers, mitigation specialists, mitigation contractors and radon laboratories;

(2) Accredited training courses for radon testers and mitigation specialists; and

(3) Training courses for employees of mitigation contractors.

(g) Each applicant for approval shall submit a completed application to the director on a form the director shall prescribe and furnish.

(h) In accordance with rules adopted under section six of this article, the director shall issue the appropriate approval to each applicant that pays the approval fee and meets the criteria for approval.

(i) The director may refuse to issue an approval and may revoke or suspend an approval issued under this section if the operator of the course or laboratory fails to meet the established criteria.

(j) The director shall do all of the following:

(1) Administer the radon licensing program established by this article and enforce the requirements of this article and the rules adopted under this article;

(2) Examine the records of radon testers, mitigation specialists, mitigation contractors and radon laboratories and training courses approved under section seven of this article as he or she considers necessary to determine whether they are in compliance with the requirements of this article and the rules adopted under this article;

(3) Coordinate the radon licensing program with any radon programs in schools;

(4) Collect and disseminate information relating to radon in this state; and

(5) Conduct research on indoor radon contamination, which may include a statewide survey on radon contamination.

(k) The director may do any of the following:

(1) Conduct inspections as he or she considers necessary to determine whether the requirements of this article and the rules adopted under this article have been met;

(2) Conduct training programs and establish and collect fees to cover the cost of conducting them;

(3) Advise, consult, cooperate with and, with the consent of the secretary, enter into contracts or grant agreements with any individual business entity, government entity, interstate agency or the federal government as he or she considers appropriate to fulfill the requirements of this article and the rules adopted under this article; and

(4) Collect the information required to be reported to him or her under any rules adopted under section six of this article.

(l) Nothing in this article shall be construed to allow the director to:

(1) Require the performance of a test for radon;

(2) Regulate construction practices; or

(3) Regulate the retail sales of radon test kits for use by individuals to do their own radon testing in buildings owned by them.

§16-34-6. Rules.

(a) To protect the health of individuals inhabiting, occupying or frequenting buildings, the Department of Health shall adopt rules to implement the requirements of this article. All rules adopted under this section shall be adopted in accordance with article three, chapter twenty-nine-a of this code.

(b) The secretary shall adopt rules:

(1) Establishing criteria and procedures to be followed in issuing and renewing licenses to radon testers, mitigation specialists or mitigation contractors, as well as the fees for the licenses. The rules may require that all applicants for licensure as a radon tester or mitigation specialist pass an examination. If an examination is required, the rules may require applicants to pass an examination conducted by the division of health or by a training center accredited by the director;

(2) Establishing criteria and procedures to be followed in approving and accrediting training courses under section five of this article. The rules shall require the participants in training courses to pass an examination conducted by the operator of the course;

(3) Establishing criteria and procedures in approving and licensing radon laboratories;

(4) Establishing standards to be followed by licensed radon testers, mitigation specialists, mitigation contractors and radon laboratories for the prevention of hazards to the public health, including standards for worker protection, record keeping and the training of employees or radon testers and mitigation contractors;

(5) Establishing procedures to be followed by an individual business entity or government entity licensed by another state to practice as a radon tester, mitigation specialist, mitigation contractor or radon laboratory in providing notice to the director prior to commencing practice in this state pursuant to section three of this article; and

(6) That require licensed radon testers and mitigation specialists to report to the director, by street address, radon test

results. The rules shall require the reporting of the identity of the radon laboratory involved, screening measurements, follow-up measurements, postmitigation measurements and, if it is known that mitigation was performed, the methods of mitigation that were used. Any information required to be reported to the director under the rules is not a public record and shall not be released except in aggregate statistical form.

§16-34-9. Record keeping and confidentiality.

(a) The director, any employee of the Department of Health, or any individual, business entity or government entity with which the director enters into an agreement under §16-34-5(k)(3), shall not release information collected pursuant to this article concerning a specific building used as a private residence or the real property upon which it is located to anyone other than the owner or occupant of the building or real property without his or her consent: *Provided*, That the director may release information if he or she determines that the release is necessary for use in conducting legitimate scientific studies or the information is released in summary statistical or other form that does not reasonably tend to disclose the address of the building or real property or the identity of the owner or occupant.

(b) The bureau shall maintain information pursuant to this article and the rules adopted under this article for at least three years. The bureau may destroy any information that it has maintained for three years.

§16-34-13. Reprimands; suspension or revocation of license; orders; hearings.

(a) The director shall suspend or revoke the license of or reprimand a radon tester, mitigator, contractor or laboratory if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license;

(2) Fails at any time to meet the qualifications for a license or to comply with the requirements of this article or any applicable rules adopted by the secretary;

(3) Fails to meet applicable federal or state standards for radon testing or radon mitigation; or

(4) Employs or permits an individual without a radon tester's license or a radon mitigator's license to supervise work on a radon project.

(b) The director shall investigate all alleged violations reported to the bureau. Upon the finding of a violation in connection with any project involving radon testing or mitigation, the director shall issue a cease and desist order directing that all work be halted immediately. Where practicable, the director shall deliver a copy of the order by certified mail, return receipt requested, to the radon tester and radon mitigator.

(c) Hearings regarding violations of this article shall be conducted in accordance with the administrative procedures act of chapter twenty-nine-a of this code.

ARTICLE 37. BODY PIERCING STUDIO BUSINESS.

§16-37-2. Definitions.

(a) "Adequate ventilation" means a free and unrestricted circulation of fresh air throughout the body piercing studio and the expulsion of foul or stagnant air.

(b) "Antimicrobial solution" means any solution used to retard the growth of microorganisms.

(c) "Body piercing" means to puncture the skin for the purpose of creating a hole to be decorated or adorned, but does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

(d) "Body piercing studio" means any room or space where body piercing is practiced or where the business of body piercing or any part thereof is conducted.

(e) "Operator" means any person who is registered with the state to operate, control or manage a body piercing studio, and whose studio has been issued an operating permit by the local board of health.

(f) "Single use" means products, instruments or items that are used one time on one client and then properly disposed of in accordance with rules of the Department of Health regarding the disposal of medical wastes.

(g) "Standard precautions" means that all blood and body fluids are treated so as to contain all blood-borne pathogens and all proper precautions are taken to prevent the spread of any blood-borne pathogens.

(h) "Technician" means an individual who engages in the practice of body piercing.

§16-37-4. Rules to be proposed by the Department of Health.

(a) The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which rules shall provide at a minimum:

(1) General physical requirements for facilities and equipment, including requirements for adequate ventilation and lighting;

(2) Record keeping requirements and forms;

(3) Written notification of the risks of body piercing procedures and minimum age requirements;

(4) Body piercing procedures, including, but not limited to, safety and sterilization procedures; the use of antimicrobial solutions, needles, single use instruments and other instruments; the exercise of standard precautions; and instructions on the care of the skin after body piercing procedures;

(5) Permitting requirements for operators and technicians, including fees for permits and renewals of permits sufficient to cover the costs of inspecting facilities and administering this article; and

(6) For the disposal of waste in compliance with the rules of the Department of Health regarding the disposal of medical wastes.

(b) The rules required by this section may also include provisions on training or educational requirements or materials; health screenings for technicians; and any other provisions considered necessary to protect the public or assure adequate health and safety.

(c) The rules may also include limitations or prohibitions on the performance of certain procedures, including, but not limited to, procedures referred to as cutting, branding and scarification, which are identified as posing a risk to the public health and safety.

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-3. Operation standards.

(a) *Records.* —

(1) Proper records of tattoos administered shall be maintained for each patron by the holder of the studio registration;

(2) A record shall be prepared for each patron prior to any procedure being performed and shall include the patron's name and signature, address, age, date tattooed, design of the tattoo, location of the tattoo on the patron's body and the name of the tattoo artist who performed the work;

(3) Record entries shall be in ink or indelible pencil and shall be available for examination by the inspecting authorities provided in §16-38-6 of this code;

(4) Before tattoo administration, the owner or tattoo artist shall discuss with the patron the risks involved in the tattoo requested, including the potential that a tattoo may interfere with the clinical

reading of a magnetic resonance imaging study, should the patron intending to be tattooed ever encounter a medical need for such a study. The owner shall provide the patron with written information regarding the possible complications that may arise from receiving a tattoo. The written information shall be prepared by the Department of Health. Receipt of the information shall be acknowledged in writing by the patron. The owner or tattoo artist shall also keep and maintain the acknowledgment as part of the patron's record pursuant to the provisions of subdivision (5) of this subsection.

(5) All records required by this section shall be kept on file for five years by the holder of the studio registration for the studio in which the tattoo was performed.

(b) *Consent.* —

(1) Prior written consent for tattooing of minors shall be obtained from one parent or guardian;

(2) All written consents shall be kept on file for five years by the holder of the studio registration for the tattoo studio in which the tattoo was performed;

(3) The person receiving the tattoo shall attest to the fact that he or she is not intoxicated or under the influence of drugs or alcohol.

(c) *Tattooing procedures.* —

(1) Printed instructions on the care of the skin after tattooing shall be given to each patron as a precaution to prevent infection;

(2) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed;

(3) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.;

(4) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough, jaundice, draining or open skin

infections such as boils which could be indicative of more serious conditions such as, but not limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall refrain from tattooing activities until such time as they are no longer experiencing or exhibiting the aforementioned symptoms;

(5) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with hot running water, antibacterial soap and an individual hand brush that is clean and in good repair;

(6) The tattoo artist's hands shall be air blown dried or dried by a single-use towel. In addition, disposable latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured or whenever their ability to function as a barrier is compromised;

(7) Only sterilized or single-use, disposable razors shall be used to shave the area to be tattooed;

(8) Immediately prior to beginning the tattoo procedure, the affected skin area shall be treated with an antibacterial solution;

(9) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the acetate stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least 20 minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use;

(10) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the paper stencil shall be single-use and disposable;

(11) If the design is drawn directly onto the skin, the design shall be applied with a single-use article only.

(d) *Dyes or pigments.* —

(1) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized or disposable single-use containers for each patron;

(2) After tattooing, the unused dye or pigment in the single-use containers shall be discarded along with the container;

(3) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(e) *Sterilization of needles.* —

(1) A set of individual, sterilized needles shall be used for each patron;

(2) No less than 24 sets of sterilized needles and tubes shall be on hand for the entire day or night operation. Unused sterilized instruments shall be re-sterilized at intervals of no more than six months from the date of the last sterilization;

(3) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(4) If used instruments are ultrasonically cleaned prior to being placed in the used instrument container, they shall be ultrasonically cleaned and then rinsed under running hot water prior to being placed in the used instrument container;

(5) The ultrasonic unit shall be sanitized daily with a germicidal solution;

(6) If used instruments are not ultrasonically cleaned prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(7) All nondisposable instruments, including the needle tubes, shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave

sterilization and shall include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents;

(8) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization, shall be utilized during the autoclave sterilization process;

(9) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them;

(10) No rusty, defective or faulty instruments shall be kept in the studio.

(f) *Aftercare of tattoo.* —

The completed tattoo shall be washed with a single-use towel saturated with an antibacterial solution.

(g) It is unlawful for any person to perform or offer to perform scleral tattooing upon a person.

ARTICLE 42. CORE BEHAVIORAL HEALTH CRISIS SERVICES SYSTEM.

§16-42-1. Definitions.

In this article the following words have the meanings indicated:

"988 Crisis Hotline Center" or "hotline center" means a state-identified center participating in the National Suicide Prevention Lifeline Network to respond to statewide or regional 988 calls.

"Commercial mobile radio service provider" or "CMRS provider" means cellular licensees, broadband personal communications services (PCS) licensees, and specialized mobile radio (SMR) providers, as those terms are defined by the Federal Communications Commission, which offer on a post-paid or prepaid basis or via a combination of those two methods, real-time, two-way switched voice service that is interconnected with the public switched network and includes resellers of any commercial mobile radio service.

"Crisis receiving and stabilization services" means facilities providing short-term (under 24 hours) with capacity for diagnosis, initial management, observation, crisis stabilization, and follow-up referral services to all persons in a home-like environment.

"Department" means the West Virginia Department of Human Services.

"Federal Communications Commission" or "FCC" means the federal governmental agency that regulates interstate and international communications by radio, television, wire, satellite, and cable in all 50 states, the District of Columbia, and U.S. territories. An independent U.S. government agency overseen by Congress, the Commission is the United States' primary authority for communications law, regulation, and technological innovation.

"National Suicide Prevention Lifeline" or "NSPL" means the national network of local crisis centers that provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, seven days a week. Membership as an NSPL center requires nationally recognized certification which includes evidence-based training for all staff and volunteers in the management of calls.

"Peers" means individuals employed on the basis of their personal lived experience of mental illness and/or addiction and recovery who meet the state's peer certification requirements where applicable.

"Secretary" means the Secretary of the West Virginia Department of Health.

"Substance Abuse and Mental Health Services Administration" means the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation.

"988 Suicide Prevention and Mental Health Crisis Hotline" means the National Suicide Prevention Lifeline (NSPL) or its successor maintained by the Assistant Secretary for Mental Health

and Substance Use under section 520E-3 of the Public Health Service Act.

"Veterans Crisis Line" or "VCL" means Veterans Crisis Line maintained by the Secretary of Veterans Affairs under section 1720F(h) of Title 38, United States Code.

ARTICLE 44. THE PULSE OXIMETRY NEWBORN TESTING ACT.

§16-44-2. Pulse oximetry screening required; definition; rules.

(a) The Commissioner of the Bureau for Public Health shall require each birthing facility licensed by the Department of Health to perform a pulse oximetry screening on every newborn in its care, when the baby is twenty-four to forty-eight hours of age, or as late as possible if the baby is to be discharged from the hospital before he or she is twenty-four hours of age.

(b) As used in this article, "birthing facility" means an inpatient or ambulatory health care facility licensed by the Department of Health that provides birthing and newborn care services.

(c) The commissioner shall adopt procedural rules and propose legislative rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, that are necessary to carry out the purposes of this article.

ARTICLE 48. WEST VIRGINIA ABLE ACT.

§16-48-5. Use of financial organizations as program depositories and managers.

(a) The Treasurer may implement the program through use of financial organizations as account depositories and managers. The Treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The Treasurer may select more than one financial organization and investment instrument for the program. The Treasurer shall select financial

organizations to act as program depositories and managers from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this state of the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The Treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any actions not contrary to its contract to manage the program to qualify as a "qualified ABLE program" as defined in Section 529a of the federal Internal Revenue Code of 1986, as amended;

(2) Keep adequate records of each account, keep each account segregated from each other account and provide the Treasurer with the information necessary to prepare the statements required by section six of this article, and amendments thereto;

(3) Compile and total information contained in statements required to be prepared under section six of this article, and amendments thereto, and provide such compilations to the Treasurer;

(4) If there is more than one program manager, provide the Treasurer with such information as is necessary to determine compliance with section six of this article;

(5) Provide the Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article and Section 529a of the federal Internal Revenue Code of 1986, as amended;

(6) Hold all accounts for the benefit of the account owner or owners;

(7) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the Treasurer;

(8) Provide the Treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(9) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The Treasurer may:

(1) Enter into such contracts as it deems necessary and proper for the implementation of the program;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the Treasurer has any reason to be concerned about the financial position, the record keeping practices or the status of accounts of such program depository and manager; and

(3) Terminate or not renew a management agreement. If the Treasurer terminates or does not renew a management agreement, the Treasurer shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(d) The Treasurer and the Department of Human Services are authorized to exchange data regarding eligible individuals to carry out the purposes of this act.

§16-48-6. Establishment of ABLE savings account by designated beneficiary or person or entity with signature authority.

(a) Any ABLE savings accounts established pursuant to the provisions of this article shall be opened and managed by a designated beneficiary or a person or entity with signature authority, according to the ABLE Act.

(b) Each designated beneficiary may have only one account.

(c) In the absence of a conservator, a guardian may manage an ABLE account regardless of the amount of a designated beneficiary's personal assets. The Department of Human Services may not manage an ABLE account.

(d) The Treasurer may require a designated beneficiary or a person with signature authority to submit an application to the Treasurer to establish an account. The Treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the Treasurer and contain:

(1) The name, address, and social security number of the designated beneficiary;

(2) The name, address, and social security number or federal employer identification number of the person or entity opening or managing the ABLE account on behalf of the designated beneficiary;

(3) A certification relating to no excess contributions; and

(4) Any additional information as the Treasurer may require.

(e) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by the ABLE Act.

(f) Contributions to ABLE savings accounts may only be made in cash. The Treasurer or program manager shall reject or promptly withdraw:

(1) Contributions in excess of the limits established pursuant to subsection (e), or

(2) The total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the Treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to §18-30-1 *et seq.* of this code; or

(B) The designated beneficiary is not an eligible individual in the current calendar year.

(g) (1) An account owner may:

(A) Change the designated beneficiary of an account to an eligible individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Treasurer; and

(B) Transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in the ABLE Act.

(2) No account owner may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(h) (1) Distributions may be made from the account for payment of any qualified disability expense for the designated beneficiary of the account made in accordance with the provisions of this article.

(2) Any distribution from an account to any individual or for the benefit of any individual during a calendar year shall be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary, or the distributee to the extent required by state or federal law.

(3) Statements shall be provided to each account owner at least four times each year within 30 days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period, and any other information that the Treasurer requires to be reported to the account owner.

(4) Statements and information relating to accounts shall be prepared and filed to the extent required by this article and any other state or federal law.

(i) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account or a qualified withdrawal:

(A) Are exempt from attachment, execution, or garnishment;

(B) Are disregarded for the purposes of determining eligibility for or the amount of a public assistance program, unless required by federal law;

(C) Are not subject to claims by the West Virginia Department of Human Services unless required by federal law; and

(D) On the death of the designated beneficiary, shall be transferred to the estate of the designated beneficiary, unless prohibited by federal law.

ARTICLE 50. EPINEPHRINE AUTO-INJECTOR AVAILABILITY AND USE.

§16-50-1. Definitions.

As used in this article the term:

(1) "Administer" means to directly apply an epinephrine auto-injector to the body of an individual.

(2) "Authorized entity" means an entity or organization where allergens capable of causing a severe allergic reaction may be present.

(3) "Authorized health care practitioner" means an allopathic physician licensed to practice pursuant to the provisions of article three, chapter thirty of this code and an osteopathic physician licensed to practice pursuant to the provisions of article fourteen, chapter thirty of this code.

(4) "Department" means the Department of Health.

(5) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(6) "Self-administration" means an individual's discretionary administration of an epinephrine auto-injector on herself or himself.

**ARTICLE 53. ESTABLISHING ADDITIONAL
SUBSTANCE ABUSE TREATMENT FACILITIES.**

§16-53-1. Establishment of substance use disorder treatment and recovery services.

(a) The Secretary of the Department of Human Services shall ensure that substance use disorder treatment or recovery services, or both, are made available in locations throughout the state which the department determines to be the highest priority for serving the needs of the state.

(b) The secretary shall identify and allocate funds to appropriate facilities to provide substance use disorder treatment services, which shall be provided via an inpatient or outpatient service model. These facilities shall:

- (1) Give preference to West Virginia residents;
- (2) Accept payment from private pay patients, third person payors, or patients covered by Medicaid;
- (3) Offer treatment, based upon need;
- (4) Work closely with the Adult Drug Court Program, provided for in §62-15-1 *et seq.* of this code; and
- (5) Be licensed by this state to provide substance use disorder treatment services.

(c) The secretary shall identify and allocate funds to appropriate facilities to provide recovery services. Peer-led facilities shall follow standards set forth by the National Alliance for Recovery Residences and offer access to peer support services.

(d) Other programs or projects designed to address substance use disorder, and a study or studies designed to evaluate substance

use prevention education programs in schools, may be eligible for funding at the secretary's discretion and as funds are available.

§16-53-2. Establishing the Ryan Brown Addiction Prevention and Recovery Fund.

The Ryan Brown Addiction Prevention and Recovery Fund is created in the state treasury as a special revenue account. The fund shall be administered by the Secretary of the Department of Human Services and shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, all grants, bequests or transfers from any source, any moneys that may be appropriated and designated for those purposes by the Legislature and all interest or other return earned from investment of the fund, gifts, and all other sums available for deposit to the special revenue account from any source, public or private. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Upon the effective date of this section, the attorney general and any public official with custody or control of the proceeds recovered for the state pursuant to settlement agreement dated January 9, 2017, in that certain civil action then pending in Boone County, designated Civil Action No. 12-C-141, shall forthwith transfer, or cause the transfer, of those proceeds into the Ryan Brown Addiction Prevention and Recovery Fund in the manner directed by the state treasurer pursuant to articles one and two, chapter twelve of this code and all other applicable law.

§16-53-3. Rulemaking.

The Secretary of the West Virginia Department of Human Services shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to effectuate the provisions of this article.

ARTICLE 57. SUDDEN CARDIAC ARREST PREVENTION ACT.**§16-57-3. Applicability, educational materials, removal from play, and training.**

(a) The Department of Education, working in conjunction with the State Health Officer, shall develop educational materials and guidelines, including a warning sign information sheet, regarding sudden cardiac arrest, including, but not limited to, symptoms and warning signs for students of all ages and risks associated with continuing to play or practice after experiencing the following symptoms: Fainting or seizures during exercise, unexplained shortness of breath, chest pains, dizziness, racing heart, or extreme fatigue. Training materials shall be developed for the use of parents, students, coaches, and administrators.

(b) The educational materials and other relevant materials shall be posted on the website of the Department of Education, Department of Health, and public schools to inform and educate parents, students, and coaches participating, or desiring to participate in, an athletic activity about the nature and warning signs of sudden cardiac arrest.

(c) Prior to the start of each athletic season, a school subject to this section shall hold an informational meeting for students, parents, guardians, or other persons having care or charge of a student regarding the warning signs of sudden cardiac arrest for children of all ages.

(d) No student may participate in an athletic activity until the student has submitted to a designated school official, a form signed by the student and the parent, guardian, or other person having care or charge of the student stating that the student and the parent, guardian, or other person having care or charge of the student have received and reviewed a copy of the information developed by the departments of health and education and posted on their respective webpages. A completed form shall be submitted each school year in which the student participates in an athletic activity.

(e) No individual may coach an athletic activity unless the individual has completed, on an annual basis, the sudden cardiac arrest training course approved by the Department of Education and Department of Health.

(f) A student shall not be allowed to participate in an athletic activity if either of the following is the case:

(1) The student is known to have exhibited syncope or fainting at any time prior to or following an athletic activity and has not been evaluated and cleared for return after exhibiting syncope or fainting; or

(2) The student experiences syncope or fainting while participating in, or immediately following, an athletic activity.

(g) If a student is not allowed to participate in or is removed from participation in an athletic activity under subsection (f) of this section, the student shall not be allowed to return to participation until the student is evaluated and cleared for return in writing by any of the following:

(1) A physician authorized under §30-3-1 *et seq.* and §30-14-1 *et seq.* of this code;

(2) A certified nurse practitioner, clinical nurse specialist, or certified nurse midwife; or

(3) A physician assistant licensed under §30-3E-1 *et seq.* and §30-14A-1 *et seq.* of this code.

(h) The licensed health care professional may consult with any other licensed or certified health care professionals in order to determine whether a student is ready to participate in the athletic activity.

(i) The governing body of a school shall establish penalties for a coach found in violation of the requirements of subsection (f) of this section.

(j) A school district, member of a school district, board of education, school district employee or volunteer, including a coach, is not liable for damages in a civil action for injury, death, or loss to person or property allegedly arising from providing services or performing duties under this section, unless the act or omission constitutes willful or wanton misconduct. This section does not eliminate, limit, or reduce any other immunity or defense that a school district, member of a board of education, or school district employee or volunteer, including a coach, may be entitled to under the law of this state.

***§16-57-4. Rulemaking.**

The Department of Education, acting in conjunction with the Department of Health, may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code that are necessary to effectuate the provisions of this article.

ARTICLE 59. CERTIFICATION OF RECOVERY RESIDENCES.

§16-59-1. Definitions.

As used in this article, the term:

(1) "Certificate of compliance" means a certificate that is issued to a recovery residence by the department's appointed certifying agency.

(2) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance.

(3) "Department" means the Department of Human Services.

(4) "Recovery residence" means a single-family, drug-free, and alcohol-free residential dwelling unit, or other form of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment for the purposes of promoting sustained, long-term recovery from substance use disorder.

***NOTE:** This section was also amended by S. B. 475 (Chapter 212), which passed subsequent to this Act.

CHAPTER 16A. MEDICAL CANNABIS ACT.**ARTICLE 2. DEFINITIONS.****§16A-2-1. Definitions.**

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Act" means the West Virginia Medical Cannabis Act and the provisions contained in §60A-1-101 *et seq.* of this code.

(2) "Advisory board" means the advisory board established under §16A-11-1 *et seq.* of this code.

(3) "Bureau" means the Bureau for Public Health within the Department of Health.

(4) "Caregiver" means the individual designated by a patient or, if the patient is under 18 years of age, an individual authorized under §16A-5-1 *et seq.* of this code, to deliver medical cannabis.

(5) "Certified medical use" means the acquisition, possession, use, or transportation of medical cannabis by a patient, or the acquisition, possession, delivery, transportation, or administration of medical cannabis by a caregiver, for use as part of the treatment of the patient's serious medical condition, as authorized in a certification under this act, including enabling the patient to tolerate treatment for the serious medical condition.

(6) "Change in control" means the acquisition by a person or group of persons acting in concert of a controlling interest in an applicant or permittee either all at one time or over the span of a 12-consecutive-month period.

(7) "Commissioner" means the Commissioner of the Bureau for Public Health.

(8) "Continuing care" means treating a patient, in the course of which the practitioner has completed a full assessment of the patient's medical history and current medical condition, including

an in-person consultation with the patient, and is able to document and make a medical diagnosis based upon the substantive treatment of the patient.

(9) "Controlling interest" means:

(A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial holding of five percent or more of the securities of the publicly traded entity.

(B) For a privately held entity, the ownership of any security in the entity.

(10) "Dispensary" means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit issued by the bureau to dispense medical cannabis. The term does not include a health care medical cannabis organization as defined in §16A-13-1 *et seq.* of this code.

(11) "Family or household member" means the same as defined in §48-27-204 of this code.

(12) "Financial backer" means an investor, mortgagee, bondholder, note holder, or other source of equity, capital, or other assets, other than a financial institution.

(13) "Financial institution" means a bank, a national banking association, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, or a savings bank.

(14) "Form of medical cannabis" means the characteristics of the medical cannabis recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity, or percentage of medical cannabis or particular active ingredient.

(15) "Fund" means the Medical Cannabis Program Fund established in §16A-9-2 of this code.

(16) "Grower" means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit from the bureau under this act to grow medical cannabis. The term does not include a health care medical cannabis organization as defined in §16-13-1 *et seq.* of this code.

(17) "Grower/processor" means either a grower or a processor.

(18) "Identification card" means a document issued under §16A-5-1 *et seq.* of this code that authorizes access to medical cannabis under this act.

(19) "Individual dose" means a single measure of medical cannabis.

(20) "Medical cannabis" means cannabis for certified medical use as set forth in this act.

(21) "Medical cannabis organization" means a dispensary, grower, or processor. The term does not include a health care medical cannabis organization as defined in §16A-13-1 *et seq.* of this code.

(22) "Patient" means an individual who:

(A) Has a serious medical condition;

(B) Has met the requirements for certification under this act;
and

(C) Is a resident of this state.

(23) "Permit" means an authorization issued by the bureau to a medical cannabis organization to conduct activities under this act.

(24) "Physician" or "practitioner" means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the

provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to practice medicine and surgery in this state.

(25) "Post-traumatic stress disorder" means a diagnosis made as part of continuing care of a patient by a medical doctor, licensed counselor, or psychologist.

(26) "Prescription drug monitoring program" means the West Virginia Controlled Substances Monitoring Program under §60A-9-101 *et seq.* of this code.

(27) "Principal" means an officer, director, or person who directly owns a beneficial interest in or ownership of the securities of an applicant or permittee, a person who has a controlling interest in an applicant or permittee, or who has the ability to elect the majority of the board of directors of an applicant or permittee, or otherwise control an applicant or permittee, other than a financial institution.

(28) "Processor" means a person, including a natural person, corporation, partnership, association, trust, or other entity, or any combination thereof, which holds a permit from the bureau under this act to process medical cannabis. The term does not include a health care medical cannabis organization as defined in §16A-13-1 *et seq.* of this code.

(29) "Registry" means the registry established by the bureau for practitioners.

(30) "Serious medical condition" means any of the following, as has been diagnosed as part of a patient's continuing care:

(A) Cancer.

(B) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome.

(C) Amyotrophic lateral sclerosis.

(D) Parkinson's disease.

(E) Multiple sclerosis.

(F) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.

(G) Epilepsy.

(H) Neuropathies.

(I) Huntington's disease.

(J) Crohn's disease.

(K) Post-traumatic stress disorder.

(L) Intractable seizures.

(M) Sickle cell anemia.

(N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain.

(O) Terminally ill.

(31) "Terminally ill" means a medical prognosis of life expectancy of approximately one year or less if the illness runs its normal course.

ARTICLE 4. PRACTITIONERS.

§16A-4-3. Issuance of certification.

(a) *Conditions for issuance.* — A certification to use medical cannabis may be issued by a practitioner to a patient if all of the following requirements are met:

(1) The practitioner has been approved by the bureau for inclusion in the registry and has a valid, unexpired, unrevoked, unsuspended license to practice medicine in this state at the time of the issuance of the certification.

(2) The practitioner has determined that the patient has a serious medical condition and has included the condition in the patient's health care record.

(3) The patient is under the practitioner's continuing care for the serious medical condition.

(4) In the practitioner's professional opinion and review of past treatments, the practitioner determines the patient is likely to receive therapeutic or palliative benefit from the use of medical cannabis.

(5) The practitioner has determined that the patient has no past or current medical condition(s) or medication use that would constitute a contraindication for the use of cannabis.

(6) The practitioner has determined that the patient is experiencing serious pathophysiological discomfort, disability, or dysfunction that may be attributable to a serious medical condition and may possibly benefit from cannabis treatment when current medical research exhibits a moderate or higher probability of efficacy; and

(7) The practitioner has educated the patient about cannabis and its safe use.

(b) *Contents.* — The certification shall include:

(1) The patient's name, date of birth, and address.

(2) The specific serious medical condition of the patient.

(3) A statement by the practitioner that the patient has a serious medical condition and the patient is under the practitioner's continuing care for the serious medical condition.

(4) The date of issuance.

(5) The name, address, telephone number, and signature of the practitioner.

(6) Any requirement or limitation concerning the appropriate form of medical cannabis and limitation on the duration of use, if applicable, including whether the patient is terminally ill.

(7) A statement by the practitioner attesting that he or she has performed the requirements contained in subsection (a) of this section on a form to be issued by the West Virginia Department of Health, Bureau for Public Health.

(c) *Consultation.* —

(1) A practitioner shall review the prescription drug monitoring program prior to:

(A) Issuing a certification to determine the controlled substance history of a patient.

(B) Recommending a change of amount or form of medical cannabis.

(2) The practitioner shall consider and give due consideration to other controlled substances the patient may be taking prior to certifying medical cannabis.

(d) *Other access by practitioner.* — A practitioner may access the prescription drug monitoring program to do any of the following:

(1) Determine whether a patient may be under treatment with a controlled substance by another physician or other person.

(2) Allow the practitioner to review the patient's controlled substance history as deemed necessary by the practitioner.

(3) Provide to the patient, or caregiver, on behalf of the patient if authorized by the patient, a copy of the patient's controlled substance history.

(e) *Duties of practitioner.* — The practitioner shall:

(1) Provide the certification to the patient.

(2) Provide a copy of the certification to the bureau, which shall place the information in the patient directory within the bureau's electronic database. The bureau shall permit electronic submission of the certification.

(3) File a copy of the certification in the patient's health care record.

(f) *Prohibition.* — A practitioner may not issue a certification for the practitioner's own use or for the use of a family or household member.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-6. Daycare centers.

The Bureau shall promulgate rules within six months of the effective date of this section regarding the following:

(1) Possession and use of medical cannabis by a child under the care of a child-care or social service center licensed or operated by the Bureau of Family Assistance.

(2) Possession and use of medical cannabis by an employee of a child-care or social service center licensed or operated by the Bureau of Family Assistance.

(3) Possession and use of medical cannabis by employees of a youth development center or other facility which houses children adjudicated delinquent.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 4A. COMPLETE STREETS ACT.

§17-4A-3. Complete Streets Advisory Board.

(a) A Complete Streets Advisory Board to the Division of Highways is established to:

(1) Provide and facilitate communication, education and advice between the Division of Highways, counties, municipalities, interest groups, and the public;

(2) Make recommendations to the Division of Highways, counties, and municipalities for restructuring procedures, updating design guidance, providing educational opportunities to

employees, and creating new measures to track the success of multimodal planning and design; and

(3) Submit to the Joint Committee on Government and Finance, through the Division of Highways, an annual report as outlined herein.

(b) The advisory board shall consist of 15 members, designated as follows:

(1) The Commissioner of Highways or his or her designee;

(2) The Secretary of the Department of Transportation or his or her designee;

(3) The Secretary of the Department of Health or his or her designee; and

(4) Twelve members who serve at the will and pleasure of the Governor and appointed by the Governor as follows:

(A) One member who is a licensed engineer with expertise in transportation or civil engineering;

(B) One member representing the American Planning Association;

(C) One member representing a state association of counties;

(D) One member representing state association of municipalities;

(E) One member representing a major regional or local public transportation agency;

(F) One member representing a national association of retired persons;

(G) One member representing an organization interested in the promotion of bicycling;

(H) One member representing an organization interested in the promotion of walking and health;

(I) One member representing an organization representing persons with disabilities;

(J) One member representing an automobile and/or trucking organization; and

(K) Two members of the general public interested in promoting complete streets policies, one representing each congressional district, as determined by the Governor.

(c) The Commissioner of Highways shall serve as the first chair of the board. The board shall meet at least twice a year and at the call of the chair or a majority of the members. The members of the board shall annually elect one of its members to serve as chair after the first year.

(d) The initial terms of appointment for members appointed by the Governor shall be as follows: Three members appointed to a term of one year, three members appointed to a term of two years, three members appointed to a term of three years and four members appointed to a term of four years. Thereafter each member shall be appointed for four years. A member shall serve until his or her successor is appointed. In the case of a vacancy the appointee shall serve the remainder of the unexpired term. Members of the board may succeed themselves and shall serve without compensation. The members appointed by the Governor are entitled to be reimbursed in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration for actual and necessary mileage expenses incurred while attending official meetings of the board.

(e) On December 1, the board shall submit an annual report to the Governor, the Commissioner of Highways and the Joint Committee on Government and Finance on the status of implementation of section one of this article.

(1) The annual report shall include the following information:

(A) A summary of actions taken by the Division of Highways in the preceding year to improve the safety, access and mobility of roadways pursuant to section one of this article;

(B) Modifications made to or recommended for protocols, guidance, standards or other requirements to facilitate complete streets implementation;

(C) Status of the development of multimodal performance indicators;

(D) Any information obtained on the use made of bicycle, pedestrian, transit, and highway facilities together with the existing target level of use for these modes, if any;

(E) Available crash statistics by mode, age, road type, and location and other relevant factors; and

(F) Other related information that may be requested by the Governor or Legislature.

(2) The Division of Highways may assist the board in the preparation of the board's annual report.

ARTICLE 28. WEST VIRGINIA COMMUNITY EMPOWERMENT TRANSPORTATION ACT.

§17-28-10. Coordination and development of transportation projects with other infrastructure; information sharing; agreements among municipal utilities and public service districts to participate in transportation projects; rates to include costs borne by municipal utilities and public service districts in coordination with transportation projects; exemption from Public Service Commission approval.

(a) The commissioner is to encourage the joint and concurrent development and construction of transportation projects with other infrastructure including, without limitation, water and sewer infrastructure.

(b) To coordinate and integrate the planning of transportation projects among local jurisdictions, all governing bodies, units of government, municipal utilities and public service districts within the affected local jurisdiction are to cooperate, participate, share information and give input when a project sponsor prepares a transportation project plan.

(c) Municipal utilities and public service districts may enter into agreements with any project sponsor for the purpose of constructing new infrastructure facilities or substantially improving or expanding infrastructure facilities in conjunction with a transportation project and dedicating revenue or contributing moneys to transportation project costs. Each agreement must contain, at a minimum, engineering and construction standards, terms regarding the revenue sources, allocation of project costs and confirmation that the agreement does not violate any existing bond covenants. Each agreement shall also comply and be consistent with the comprehensive agreement applicable to the transportation project. No infrastructure facilities may be located or relocated within a right-of-way in, or to be included within, the state road system except in accordance with transportation project plans approved by the commissioner.

(d) The rates charged by a municipal utility or public service district to customers in an affected local jurisdiction may include the additional cost borne by the municipal utility or public service district as a result of entering into an agreement with a project sponsor to contribute moneys or dedicate revenue to transportation project costs.

(e) This article may not be construed to affect the authority of the Department of Environmental Protection nor the authority of the Department of Health pursuant to this code.

(f) This article may not be construed to give the Public Service Commission authority to regulate or intervene in the approval and construction of any transportation project or any agreement between a project sponsor and a municipal utility or public service district under this article.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 15. EQUIPMENT.

§17C-15-26. Special restrictions on lamps.

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by §17C-15-26(d) of this code.

(c) Except as authorized in §17C-15-26(d) and §17C-15-26(g) of this code and authorized in §17C-15-19 of this code, flashing lights are prohibited on motor vehicles: *Provided*, That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by §17C-15-19 of this code, red flashing warning lights are restricted to the following:

(A) Ambulances;

(B) Fire-fighting vehicles;

(C) Hazardous material response vehicles;

(D) Industrial fire brigade vehicles;

(E) Rescue squad vehicles not operating out of a fire department;

(F) School buses;

(G) Class A vehicles, as defined by §17A-10-1 *et seq.* of this code, of those firefighters who are authorized by their fire chiefs to have the lights;

(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;

(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services, or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(K) West Virginia Department of Agriculture emergency response vehicles;

(L) Vehicles designated by the Secretary of the Department of Homeland Security for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management;

(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence; and

(N) Emergency management and operations vehicles operated by airports.

Red flashing warning lights attached to a Class A vehicle may be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights is authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal's Office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal's Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health.

(E) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal's Office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health, and the sheriff of the county of residence.

(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence, and the Department of Health.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services, or duly chartered rescue squads shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.

(K) Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Homeland Security.

(L) Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence.

(M) Authorization for emergency management and operations vehicles operated by airports shall be designated by the airport director and the Secretary of the Department of Homeland Security.

(4) Yellow or amber flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by §17C-15-27 of this code;

(B) Postal service vehicles and rural mail carriers, as authorized in §17C-15-19 of this code;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department, or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the state Fire Commission by legislative rule (87 CSR 1, *et seq.*), except as follows:

(i) With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an

organization receiving funding from the state or Federal Transit Administration for the purpose of providing general public transportation or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in §17C-6-11 of this code may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5b. Medicaid-eligible children; school health services advisory committee.

(a) The state board shall become a Medicaid provider and seek out Medicaid-eligible students for the purpose of providing Medicaid and related services to students eligible under the Medicaid program and to maximize federal reimbursement for all services available under the Omnibus Budget Reconciliation Act of 1989, as it relates to Medicaid expansion and any future expansions in the Medicaid program for Medicaid and related services for which state dollars are or will be expended.

(b) The state board may delegate this provider status and subsequent reimbursement to regional education service agencies, county boards or both: *Provided*, That a county board is not required to seek reimbursement if it determines there is not a net

benefit after consideration of costs and time involved with seeking the reimbursement for eligible services and that the billing process detracts from the educational program.

(c) Annually, no later than January 1, the state board shall report on a county by county basis to the Legislature:

- (1) The number and age of children eligible for Medicaid;
- (2) The number and age of children with Medicaid coverage;
- (3) The types of Medicaid-eligible services provided;
- (4) The frequency of services provided;
- (5) The Medicaid dollars reimbursed; and

(6) The problems encountered in the implementation of this system.

(d) The state board shall appoint and convene a school health services advisory committee to advise the Secretary of Human Services and the state superintendent on ways to improve the ability of regional education service agencies, local school boards and Department of Human Services' employees to provide Medicaid-eligible children with all the school-based Medicaid services for which they are eligible and to ensure that the school-based Medicaid service providers bill for and receive all the Medicaid reimbursement to which they are entitled.

(e) The committee shall consist of at least the following individuals:

(1) The person within the Department of Education responsible for coordinating the provision of and billing for school-based Medicaid services in schools throughout the state, who shall provide secretarial, administrative and technical support to the advisory committee;

(2) The person within the Department of Human Services responsible for coordinating the enrollment of Medicaid-eligible school children throughout the state;

(3) Two representatives of regional education service agencies who are experienced with the process of billing Medicaid for school-based health services;

(4) Two Department of Human Services' employees responsible for supervising employees;

(5) Two persons jointly appointed by the Secretary of Human Services and the state superintendent; and

(6) One representative of the Governor's task force on school health.

(f) The school health services advisory committee shall meet in the first instance at the direction of the state superintendent, select a chairperson from among its members, and meet thereafter at the direction of the chairperson. The committee shall report its findings and recommendations to the state board and Department of Human Services, which findings shall then be included in the report to the Legislature by the state board and Department of Human Services provided in subsection (c) of this section.

(g) All actual and necessary travel expenses of the members of the committee shall be reimbursed by the member's employing agency, for those members not employed by a state agency, the member's actual and necessary travel expenses shall be paid by the state board. All such expenses shall be reimbursed in the same manner as the expenses of state employees are reimbursed.

§18-2-9. Required courses of instruction.

(a) (1) In all public, private, parochial, and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the 12th grade in the history of the United States, in civics, in the Constitution of the United States, and in the government of the State of West Virginia for the purpose of teaching, fostering, and perpetuating the ideals, principles, and spirit of political and economic democracy in America, and increasing the knowledge of the organization and

machinery of the government of the United States and of the State of West Virginia. The required courses shall include instruction on the institutions and structure of American government, such as the separation of powers, the Electoral College, and federalism. The required courses shall include instruction that provides students an understanding of American political philosophy and history, utilizing writings from prominent figures in Western civilization, such as Aristotle, Thomas Hobbes, John Locke, and Thomas Jefferson. The courses of instruction shall offer an objective and critical analysis of ideologies throughout history including, but not limited to, capitalism, republicanism, democracy, socialism, communism, and fascism. The required courses shall emphasize the use of primary sources and interactive learning techniques, such as mock scenarios, debates, and open and impartial discussions.

(2) The state board shall, with the advice of the state superintendent, and after consultation with other entities, prescribe the courses of study, including the basic course requirements for middle school and high school, and the academic standards listed in subdivision (1) of this subsection for these courses of study covering these subjects for the public schools, and publish an approved list of instructional resources pursuant to §18-2A-1 *et seq.* of this code. The curriculum used in the delivery of instruction shall cover the standards adopted for such courses. The other entities for consultation may include such organizations as the Florida Joint Center for Citizenship, the College Board, the Bill of Rights Institute, Hillsdale College, the Gilder Lehrman Institute of American History, the Constitutional Sources Project, educators, school administrators, postsecondary education representatives, elected officials, business and industry leaders, parents, and the public. Officials or boards having authority over the respective private, parochial, and denominational schools shall prescribe courses of study for the schools under their control and supervision similar to those required for the public schools.

(3) The state board shall provide testing or assessment instruments for the history and civics courses of instruction required by this section. These testing instruments shall:

(A) Be aligned with the academic standards required by this section;

(B) Be mandatory for students enrolled in those courses of instruction;

(C) Be cumulative by including questions about knowledge learned in prior history and civics courses; and

(D) Measure students' factual and conceptual knowledge including how the facts interrelate and the reasons behind historical documents and events.

(4) To further this study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to §3-2-22 of this code.

(b) The state board shall cause to be taught in all public schools of this state the subject of health education, including instruction in any of the grades six through 12 as considered appropriate by the county board, on: (1) The prevention, transmission, and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; (3) the importance of healthy eating and physical activity in maintaining healthy weight; and (4) education concerning cardiopulmonary resuscitation and first aid, including instruction in the care for conscious choking, and recognition of symptoms of drug or alcohol overdose. The course curriculum requirements and materials for the instruction shall be adopted by the state board by rule in consultation with the Department of Health. The state board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

(c) An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission, and spread of acquired immune deficiency syndrome and other

sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.

(d) After July 1, 2015, the required instruction in cardiopulmonary resuscitation in subsection (b) of this section shall include at least 30 minutes of instruction for each student prior to graduation on the proper administration of cardiopulmonary resuscitation (CPR) and the psychomotor skills necessary to perform cardiopulmonary resuscitation. The term "psychomotor skills" means the use of hands-on practicing to support cognitive learning. Cognitive-only training does not qualify as "psychomotor skills". The CPR instruction shall be based on an instructional program established by the American Heart Association or the American Red Cross, or another program which is nationally recognized and uses the most current national evidence-based emergency cardiovascular care guidelines and incorporates psychomotor skills development into the instruction. A licensed teacher is not required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide, or oversee such instruction. The instruction may be given by community members, such as emergency medical technicians, paramedics, police officers, firefighters, licensed nurses, and representatives of the American Heart Association or the American Red Cross. These community members are encouraged to provide necessary training and instructional resources such as cardiopulmonary resuscitation kits and other material at no cost to the schools. The requirements of this subsection are minimum requirements. A local school district may offer CPR instruction for longer periods of time and may enhance the curriculum and training components, including, but not limited to, incorporating into the instruction the use of an automated external defibrillator (AED): *Provided*, That any instruction that results in a certification being earned shall be taught by an authorized CPR/AED instructor.

(e) A full week of classes during the week selected by the county board of education shall be recognized as Celebrate

Freedom Week. The purpose of Celebrate Freedom Week is to educate students about the sacrifices made for freedom in the founding of this country and the values on which this country was founded.

Celebrate Freedom Week shall include appropriate instruction in each social studies class which:

(1) Includes an in-depth study of the intent, meaning, and importance of the Declaration of Independence, the Emancipation Proclamation, and the Constitution of the United States with an emphasis on the amendments that are crucial to the survival of democracy and freedom, such as the Bill of Rights and the thirteenth, fourteenth, fifteenth, and nineteenth amendments;

(2) Uses the historical, political, and social environments surrounding each document at the time of its initial passage or ratification; and

(3) Includes the study of historical documents to firmly establish the historical background leading to the establishment of the provisions of the constitution and Bill of Rights by the founding fathers for the purposes of safeguarding our constitutional republic.

The requirements of this subsection are applicable to all public, private, parochial, and denominational schools located within this state. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

(f) Beginning the 2018-2019 school year, students in public schools shall be administered a test the same as or substantially similar to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services between their ninth and 12th grade years as an indicator of student achievement in the area of civics education. The test results may be reported in the aggregate to the county board for evaluation by the board's curriculum director and reported to the board members. Nothing in this subsection creates a standard or requirement subject to state accountability measures.

§18-2-13h. Provision of educational services for school-age juveniles placed in residential facilities for custody and treatment.

(a) The state Board of Education and the Department of Human Services are authorized to provide for adequate and appropriate education opportunities for school-age juveniles placed in the following residential facilities as a result of proceedings commenced under the provisions of chapters twenty-seven and forty-nine of this code: Davis-Stuart, Inc., located in Lewisburg, West Virginia; the Elkins Mountain School, located in Elkins, West Virginia; the Abraxas Foundation of West Virginia, located in Waverly, West Virginia; and the Barboursville School, located in Barboursville, West Virginia.

(b) Subject to appropriations by the Legislature, the state board shall have the following authority: (1) To provide education programs and services for school-age juveniles on the grounds of residential facilities, pursuant to agreements with the Department of Human Services and the licensed child-care agencies of such department; (2) to hire classroom teachers and other school personnel necessary to provide adequate and appropriate education opportunities to these juveniles; and (3) to provide education services for school-age juveniles in residential facilities on a twelve-month basis.

(c) The Department of Human Services shall cooperate with the state board and the state superintendent in the establishment and maintenance of education programs authorized under this section. Subject to appropriations by the Legislature, the Department of Human Services shall provide, or cause to be provided, adequate space and facilities for such education programs. The state board shall not be required to construct, improve or maintain any building, other improvement to real estate or fixtures attached thereto at any residential facility for the purpose of establishing and maintaining an education program.

(d) The state Board of Education and the Department of Human Services are authorized to enter into agreements to provide adequate and appropriate education opportunities for school-age

juveniles who are placed in residential facilities other than the facilities identified in this section.

ARTICLE 2K. THE DIABETES CARE PLAN ACT.

§18-2K-2. Adoption of guidelines for individual diabetes care plans.

(a) The State Board of Education shall adopt guidelines for the development and implementation of individual diabetes care plans on or before January 1, 2007. The guidelines for information and allowable actions in a diabetes care plan shall meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting. The State Board of Education shall consult with the Bureau for Public Health in the development of these guidelines. The State Board of Education also shall consult with county board of education employees who have been designated as responsible for coordinating their individual county's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794. In its development of these guidelines, the state Board of Education shall consider recent resolutions by the Office of Civil Rights of the United States Department of Education regarding investigation of complaints alleging discrimination against students with diabetes.

The guidelines adopted by the state board shall include:

(1) Procedures for school nurses to develop an individual diabetes care plan for any student diagnosed with diabetes, which shall involve the parent or guardian, the student's health care provider, the student's classroom teacher, the student if appropriate, and other appropriate school personnel;

(2) Procedures for regular review of an individual care plan.

(3) Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and

management and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student; and

(4) Procedures for information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

(b) The State Board of Education shall provide that the guidelines and any subsequent changes are published and disseminated to county boards of education.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in §49-2-401 of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents, and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment, and reducing the general vulnerability of children.

(b) County boards of education shall, to the extent funds are provided, establish programs for the prevention of child abuse and neglect and child assault. The programs shall be provided to students, parents and school personnel as considered appropriate. The programs comply with rules developed by the state Board of Education with the advice and assistance of the Department of Human Services and the West Virginia State Police: *Provided*, That any programs which substantially comply with the rules adopted by the board and were in effect prior to the adoption of the rules may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated

to the county boards of education from the children's trust fund established pursuant to the provisions of §49-2-401 of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the state Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses, or possession of controlled substances with intent to deliver the controlled substances or all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

(e) Contractors or service providers or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or employees have not previously been convicted of a qualifying offense, as defined in §15-12-2 of this code. For the purposes of this section, contractor and service provider shall be limited to any vendor, individual, or entity under contract with a county school board. County school boards may require contractors and service providers to verify the criminal records of their employees before granting contact or access. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors, service providers, and their employees for the purposes of this subsection. Where a contractor or service provider gives his or her prior written consent, the county school board also may share information provided by the Central Abuse Registry with other county school boards for the purposes of satisfying the requirements of this subsection.

§18-5-42. County-wide council on productive and safe schools.

(a) Each county shall develop a county-wide council on productive and safe schools, which shall be comprised of the following members:

(1) The county superintendent, who shall serve as the chair of the county-wide council on productive and safe schools;

(2) One representative from each local school improvement council, to be elected by a majority vote of each local school improvement council;

(3) The prosecuting attorney or his or her designee;

(4) A representative of the Department of Human Services, to be appointed by the secretary of the department;

(5) A representative of the law-enforcement agencies situated in the county in which the school is situated to be recommended by the county sheriff;

(6) A representative of the county board of education for the county in which the school is situated to be appointed by the president of the county board of education;

(7) The county board of education's supervisor of transportation; and

(8) A representative of the regional comprehensive behavioral health center as designated by the office of behavioral health services in which the county school system is situated, to be appointed by the executive director of the center.

(9) When the members listed in subdivisions (1) through (8) do not include at least two classroom teachers, then the county superintendent shall appoint additional members so that at least two classroom teachers are members of the county-wide council.

(10) When the members listed in subdivisions (1) through (8) do not include at least two school principals, then the county superintendent shall appoint additional members so that at least two school principals are members of the county-wide council.

(b) The county superintendent shall call an organizational meeting of the council as soon as practicable after the effective date of this section.

(c) The council shall compile the local school improvement council's guidelines developed pursuant to §18-5A-2(f) and shall

report and deliver such guidelines to the county board of education, along with the council's assessment and recommendations regarding the guidelines. The council also shall provide a report of the estimated cost for any proposed alternative settings or programs.

(d) No meetings of the county-wide council shall be held during instructional time.

§18-5-44. Early childhood education programs.

(a) For the purposes of this section, an "early childhood education program" means a program created under this section for children who have attained the age of four prior to September 1 of the school year in which the children enter the program.

(b) For the purposes of this section beginning in the school year 2018-2019, an "early childhood education program" means a program created under this section for children who have attained the age of four prior to July 1 of the school year in which the children enter the program.

(c) *Findings.* –

(1) Among other positive outcomes, early childhood education programs have been determined to:

(A) Improve overall readiness when children enter school;

(B) Decrease behavioral problems;

(C) Improve student attendance;

(D) Increase scores on achievement tests;

(E) Decrease the percentage of students repeating a grade; and

(F) Decrease the number of students placed in special education programs;

(2) Quality early childhood education programs improve school performance and low-quality early childhood education programs may have negative effects, especially for at-risk children;

(3) West Virginia has the lowest percentage of its adult population twenty-five years of age or older with a bachelor's degree and the education level of parents is a strong indicator of how their children will perform in school;

(4) During the 2006-2007 school year, West Virginia ranked thirty-ninth among the fifty states in the percentage of school children eligible for free and reduced lunches and this percentage is a strong indicator of how the children will perform in school;

(5) For the school year 2008-2009, 13,135 students were enrolled in prekindergarten, a number equal to approximately sixty-three percent of the number of students enrolled in kindergarten;

(6) Excluding projected increases due to increases in enrollment in the early childhood education program, projections indicate that total student enrollment in West Virginia will decline by one percent, or by approximately 2,704 students, by the school year 2012-2013;

(7) In part, because of the dynamics of the state aid formula, county boards will continue to enroll four-year-old students to offset the declining enrollments;

(8) West Virginia has a comprehensive kindergarten program for five-year-olds, but the program was established in a manner that resulted in unequal implementation among the counties, which helped create deficit financial situations for several county boards;

(9) Expansion of current efforts to implement a comprehensive early childhood education program should avoid the problems encountered in kindergarten implementation;

(10) Because of the dynamics of the state aid formula, counties experiencing growth are at a disadvantage in implementing comprehensive early childhood education programs; and

(11) West Virginia citizens will benefit from the establishment of quality comprehensive early childhood education programs.

(d) County boards shall provide early childhood education programs for all children who have attained the age of four prior to September 1 of the school year in which the children enter the early childhood education program. These early childhood education programs shall provide at least forty-eight thousand minutes annually and no less than fifteen hundred minutes of instruction per week.

(e) Beginning in the school year 2018-2019, county boards shall provide early childhood education programs for all children who have attained the age of four prior to July 1 of the school year in which the children enter the early childhood education program.

(f) The program shall meet the following criteria:

(1) It shall be voluntary, except that, upon enrollment, the provisions of section one-a, article eight of this chapter apply to an enrolled student, subject to subdivision (4) of this subsection;

(2) It shall be open to all children meeting the age requirement set forth in this section;

(3) It shall provide no less than fifteen hundred minutes of instruction per week, in a full-day program with at least forty-eight thousand minutes of instruction annually; and

(4) It shall permit a parent of an enrolled child to withdraw the child from that program by notifying the district in writing. A child withdrawn under this section is not subject to the attendance provisions of this chapter until that child again enrolls in a public school in this state.

(g) Enrollment of students in Head Start, or in any other program approved by the state superintendent as provided in this section, may be counted toward satisfying the requirement of subsection (c) of this section.

(h) For the purposes of implementation financing, all counties are encouraged to make use of funds from existing sources, including:

(1) Federal funds provided under the Elementary and Secondary Education Act pursuant to 20 U. S. C. §6301, *et seq.*;

(2) Federal funds provided for Head Start pursuant to 42 U. S. C. §9831, *et seq.*;

(3) Federal funds for temporary assistance to needy families pursuant to 42 U. S. C. §601, *et seq.*;

(4) Funds provided by the School Building Authority pursuant to article nine-d of this chapter;

(5) In the case of counties with declining enrollments, funds from the state aid formula above the amount indicated for the number of students actually enrolled in any school year; and

(6) Any other public or private funds.

(i) Each county board shall develop a plan for implementing the program required by this section. The plan shall include the following elements:

(1) An analysis of the demographics of the county related to early childhood education program implementation;

(2) An analysis of facility and personnel needs;

(3) Financial requirements for implementation and potential sources of funding to assist implementation;

(4) Details of how the county board will cooperate and collaborate with other early childhood education programs including, but not limited to, Head Start, to maximize federal and other sources of revenue;

(5) Specific time lines for implementation; and

(6) Any other items the state board may require by policy.

(j) A county board shall submit its plan to the Secretary of the Department of Human Services. The secretary shall approve the plan if the following conditions are met:

(1) The county board has maximized the use of federal and other available funds for early childhood programs; and

(2) The county board has provided for the maximum implementation of Head Start programs and other public and private programs approved by the state superintendent pursuant to the terms of this section; or

(3) The secretary finds that, if the county board has not met one or more of the requirements of this subsection, the county board has acted in good faith and the failure to comply was not the primary fault of the county board. Any denial by the secretary may be appealed to the circuit court of the county in which the county board is located.

(k) The county board shall submit its plan for approval to the state board. The state board shall approve the plan if the county board has complied substantially with the requirements of subsection (g) of this section and has obtained the approval required in subsection (h) of this section.

(l) Every county board shall submit its plan for reapproval by the Secretary of the Department of Human Services and by the state board at least every two years after the initial approval of the plan and until full implementation of the early childhood education program in the county. As part of the submission, the county board shall provide a detailed statement of the progress made in implementing its plan. The standards and procedures provided for the original approval of the plan apply to any reapproval.

(m) A county board may not increase the total number of students enrolled in the county in an early childhood program until its program is approved by the Secretary of the Department of Human Services and the state board.

(n) The state board annually may grant a county board a waiver for total or partial implementation if the state board finds that all of the following conditions exist:

(1) The county board is unable to comply either because:

(A) It does not have sufficient facilities available; or

(B) It does not and has not had available funds sufficient to implement the program;

(2) The county has not experienced a decline in enrollment at least equal to the total number of students to be enrolled; and

(3) Other agencies of government have not made sufficient funds or facilities available to assist in implementation.

Any county board seeking a waiver shall apply with the supporting data to meet the criteria for which they are eligible on or before March 25 for the following school year. The state superintendent shall grant or deny the requested waiver on or before April 15 of that same year.

(o) The provisions of subsections (b), (c) and (d), section eighteen of this article relating to kindergarten apply to early childhood education programs in the same manner in which they apply to kindergarten programs.

(p) Except as required by federal law or regulation, no county board may enroll students who will be less than four years of age prior to September 1 for the year they enter school.

(q) Except as required by federal law or regulation, beginning in the school year 2018-2019, no county board may enroll students who will be less than four years of age prior to July 1 for the year they enter school.

(r) Neither the state board nor the state department may provide any funds to any county board for the purpose of implementing this section unless the county board has a plan approved pursuant to subsections (h), (i) and (j) of this section.

(s) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purposes of implementing the provisions of this section. The state board shall consult with the Secretary of the Department of Human Services in the preparation of the rule. The rule shall contain the following:

- (1) Standards for curriculum;
- (2) Standards for preparing students;
- (3) Attendance requirements;
- (4) Standards for personnel; and

(5) Any other terms necessary to implement the provisions of this section.

(t) The rule shall include the following elements relating to curriculum standards:

(1) A requirement that the curriculum be designed to address the developmental needs of four-year-old children consistent with prevailing research on how children learn;

(2) A requirement that the curriculum be designed to achieve long-range goals for the social, emotional, physical and academic development of young children;

(3) A method for including a broad range of content that is relevant, engaging and meaningful to young children;

(4) A requirement that the curriculum incorporate a wide variety of learning experiences, materials and equipment, and instructional strategies to respond to differences in prior experience, maturation rates and learning styles that young children bring to the classroom;

(5) A requirement that the curriculum be designed to build on what children already know in order to consolidate their learning and foster their acquisition of new concepts and skills;

(6) A requirement that the curriculum meet the recognized standards of the relevant subject matter disciplines;

(7) A requirement that the curriculum engage children actively in the learning process and provide them with opportunities to make meaningful choices;

(8) A requirement that the curriculum emphasize the development of thinking, reasoning, decision making and problem-solving skills;

(9) A set of clear guidelines for communicating with parents and involving them in decisions about the instructional needs of their children; and

(10) A systematic plan for evaluating program success in meeting the needs of young children and for helping them to be ready to succeed in school.

(u) After the school year 2012-2013, on or before July 1 of each year, each county board shall report the following information to the Secretary of the Department of Human Services and the state superintendent:

(1) Documentation indicating the extent to which county boards are maximizing resources by using the existing capacity of community-based programs, including, but not limited to, Head Start and child care; and

(2) For those county boards that are including eligible children attending approved, contracted community-based programs in their net enrollment for the purposes of calculating state aid pursuant to article nine-a of this chapter, documentation that the county board is equitably distributing funding for all children regardless of setting.

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.

§18-5D-4. Creating public-private partnerships; creating nonprofit foundation or fund; audit.

(a) The Department of Education and each county board of education shall promptly establish a fund that is restricted solely for the receipt and expenditure of gifts, grants and bequests for the purposes of this article and may establish in lieu thereof a nonprofit foundation for this purpose. The purpose of the fund or nonprofit foundation is to provide supplemental or matching funds to increase participation in the nutrition programs in the Feed to Achieve initiative set forth in subsection (c) of this section. The Department of Education shall utilize its fund or nonprofit foundation to assist county boards of education in counties whose fund or foundation lacks sufficient business, industry and individual contributors to fund the Feed to Achieve nutrition programs.

(b) Financial support for the fund or foundation may come from either public or private gifts, grants, contributions, bequests and endowments.

(c) Expenditures from the state or county funds or by the foundations shall be used for provision of food to students through any of the programs or initiatives approved by the Office of Child Nutrition, including the following programs: School Breakfast Program, National School Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, the Child and Adult Care Food Program, the farm-to-school initiative and community gardens. Expenditures may also be made for initiatives developed with the Department of Human Services and public-private partnerships to provide outreach and nutritional meals when students are not in school.

(d) No administrative expenses or personnel expenses for any of the state departments implementing this act, the State Board of Education, any county board of education, school or program may be paid from the funds or by the foundations.

(e) Individuals or businesses that contribute to the funds or foundations may specify schools or nutrition programs for which the contribution is to be used.

(f) The Department of Education and county boards of education may establish public-private partnerships to enhance current or advance additional nutrition programs that provide nutritious food for children to take home for weekend meals.

(g) The Department of Education and county boards of education shall form or expand existing partnerships with the federal and state departments of agriculture, Department of Human Services, local master gardeners, county extension agents or other experts in the field of agriculture or gardening to develop community gardens, farm-to-school programs and other such programs that teach students how to grow and produce healthy food and provide healthy food to the students.

(h) The Department of Education shall collaborate with the Department of Human Services to develop effective strategies and programs such as after school nutrition outreach and programs that improve the healthy lifestyle of all students in pre-kindergarten through twelfth grade. The Department of Human Services may propose rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate any programs so developed.

(i) All moneys contributed to a fund or foundation established pursuant to this section and all expenditures made therefrom shall be audited as part of the annual independent audit of the State Board of Education and the county boards of education.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cash-outs or contributions as described in Section

415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan may not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1.

"Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends, or other accumulations credited on behalf of the member.

"Compensation" means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code.

"Consolidated board" or "board" means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code.

"Defined contribution system" or "system" means the Teachers' Defined Contribution Retirement System created and established by this article.

"Electing charter school" means a public charter school established pursuant to §18-5G-1 *et seq.* of this code which has elected to participate in this retirement system as permitted in the definition of "Member" or "employee" in this section.

"Employer" means the agency of and within the State of West Virginia which has employed or employs a member, a county board of education which has employed or employs a member, or an electing charter school which has employed or employs a

member. "Participating public employer" or "participating employer" means "employer" unless the context clearly requires otherwise.

"Employer contribution" means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds.

"Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

"Employment term" means employment for at least 10 months in any plan year with a month being defined as 20 employment days.

"Existing employer" means any employer who employed or employs a member of the system.

"Existing retirement system" means the State Teachers Retirement System established in §18-7A-1 *et seq.* of this code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

"Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed by a public school for instructional service in the public schools of West Virginia; (B) principals employed by a public school; (C) librarians employed by a public school; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under

the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, an electing charter school, or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Human Services; (K) any person who is regularly employed for full-time service by any county board of education, electing charter school, educational services cooperative, or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant to §18-5G-7 of this code a determination to participate in the retirement systems under this article, subject to §18-7B-7a and §18-7A-1 *et seq.* of this code.

"Member contribution" means an amount reduced from the employee's regular pay periods and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System.

"Permanent, total disability" means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is

so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness.

"Plan year" means the 12-month period commencing on July 1 of any designated year and ending on the following June 30.

"Public schools" means all publicly supported schools, including normal schools, colleges, and universities in this state. Unless the context clearly requires otherwise, "public school" shall not include a public charter school which is not an "electing charter school" as defined herein.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer.

"Retirement" means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement.

"Year of employment service" means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be accumulated in any 12-month period.

ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

§18-10K-1. Transfer of fund to Department of Health.

(a) Effective July 1, 2018, the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board as created by the prior enactment of this article is abolished and its powers and duties

are transferred to the West Virginia Department of Health in accordance with §9-10-1 *et seq.* of this code.

(b) The rules of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board shall remain in force and effect until the promulgation of new or additional rules by the Secretary of the Department of Health, pursuant to §9-10-5 of this code.

(c) On the effective date of this section, all records necessary to effectuate the purposes of §9-10-1 *et seq.* of this code shall be transferred to the Secretary of the Department of Health.

ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING ACT.

§18-10M-6. Statewide Independent Living Council.

(a) The West Virginia Statewide Independent Living Council is continued as a not-for-profit corporation which has been organized to meet the requirements of the federal Rehabilitation Act, as amended. The council may not be established as an entity within any agency or political subdivision of the state. The council shall be governed by a board of directors, consisting of the voting members of the council, as provided in this section. The composition of this board of directors, as well as the composition of the full council's membership, shall include a majority of members who are persons with disabilities, as defined in the federal Rehabilitation Act, as amended, who are not employed by any agency of the state or center for independent living. The council's membership shall reflect balanced geographical representation, diverse backgrounds and a broad range of disabilities, including, but not limited to, physical, mental, cognitive, sensory and multiple.

(b) The council shall function as a partner with the centers for independent living, in compliance with the federal Rehabilitation Act, as amended, in the planning and provision of independent living services in the state. In conjunction with the centers for independent living, the council shall develop, approve and submit

to the proper federal authorities the state plan for independent living, as required by the federal act. The council shall monitor, review and evaluate the effectiveness of the implementation of the state plan.

(c) *Voting members.* — The council shall consist of twenty-four voting members, including one director of an independent living center chosen by the directors of the independent living centers in the state. The Governor shall select appointments from among the nominations submitted by the council after having conducted a statewide solicitation from organizations representing a wide range of individuals with disabilities and other interested groups, as coordinated by the council, by and with the advice and consent of the Senate. These members may include individuals with disabilities, other representatives from centers for independent living, parents and guardians of individuals with disabilities, advocates of individuals with disabilities, representatives from the business and educational sectors, representatives of organizations that provide services for individuals with disabilities and other interested individuals, as appropriate to the purpose of the council.

(d) *Nonvoting members.* — The membership of the council shall also include the following, nonvoting, ex officio members or their designees who shall be appointed by the Governor:

- (1) A representative of the designated state entity;
- (2) A representative of the Division of Intellectual and Developmental Disabilities;
- (3) A representative of the West Virginia Housing Development Fund;
- (4) A representative of the West Virginia Association of Rehabilitation Facilities;
- (5) A representative of the Bureau of Senior Services; and
- (6) A representative of the Office of Special Education Programs and Assurance in the Department of Education.

(e) The nonvoting membership may also include additional representatives of groups represented on the board of directors as identified in the bylaws of the council.

(f) *Appointment.* — All council members are appointed by the Governor. The Governor shall appoint from among the nominations submitted by organizations representing a wide range of individuals with disabilities and other interested groups, as coordinated by the council.

(g) *Terms of appointment.* — All council members are appointed to serve for a term of three years, except that a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of the unexpired term. No member of the council may serve more than two consecutive full terms.

(h) *Vacancies.* — Any vacancy occurring in the appointed membership of the council shall be filled in the same manner as the original appointment. A vacancy does not affect the power of the remaining members to execute the duties of the council.

(i) *Delegation.* — The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council after initial appointments have been made.

(j) *Duties.* — The council shall:

(1) In conjunction with the centers for independent living, develop and sign the state plan for independent living;

(2) Monitor, review and evaluate the implementation of the state plan;

(3) Coordinate activities with other bodies that address the needs of specific disability populations and issues under other federal and state law;

(4) Ensure that all regularly scheduled meetings of the council are open to the public and sufficient advance notice is provided;

(5) Submit to the federal funding agency such periodic reports as are required and keep such records and afford access to such records, as may be necessary to verify such reports; and

(6) Ensure that the state plan for independent living sets forth the steps that will be taken to maximize the cooperation, coordination and working relationships among:

(A) The Independent Living Rehabilitation Service Program, the Statewide Independent Living Council and centers for independent living; and

(B) The designated state unit, other state agencies represented on the council, other councils that address the needs of specific disability populations and issues, and other public and private entities determined to be appropriate by the council.

(k) *Authorities.* — Unless prohibited by state law the council may, consistent with the state plan described in section seven of this article:

(1) Work with centers for independent living to coordinate services with public and private entities to improve services provided to individuals with disabilities;

(2) Conduct resource development activities to support the activities described in this article to support the provision of independent living services by centers for independent living; and

(3) Perform other functions, consistent with the purpose of this article and comparable to other functions described in this subsection, as the council determines to be appropriate.

(l) *Staffing and resources.* — The council may employ staff as necessary to perform the functions of the council, including an executive director and other staff as may be determined necessary by the council. The council shall supervise and evaluate the executive director. The council shall prepare, in conjunction with the designated state entity, a plan for the use of available resources as may be necessary to carry out the functions and duties of the council pursuant to this article, utilizing eligible

federal funds including innovation and expansion funds as directed by the federal Rehabilitation Act, as amended, funds made available under this article and funds from other public and private sources. This resource plan shall, to the maximum extent possible, rely on the use of existing resources during the period of plan implementation.

(m) *Compensation and expenses.* — The council may use available resources to reimburse members of the council for reasonable and necessary expenses of attending council meetings and performing council duties, such as personal assistance services, and if the member is not employed or must forfeit wages from other employment, to pay compensation to the member for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

***§18-20-11. Video cameras required in certain special education classrooms.**

(a) A county board of education shall ensure placement of video cameras in self-contained classrooms and audio recording devices in the restrooms of self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

(A) An employee of a public school or school district; or

(B) Another student;

***NOTE:** This section was also amended by H. B. 5158 (Chapter 116), which passed subsequent to this Act.

(2) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

(c) (1) A county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom.

(2) Prior to August 1, 2023, a county board of education shall provide an audio recording device to a public school to be used in the restroom of each self-contained classroom that is a part of that school. If the public school is not able to receive the audio recording device by August 1, 2023, the public school may apply to the state Department of Education for a waiver to extend that date to August 1, 2024.

(3) The principal of the school or other school administrator whom the principal assigns as a designee shall be the custodian of the video camera and audio recording device, all recordings generated by the video camera and audio recording device, and access to those recordings pursuant to this section.

(d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) Every public school that receives an audio recording device under this section shall operate and maintain the audio recording device in every restroom that is a part of a self-contained classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped with an audio recording device for the protection of the students."

(3) If there is an interruption in the operation of the video camera or audio recording device for any reason, a written

explanation should be submitted to the school principal and the county board explaining the reason and length for which there was no recording. The explanation shall be maintained at the county board office for at least one year.

(e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes.

(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except, for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) An audio recording device shall be placed in the restroom of the self-contained classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

(4) A video camera or audio recording device required by this section is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom or an audio recording device in the restroom of a self-contained classroom pursuant to this section, the county board of education shall provide written notice of the placement to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the bathroom audio monitoring for their student. An Individual Education Plan or 504

plan shall outline the opt out and an alternative arrangement for the student or parent needs and requested accommodation; and

(2) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain video and audio recorded pursuant to this section for at least three months after the date of the recording, subject to the following:

(A) If the minimum three-month period overlaps the summer break occurring between the last day of one instructional term and the first day of the next instructional term, the minimum three-month period shall be extended by the number of days occurring between the two instructional terms;

(B) For any school-based camera system or audio device recording device that is installed or replaced after April 1, 2022, the public school shall retain video recorded from a camera or audio device recording for at least 365 days after the date the video or audio was recorded and no extension of this time period during the summer break is required.

(2) If a person requests to review a recording under subsection (k) or subsection (l) of this section, the public school shall retain the recording from the date of the request until:

(A) The earlier of the person reviewing the recording or 60 days after the person who requested the video or audio recording was notified by the public school that the video or audio recording is available; and

(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(3) In no event may the recording be deleted or otherwise made unretrievable before the time period set forth in subdivision (1) of this subsection elapses.

(h) This section does not:

(1) Waive any immunity from liability of a public school district or employee of a public school district;

(2) Create any liability for a cause of action against a public school or school district or employee of a public school or school district; or

(3) Require the principal or other designated school administrator to review the recording absent an authorized request pursuant to this code section or suspicion of an incident except as otherwise provided in subsection (j) of this section.

(i) A public school or school district shall not use video or audio recorded under this section for:

(1) Teacher evaluations; or

(2) Any purpose other than the promotion and protection of the health, wellbeing, and safety of students receiving special education and related services in a self-contained classroom or restroom of a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a recording made under this section is confidential and shall not be released or reviewed by anyone except the school principal, other school administration designee, or county designee if the school principal or other school administration designee is unable to review the video or audio recording pursuant to this subsection. The school principal, other school administration designee, or county designee shall review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-contained classroom and restroom at the school no less than every 90 days. The state board shall include in its rule authorized by this section requirements for documentation of compliance with the video and audio reviewing requirements of this subsection.

(k) Within seven days of receiving a request, a public school or school district shall allow review of a recording by:

(1) A public school or school district employee who is involved in an alleged incident that is documented by the recording and has been reported to the public school or school district;

(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the recording and has been reported to the public school or school district; or

(3) An employee of a public school or school district as part of an investigation into an alleged incident that is documented by the recording and has been reported to the public school or school district.

(l) Within seven days of receiving a request, a public school or school district shall allow review of a recording by and comply with all subsequent requests for review or release of the recording by:

(1) A law-enforcement officer or employee of the Department of Human Services, as part of an investigation into an alleged incident that is documented by the recording and has been reported to the agency: *Provided*, That if a release of the recording is requested pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict confidentiality of the recording and not further release the recording without authorization from the public school district through its superintendent; or

(2) A judge, counsel, or other legal entity that is charged with deciding or representing either the school board, students, or employees in any matters related to legal issues arising from an incident: *Provided*, That the recording may only be released pursuant to an appropriate protective order or under seal.

(m) If an incident is discovered while initially reviewing a recording that requires a report to be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to that section within 24 hours of viewing the incident.

(n) When a recording is under review as part of the investigation of an alleged incident, and the recording reveals a

student violating a disciplinary code or rule of the school, which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(o) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or school district incidentally reviews a recording under this section if the contractor or employee of a public school or school district is performing job duties related to the:

(1) Installation, operation, or maintenance of video or audio equipment; or

(2) Retention of video or audio recordings.

(p) This section applies solely to cameras and audio recording devices installed pursuant to this code section and does not limit the access of a student's parent or legal guardian to a recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(q) A public school or school district shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a public school or school district that the person believes to be in violation of this section.

(2) The state board shall grant a hearing on an appeal under this subsection within 45 days of receiving the appeal.

(s) (1) A public school or school district may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code or any other available funds to meet the requirements of this section.

(2) A public school or school district may accept gifts, grants, or donations to meet the requirements of this section.

(t) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify the requirements of this section and address any unforeseen issues that might arise relating to the implementation of the requirements of this section.

ARTICLE 21. SPECIAL COMMUNITY-BASED PILOT DEMONSTRATION PROJECT TO IMPROVE OUTCOMES FOR AT-RISK YOUTH.

§18-21-1. Definition of "at-risk youth".

As used in this article "at-risk youth" means all children between birth and seventeen and young adults between the ages of eighteen and twenty-one who are low income, receiving benefits from the Department of Human Services, legally under the jurisdiction of the Department of Human Services or in custody of the West Virginia Division of Juvenile Services, the selected county's juvenile court/probation department or the selected county's alternative school system program.

§18-21-2. Creation of a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Effective July 1, 2012, if funds are available, the Secretary of the Department of Human Services shall select a community-based

organization to establish a special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth in a specified community for a duration of seven years. The project will identify, implement and document best practices that can be replicated in other communities. The designated community-based organization shall operate the special pilot project under the direction of the Secretary of the Department of Human Services and shall work in collaboration with the State School Superintendent, local county school superintendent, Chancellor for Community and Technical College Education, the closest community and technical college and four-year college or university, State Workforce Investment Division, Executive Director of the West Virginia Vocational Rehabilitation Services, the local juvenile court system, the local workforce investment board, the Chancellor for Higher Education, the Director of West Virginia Division of Juvenile Services, the local mental or behavioral health organizations and other governmental and community-based organizations.

§18-21-3. Secretary of Department of Human Services responsibilities.

The Secretary of the Department of Human Services shall:

(1) Identify a county with the most at-risk youth, that also has adequate facilities and community leadership, to run a community-based pilot program that brings together both state and local organizations, to work collaboratively to provide comprehensive, intense wrap-around services to at-risk youth and their families in a seamless coordinated system; and

(2) Identify the challenges confronting the most at-risk youth and their families and make specific recommendations to the pilot program administrators to improve the outcomes for these youths; specifically, to reduce the number of abuse and neglect cases to reduce the number of youth in out-of-home and out-of-state placements; to reduce high school drop-out rates, to reduce substance abuse among youth including smoking, reduce teen pregnancies, to reduce juvenile delinquency and to reduce the

number of juvenile delinquents and youth aging out of foster care that eventually enter into the adult criminal justice system.

(3) Document best practices which can be replicated in other counties.

(4) Establish base line and goals for each performance measure in conjunction with the director of the community-based organization operating the pilot project.

(5) Beginning in January 2013, on or before the first day of the regular session of the Legislature, and each year thereafter, the Secretary of Department of Human Services along with the director of the community-based organization operating the pilot program shall make a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

§18-21-4. Organization and goals of the community-based pilot demonstration program.

(a) The pilot program shall be operated by a local community-based organization under the direction of the Secretary of the West Virginia Department of Human Services and in collaboration with the State School Superintendent, county school superintendent, Executive Director of the State Workforce Investment Division, Executive Director of WV Vocational Rehabilitation Services, the local juvenile court system, the Chancellor for Higher Education, the Chancellor for Community and Technical College Education, president of the local community and technical college and four-year college or university, the Director of the West Virginia Division of Juvenile Services, the local mental or behavioral health organizations and other governmental and community-based organizations and partner agencies to serve as a clearinghouse to coordinate comprehensive youth and family services. The pilot project shall be housed within the community and will be directed by a local community-based nonprofit organization.

(b) The pilot project shall operate out of a centrally located building to coordinate services to youth and their families in the

selected county from birth to seventeen years of age who are referred by the Department of Human Services.

(c) The goal of the pilot program is to improve outcomes for at-risk youth as measured by the following metrics:

(1) Early childhood development:

(A) Increase in the number of mothers receiving early prenatal care;

(B) Increase in the number of mothers participating in the Right From the Start Program;

(C) Increase in the number of children screened by the birth to three year-old program for early development delays;

(D) Increase in the number of three year-olds enrolled in Head Start;

(E) Increase in the number of four year-olds enrolled in preschool.

(2) Preschool youth and teen measures:

(A) Decrease in school truancy;

(B) Decrease in truancy hearings;

(C) Decrease in school suspensions;

(D) Decrease in school expulsions;

(E) Decrease in high school dropouts at a select school;

(F) Increase in the number of youth participating in a mentoring program;

(G) Increase in academic performance for select students;

(H) Increase in the number of youth participating in summer employment; and

(I) Increase in the number of youth entering postsecondary education or the workforce.

(3) Parent measures:

(A) Increase in the number of individuals registered at the WorkForce West Virginia Center;

(B) Increase in the number of individuals enrolled in job training;

(C) Increase in the number of individuals completing job training with a certification or credential;

(D) Increase in the number of individuals placed in employment; and

(E) Increase in the number of children enrolled in the CHIP program.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

***§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Human Services in accordance with §49-1-1 *et seq.* of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. Upon the commencement of any fact-finding investigation involving conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, whether

***NOTE:** This section was also amended by H. B. 5650 (Chapter 250), which passed subsequent to this Act.

being conducted internally, or in cooperation with police or Department of Human Services, the affected employee shall be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse shall be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, or welfare of students be jeopardized or the learning environment of other students has been impacted. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

(e) It shall be the duty of any school principal to report any employee conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, to the county superintendent within 24 hours of the allegation.

Nothing in this subsection supersedes §49-2-803 of this code or the provisions therein regarding mandated reporting of child abuse and neglect.

(f) It shall be the duty of any county superintendent to report any employee suspended or dismissed, or resigned during the course of an investigation of the employee's alleged misconduct, in accordance with this section, including the rationale for the suspension or dismissal, to the state superintendent within seven business days of the suspension, dismissal, or resignation. The state superintendent shall maintain a database of all individuals suspended or dismissed for jeopardizing the health, safety, or welfare of students, or for impacting the learning environment of other students. The database shall also include the rationale for the suspension or dismissal. The database shall be confidential and shall only be accessible to county human resource directors, county superintendents, and the state superintendent of schools.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-17. Health and other facility employee salaries.

(a) The minimum salary scale for professional personnel and service personnel employed by the state Department of Education to provide education and support services to residents of state Department of Human Services' facilities, corrections facilities providing services to juvenile and youthful offenders, in the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services is the same as set forth in sections two, three and eight-a of this article. Additionally, those personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board in the county wherein each facility is located, as set forth in sections five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid the advanced salary from the date the classification of training is earned. The professional personnel shall be certified, licensed or trained, and shall meet other eligibility classifications as may be required by the provisions of this chapter

and by state board regulations for comparable instructional personnel who are employed by county boards. The professional personnel shall be paid at the equivalent rate of pay of teachers as set forth in section two of this article, but outside the public support plan, plus the equivalent of the salary supplement paid to teachers employed by the county board in the county in which each facility is located, as set forth in section five-a of this article.

(b) Professional personnel employed by the department to provide education services to residents in Department of Human Services' facilities, corrections facilities providing services to juvenile and youthful offenders, in the West Virginia schools for the deaf and the blind or in public community and technical colleges providing middle college services are afforded all the rights, privileges and benefits established for the professional personnel under this article, subject to the following:

(1) The benefits apply only within the facility at which the professional personnel are employed;

(2) The benefits exclude salaries unless explicitly provided for under this or other sections of this article; and

(3) Seniority for the professional personnel is determined on the basis of the length of time the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

(c) Professional personnel and service personnel employed by the Department of Education to provide education and support services to residents in state Department of Human Services' facilities, corrections facilities providing services to juvenile and youthful offenders, the West Virginia schools for the deaf and the blind and in public community and technical colleges providing middle college services are state employees.

(d) *Additional seniority provisions.* —

(1) Notwithstanding any other provision of this section to the contrary, professional and service personnel employed in an educational facility operated by the West Virginia Department of

Education accrue seniority at that facility on the basis of the length of time the employee has been employed at the facility. Professional and service personnel whose employment at the facility was preceded immediately by employment with the county board previously providing education services at the facility or whose employment contract was with the county board previously providing education services at the facility:

(A) Retains any seniority accrued during employment by the county board;

(B) Accrues seniority as a regular employee with the county board during employment at the facility;

(C) Attains continuing contract status in accordance with section two, article two, chapter eighteen-a of this code with both the county and the facility if the sum of the years employed by the county and the facility equals the statutory number required for continuing contract status; and

(D) Retains and continues to accrue county and facility seniority in the event of reemployment by the county as a result of direct transfer from the facility or recall from the preferred list.

(2) Reductions in work force in the facility or employment by the facility or county board are made in accordance with the provisions of sections seven-a and eight-b of this chapter. Only years of employment within the facility are considered for purposes of reduction in force within the facility.

(3) The seniority conferred in this section applies retroactively to all affected professional and service personnel, but the rights incidental to the seniority commence on the effective date of this section.

(4) Amendments made to this section during the 2009 regular session of the Legislature do not abrogate any rights, privileges or benefits bestowed under previous enactments of this section.

CHAPTER 18B. HIGHER EDUCATION.**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER EDUCATION.****§18B-10-7b. Tuition waivers for high school graduates in foster care.**

The governing boards shall make provision for institutions under their respective jurisdictions to award a tuition and fee waiver for undergraduate courses at state institutions of higher education for any student, beginning with incoming freshmen in the fall, two thousand, semester or term, who graduate from high school or pass the GED examination while in the legal custody of the state Department of Human Services. The student must be in foster care or other residential care for at least one year prior to the waiver award. If the foster care or other residential care is provided in another state, the student must first be returned to this state for waiver award eligibility.

To be eligible for a waiver award, a student must first: (1) Apply to and be accepted at the institution; and (2) apply for other student financial assistance, other than student loans, in compliance with federal financial aid rules, including the federal Pell grant.

Waiver renewal is contingent upon the student continuing to meet the academic progress standards established by the institution.

The waiver provided by this section for each eligible student may be used for no more than four years of undergraduate study. An initial waiver must be granted within two years of graduation from high school or passing the GED examination.

The waiver may only be used after other sources of financial aid that are dedicated solely to tuition and fees are exhausted.

Any award under this section is in addition to the number of fee waivers permitted in sections five and six of this article for undergraduate, graduate and professional schools.

No student who is enrolled in an institution of higher education as of the effective date of this section is eligible for a waiver award under the provisions of this section.

The governing boards may establish any limitations on the provisions of this section as they consider proper.

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-3. Definitions.

For purposes of this article, and in addition to the definitions set forth in section two, article one of this chapter, the terms used in this article have the following definitions ascribed to them:

(a) "Advisory panel" or "panel" means the West Virginia rural health advisory panel created under section six of this article.

(b) "Allied health care" means health care other than that provided by physicians, nurses, dentists and mid-level providers and includes, but is not limited to, care provided by clinical laboratory personnel, physical therapists, occupational therapists, respiratory therapists, medical records personnel, dietetic personnel, radiologic personnel, speech-language-hearing personnel and dental hygienists.

(c) "Mid-level provider" includes, but is not limited to, advanced nurse practitioners, nurse-midwives and physician assistants.

(d) "Office of community and rural health services" means that agency, staff or office within the Department of Health which has as its primary focus the delivery of rural health care.

(e) "Primary care" means basic or general health care which emphasizes the point when the patient first seeks assistance from the medical care system and the care of the simpler and more common illnesses. This type of care is generally rendered by family practice physicians, general practice physicians, general internists, obstetricians, pediatricians, psychiatrists and mid-level providers.

(f) "Primary health care education sites" or "sites", whether the term is used in the plural or singular, means those rural health care facilities established for the provision of educational and clinical experiences pursuant to section seven of this article.

(g) "Rural health care facilities" or "facilities", whether the term is used in the plural or singular, means nonprofit, free-standing primary care clinics in medically underserved or health professional shortage areas and nonprofit rural hospitals with one hundred or less licensed acute care beds located in a nonstandard metropolitan statistical area.

(h) "Schools of medicine" means the West Virginia University school of medicine, which is the school of health sciences; the Marshall school of medicine, which is the Marshall medical school; and the West Virginia school of osteopathic medicine.

(i) "Vice chancellor" means the vice chancellor for health sciences provided for under section six, article two of this chapter.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-1. Medical Student Loan Program; establishment; administration; eligibility; loan repayment and collection; required report.

(a) *Definitions.* – As used in this section, unless the context in which the term used clearly requires a different meaning:

"Approved service commitment area" means a location in West Virginia that is both a federally designated geographic, population, or facility-based health professions shortage area and in a medical specialty in which there is a shortage of physicians, as determined by the state's Department of Health, at the time the loan was issued.

"Medical schools" means the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine.

"Person" means the recipient of a medical student loan issued in accordance with the provisions of this section by a medical school as defined herein.

"West Virginia residents" means persons who are citizens or legal residents of the United States and have resided in West Virginia for at least one year immediately preceding the date of application for a medical student loan.

(b) There are established the medical student loan program at the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine.

(c) Subject to the availability of funds as established in §18C-3-1(d) of this code, the medical schools may make medical student loans in accordance with the provisions of this section to students enrolled in or admitted to their respective medical schools in a course of instruction leading to the degree of doctor of medicine or doctor of osteopathy who enter into a written medical student loan agreement with the medical school in accordance with §18C-3-1(i) of this code. The number of awards shall be determined by the availability of funds in this program at each school in any given academic year: *Provided*, That the availability of funds does not require the medical schools to issue or renew medical student loans.

(d) There are hereby continued the special revolving fund accounts at the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine, which shall be used to carry out the purposes of this section.

(1) The funds shall consist of all moneys currently on deposit in such accounts or which are due or become due for deposit into such accounts as obligations made under the previous enactment of

this section; those funds provided for medical education pursuant to the provisions of §18B-10-4 of this code; appropriations provided by the Legislature; repayment of any loans made under this section; amounts provided by medical associations, hospitals, or other medical provider organizations in this state, or by political subdivisions of the state, under an agreement which requires the recipient to practice his or her health profession in this state or in the political subdivision providing the funds for a predetermined period of time and in such capacity as set forth in the agreement; and any other amounts which may be available from external sources.

(2) All expenditures from the medical schools' medical student loan repayment funds shall be for medical student loans issued in accordance with the terms of this section and for the medical schools' expenses incurred in administering their respective medical student loan programs.

(3) These funds shall operate as special funds whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the medical schools' funds and be available for expenditure in succeeding fiscal years.

(e) In order to be eligible for a medical student loan as provided in this section, the person applying therefor shall meet the following minimum requirements:

(1) Full-time enrollment in a medical school in a program leading to the degree of doctor of medicine or doctor of osteopathy: *Provided*, That the person has not previously obtained such a degree;

(2) Demonstrated financial need as determined by the medical schools' individual financial aid offices;

(3) Demonstrated credit-worthiness by not being in default of any previous student loan or medical student loan issued by any lender; and

(4) United States citizenship as either born or naturalized.

(f) Medical student loans shall be awarded on a priority basis first to qualified applicants who are West Virginia residents at the time of entry into the medical school, and second to qualified applicants who are not West Virginia residents at the time of entry into the medical school.

(g) In order to be eligible for renewal of a medical student loan as provided in this section, the person applying therefor shall meet the minimum requirements established in §18C-3-1(e) of this code, as well as maintain good academic standing and make satisfactory progress toward degree completion in accordance with the issuing medical school's policy for awarding Title IV financial aid funds.

(h) Each medical student loan issued by a medical school shall be made pursuant to the provisions of this section and shall provide to the recipient of the medical student loan a maximum annual amount of \$10,000. The medical school and the person may renew the medical student loan annually for a period not to exceed four years: *Provided*, That the person is eligible for such renewal in accordance with §18C-3-1(g) of this code.

(i) Each medical student loan issued by a medical school shall be memorialized in a written medical student loan agreement, which shall require, at a minimum, that the person receiving the loan:

(1) Complete the required course of instruction and receive the degree of doctor of medicine (M.D.) or doctor of osteopathy (D.O.);

(2) Apply for and obtain a license to practice medicine in West Virginia;

(3) Engage in the full-time practice of medicine for a period of 12 months within an approved service commitment area;

(4) Commence the full-time practice of medicine within nine months after completion of an approved post-graduate residency training program and licensure in an approved service commitment area and continue full-time practice in the approved service commitment area for a consecutive period of months equal to the

total number of months for which the medical student loan was provided;

(5) Agree that the service commitment for each agreement entered into under the provisions of this section is in addition to any other service commitment contained in any other agreement the person has entered or may enter into for the purpose of obtaining any other financial aid;

(6) Maintain records and make reports to the issuing medical school to document the person's satisfaction of the obligations under the agreement to engage in the full-time practice of medicine in an approved service commitment area and to continue the full-time practice of medicine in the approved service commitment area for a consecutive period of months equal to the total number of months the student received the medical student loan. Persons practicing in a federally designated population-based health professions shortage area shall provide documentation that more than 50 percent of their service is provided to the designated population; and

(7) Upon failure to satisfy the requirements of the agreement that the person engage in the full-time practice of medicine within an approved service commitment area for the required period of time under the medical student loan agreement, the person receiving a medical student loan pursuant to the provisions of this section shall repay amounts to his or her issuing medical school in accordance with the provisions of §18C-3-1(k) of this code.

(j) Upon the selection of an approved service commitment area for the purpose of satisfying a service obligation under a medical student loan agreement entered into pursuant to the provisions of this section, the person so selecting shall inform the issuing medical school of the service area selected. Such person may serve all or part of the commitment in the approved service commitment area initially selected or in a different approved service commitment area: *Provided*, That the person notifies his or her issuing medical school of his or her change of approved service commitment areas. Service in any such service commitment area

shall be deemed to be continuous for the purpose of satisfying the medical student loan agreement.

(k) Upon the person's presentation of the report required by subdivision (i)(6) of this section to the issuing medical school evidencing his or her satisfaction of the terms of the medical student loan agreement provided for herein, the issuing medical school shall cancel \$10,000 of the outstanding loan for every twelve full consecutive months of service as required in the agreement.

(l) Upon the failure of any person to satisfy the obligation to engage in the full-time practice of medicine within an approved service commitment area of this state for the required period of time under any medical student loan agreement, such person shall repay to his or her issuing medical school an amount equal to the total of the amount of money received by the person pursuant to the medical student loan agreement plus annual interest at a rate of 9.5 percent from the date the person first received the medical student loan. For any such repayment, the following provisions shall apply:

(1) The person shall repay an amount totaling the entire amount to be repaid under all medical student loan agreements for which such obligations are not satisfied, including all amounts of interest at the rate prescribed. The repayment shall be made either in a lump sum or in not more than 12 equal monthly installment payments.

(2) All installment payments shall commence six months after the date of the action or circumstance that causes the person's failure to satisfy the obligations of the medical student loan agreement, as determined by the issuing medical school based upon the circumstances of each individual case. In all cases, if an installment payment becomes 91 days overdue, the entire amount outstanding shall become immediately due and payable, including all amounts of interest at the rate prescribed.

(3) If a person becomes in default of his or her medical student loan repayment obligations, the medical school shall make all

reasonable efforts to collect the debt, in accordance with the provisions of §14-1-1 *et seq.* of this code.

(m) If, during the time a person is satisfying the service requirement of a medical student loan agreement, such person desires to engage in less than the full-time practice of medicine within an approved service commitment area and remain in satisfaction of the service requirement, such person may apply to the medical school that issued the medical student loan for permission to engage in less than the full-time practice of medicine. Upon a finding of exceptional circumstances made by the medical school that issued the medical student loan, the medical school may authorize the person to engage in less than the full-time practice of medicine within an approved service commitment area for the remaining required period of time under the medical student loan agreement and for an additional period of time that shall be equal to the length of time originally required multiplied by two: *Provided*, That in no event shall such person be allowed to practice medicine less than half-time.

(n) By July 31 each year, each medical school shall prepare and submit a report on the operations of their respective medical student loan programs to the commission for inclusion in the commission's data publication and reporting required by §18C-1-1(f) of this code. At a minimum, this report shall include the following information:

(1) The number of medical student loans awarded during the preceding academic year;

(2) The total amount of medical student loans awarded;

(3) The total amount of any unexpended moneys remaining in their medical student loan funds at the end of the fiscal year;

(4) The rate of default on the repayment of previously awarded loans during the previous fiscal year;

(5) The number of doctors practicing medicine in the state in accordance with their service obligations; and

(6) The total amount of medical student loans cancelled in accordance with subsection (k) of this section.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

***§19-1-7. Shared animal ownership agreement to consume raw milk.**

(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

(1) Acquires a percentage ownership interest in a milk-producing animal;

(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;

(3) Is entitled to receive a fair share of the animal's raw milk production as a condition of the contractual agreement;

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as *Brucella*, *Campylobacter*, *Listeria*, *Salmonella*, and *E. Coli*, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women, and those with compromised immunity. The responsible party then agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and

(5) Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd share is strictly prohibited.

(b) The signed and executed shared animal ownership agreement shall be filed by the herd seller with the Commissioner of Agriculture and shall contain the names, addresses, and phone

***NOTE:** This section was also amended by H. B. 4911 (Chapter 6), which passed subsequent to this Act.

numbers of the herd seller and the responsible party so that either party may be contacted in the event of an illness.

(c) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards including the following:

(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous 12 months for brucellosis, tuberculosis, and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous 30 days before introduction into the herd; and

(2) Milk-producing animals producing bloody, stringy, or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

(d) Parties to a shared animal ownership agreement and physicians who become aware of an illness directly related to consuming raw milk shall report the illness to the local health department and the Commissioner of Agriculture. Upon receipt of such a report, the Commissioner of Agriculture or his or her designee shall contact and warn other parties consuming raw milk from the same herd seller.

(e) The Commissioner of Agriculture may impose an administrative penalty not to exceed \$100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to §29A-5-1 *et seq.* of this code.

(f) The Commissioner of Agriculture, in consultation with the Department of Health, may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code in compliance with raw milk dairy industry standards.

(g) Notwithstanding any provision of code to the contrary, raw milk may be sold without the parties entering into a written shared animal ownership agreement if the raw milk is to be used:

(1) As an ingredient in the preparation or making of a nonedible product, such as a soap or lotion; or

(2) As feed for another animal: *Provided*, That the sale of raw milk to be used as animal feed is subject to the provisions of §19-14-1 *et seq.* of this code.

ARTICLE 11E. MILK AND MILK PRODUCTS.

§19-11E-1. Purpose and scope.

In 2018, the Legislature created the Joint Task Force on Milk Rules and Regulations in response to concerns about current regulation of the dairy industry in West Virginia. The Joint Task Force heard from, and collected data and other information from, dairy farmers, industry representatives, and regulators from West Virginia, other states, and the federal government. Following its review of the collected information, the Joint Task Force concluded that potential benefits and economies of scale would best be realized by transferring some or all authority to promulgate milk rules and regulations from the Department of Health to the Department of Agriculture.

It is the purpose of this article to establish the authority of the West Virginia Department of Agriculture to regulate milk and milk products within the state. It is the further purpose of this article to ensure that milk and milk products produced, manufactured, or sold in West Virginia are safe, while also ensuring that regulation is done in such a way as to foster the stability and growth of the dairy industry in West Virginia.

It is the intent of the Legislature that this article regulate the production, transportation, and sale of milk and milk products; confer powers and impose duties upon the Commissioner of Agriculture; prescribe penalties; and provide for the enforcement thereof.

Furthermore, except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal regulations promulgated under the authority of the United States Secretary of Health and Human Services in order to provide for the movement of milk and milk products in interstate and intrastate commerce with a minimum of economic barriers.

§19-11E-17. Transfer of milk regulation authority from Department of Health to Department of Agriculture.

(a) Effective July 1, 2019, authority for the regulation, including enforcement, of Grade "A" milk is transferred to the commissioner from the Department of Health.

(b) Prior to July 1, 2019, the commissioner and the Department of Health shall enter into an agreement to provide for the orderly transition of regulatory operations from the Department of Health to the commissioner. Said agreement shall provide:

(1) For the transfer of records and equipment related to the milk regulation program to the commissioner;

(2) For the continued provision of services by staff of the Department of Health to the commissioner under the terms of the agreement;

(3) For transition, upon notice to Department of Health, of functions from the Department of Health to the commissioner; and

(4) For the completion of the transfer of all responsibilities from the Department of Health to the commissioner no later than December 31, 2019.

(c) During a period from July 1, 2019, to December 31, 2019, the Department of Health shall cooperate fully with the commissioner to ensure a smooth transition of authority, knowledge, and resources to guarantee that milk regulation in West Virginia suffers no gap or failure in regulation.

(d) All legislative rules issued by the Department of Health pursuant to its authority to regulate milk shall remain in effect until superseded by the commissioner's regulations.

ARTICLE 12A. LAND DIVISION.

§19-12A-1a. Farm management commission abolished; property transferred; powers and duties of commissioner of agriculture.

(a) The farm management commission previously established by this article is abolished. The real and personal property held by the commission, including all institutional farms and all easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories and farm facilities, operating revenue funds for those operations, and all employees of the farm management commission, are hereby transferred to the Department of Agriculture. The Commissioner of the Department of Agriculture shall have all those powers, duties and responsibilities previously vested in the farm management commission and the farm management director pursuant to this article.

(b) Not later than January 1, 1995, the Commissioner of the Department of Agriculture shall report to the Legislature on the optimum use or disposition of each institutional farm transferred pursuant to this section. The commissioner shall set forth the objectives of the agency with respect to the land, the criteria by which the agency has determined the optimum use or disposition of the property, and determinations as to whether the land shall be used in the production of food products, the production or development of natural resources, held for recreational or other specified uses, or sold, or leased in whole or in part. With respect to each institutional farm, the commissioner shall report on which properties are subject to reversionary clauses or other restrictions in deeds of conveyance which may affect permitted uses, or proposed sales or leases. With respect to each institutional farm, the commissioner shall report on projected revenues and expenses from operations. Planned activities and uses with respect to the land shall be detailed for at least five years specifically and at least ten years generally and shall include a cost benefit analysis of

options or alternatives for action. In the case of land managed for production of timber, the commissioner shall report on projections for timber harvesting on a sustained-yield basis, income estimates, and the years in which income will be generated. The report shall detail planned actions to protect the land from erosion, fire, plant and animal pests, noxious insects, noxious weeds and plant and animal diseases. In the case of land subject to rights granted by existing contracts, leases, licenses or easements, the report shall include a determination as to whether the interest granted should be continued or withdrawn. In the case of land managed under land management plans adopted prior to the effective date of this section, land management plans shall be reviewed and amended as may be necessary. When appropriate, the commissioner shall consult with the secretaries of the various departments of state government and shall request from the secretaries suggestions for land use and resource development on the land. In the case of land recommended for sale, lease, or transfer, the report shall include the review and approval of the director of the West Virginia Development Office of the proposed use and alternate suggestions for use of any institutional farm which may be in the public interest. Notwithstanding any other provision of this subsection to the contrary, title to the Weston State Hospital Institutional Farm, located at Weston, Lewis County, is transferred from the Department of Agriculture to the Department of Health Facilities, including all buildings thereon: *Provided*, That the Department of Agriculture shall retain all oil, gas and mineral rights, interests and title underlying the surface of the real property being transferred to the Department of Health Facilities under this subsection.

The Secretary of the Department of Health Facilities is authorized to sell, lease, donate or otherwise transfer the Weston State Hospital Institutional Farm, as well as the grounds of the former Weston State Hospital including the improvements and appurtenances belonging thereto: *Provided*, That notice of the sale of the real estate at auction shall include the right of the state to reject any and all bids: *Provided, however*, That the deed conveying title to the real estate shall contain a reservation in it providing that the communications tower, located on the real estate and owned and maintained by the county commission of Lewis

County, shall remain the property of the Lewis county commission and shall remain on the real estate free of any cost or rent and the county commission of Lewis County shall have an easement for ingress and egress and for the maintenance of the tower in perpetuity unless agreed otherwise in writing by the county commission of Lewis County.

(c) Nothing in this section shall be construed to limit the duties imposed on the Department of Health and the Division of Corrections to purchase food products pursuant to section five of this article and to make interdepartmental transfers pursuant to section six of this article: *Provided*, That purchases shall be made from and transfers made to the Department of Agriculture.

(d) Nothing in this section shall be construed to invalidate any action or contractual obligation of the farm management commission prior to the effective date of this section.

(e) Notwithstanding the provisions of subsection (b) of this section, in any case where the farm management commission has determined by motion adopted prior to the effective date of this article that an institutional farm or part thereof should be transferred or disposed of, or authorized any formal agreement for this purpose, whether or not any documents related to the agreement have been reduced to writing or executed, the commissioner shall execute all documents and take all necessary actions to implement the transfer or disposition of the property.

(f) For any land transferred to the public land corporation for sale, exchange or transfer pursuant to section five of this article, the farm property shall be offered for sale in both small parcels of land and as whole farms and shall be sold in the form which brings the highest price for the total property. For purposes of this subsection, "small parcels" means parcels of no more than five acres.

§19-12A-2. Definitions.

For the purpose of this article:

"Agricultural products" means livestock and livestock products, poultry and poultry products, fruits and fruit products, vegetables and vegetable products, grains and hays and the products derived therefrom, tobacco, syrups, honey, and other products derived from the business of farming; including such other products as may be manufactured, derived, or prepared from agricultural products, raw or processed, which are used as food for man or animals.

"Commission" means the Farm Management Commission as established by this article.

"Commissioner" means the Commissioner of Agriculture, or his or her designee.

"Department" means the Department of Agriculture.

"Farm equipment" means any equipment used for agricultural production.

"Farm facility" means any processing plant, milking parlor, farm equipment storage building, barn, silo, grain storage building, swinery, or any other building owned by an institution used in its farming operations.

"Institution" means any facility operated by the Department of Health Facilities or the Division of Corrections and Rehabilitation.

"Institutional farm" means any land which was formerly operated as a farm, is now being operated as a farm, or could be converted to agricultural production.

§19-12A-5. Powers, duties, and responsibilities of commissioner.

(a) The commissioner shall manage all institutional farms, equipment, and other property to most efficiently produce food products for state institutions, support the department and its activities, advance the agricultural interests of the state, as identified by the commissioner, and otherwise implement the intent of the Legislature as set forth by this article. From the total amount

of food, milk, and other commodities produced on institutional farms, the commissioner shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Department of Health Facilities and Division of Corrections and Rehabilitation shall purchase, these products based on the dietary needs of each institution: *Provided*, That if the commissioner cannot sell sufficient food products to each institution to meet the demand created, each institution may purchase such food products from vendors who can supply those food products at the greatest savings to the taxpayers of the state.

(b) If requested by the Commissioner of the Division of Corrections and Rehabilitation, the commissioner may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on those lands. The Commissioner of the Division of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall, in consultation with the Commissioner of Agriculture, assign the work to be performed by inmates. The Commissioner of Agriculture may also request inmate labor to perform work on the institutional farms, and if requested, the Commissioner of the Division of Corrections and Rehabilitation shall provide inmate labor, if available.

(c) The commissioner is authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained;

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Department of Environmental Protection will increase the beneficial use of such property;

(4) Upon 30 days written notice to the lessee, cancel a lease to which the department is a party and which is for annual consideration of less than \$5 per acre: *Provided*, That such lease must contain a provision authorizing cancellation or impairment by the Legislature; and

(5) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber on the timberland, an inventory is provided, and an appraisal of the timber is provided.

(e) The commissioner may promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and regulations relating to the powers and duties of the commissioner as enumerated in this section.

§19-12A-6. Commissioner's powers and duties.

The commissioner or his or her designee is responsible for conducting the operations of the farms and shall:

(1) Prepare an annual report of the farming operations, including a listing of all receipts and expenditures and shall present it to the Legislature at the end of each fiscal year.

(2) Prepare the annual budget request for the operation of the institutional farms.

(3) Receive and approve all requisitions for farm supplies and equipment.

(4) Supervise the operation of all canneries and determine what foods are to be canned.

(5) Recruit and approve assistant farm managers to supervise each institutional farm.

(6) Transfer farm supplies, farm equipment, farm facilities, food stuffs, and produce from one institutional farm to another to promote efficiency and improve farm management.

(7) Rent or lease additional land for farm use.

By September 30 each year, each institution under the control of the Department of Health Facilities and the Division of Corrections and Rehabilitation shall present to the commissioner a purchase order for its food requirements during the next fiscal year as determined by the institution. If, during the year, an institution finds that it needs other or additional food, milk, or commodities not included in its purchase order for the year, the institutional superintendent may forward a supplemental request to the commissioner, which order may be filled depending on availability. If institutional farms produce more food, milk, and other commodities than can be sold to the institutions, the commissioner may sell the surplus to other state agencies willing to purchase. If any surplus remains after sales to other state agencies, the commissioner may sell the surplus on the open market or turn over any surplus food products to appropriate public, nonprofit agencies.

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

§19-29-1. Nontraditional agriculture; authority.

The Commissioner of Agriculture is empowered and shall devise means of advancing the nontraditional agricultural products in the state, and in the performance of such duty, he or she shall have the authority to call upon any department, division, or officer

of the state or county to cooperate with him or her in promoting nontraditional agricultural products in the state.

These nontraditional products are to be considered as agricultural activities.

Only after consultation with the Division of Natural Resources and the Department of Health, the commissioner shall promulgate rules, in accordance with chapter twenty-nine-a of this code, for the promotion, marketing, and regulation of nontraditional agriculture.

The commissioner shall have the authority under this article to restrict the importation and commercial production of any species of nontraditional agriculture which in his or her opinion is not in the best interest of the industry or of the public.

Nothing in this article shall affect the Division of Natural Resources' authority as provided in articles one, two, three, and seven, chapter twenty of this code.

§19-29-3. Health requirements.

Only after consultation with the Division of Natural Resources and the Department of Health, the commissioner shall promulgate rules, in accordance with chapter twenty-nine-a of this code, dealing with the health standards for nontraditional agriculture.

ARTICLE 30. DONATED FOOD.

§19-30-2. Administration of donated food program transferred from Department of Health to Department of Agriculture.

(a) The Department of Agriculture is designated as the state agency to:

(1) Receive food donated by the United States Department of Agriculture, other federal or state agencies, corporations, private persons or entities;

(2) Receive payments for storage and distribution of the donated food;

- (3) Distribute the food to educational or charitable institutions;
- (4) Allocate funds received relating to the donated food; and
- (5) Enter into agreements and take other actions necessary to exercise the authority provided in this article.

ARTICLE 34. DANGEROUS WILD ANIMALS ACT.

§19-34-5. Dangerous Wild Animal Board; composition; duties.

(a) The Dangerous Wild Animal Board is established with the following members: The Commissioner of the Department of Agriculture, the Secretary of the Department of Health and the Director of the Division of Natural Resources, or their designees. The board shall develop a comprehensive list of dangerous wild animals pursuant to the rule-making authority of this article.

(b) The Commissioner of Agriculture shall serve as the chair, the Secretary of the Department of Health as the vice chair and the Director of the Division of Natural Resources shall serve as the secretary of the board. The Department of Agriculture shall provide necessary staff and support services to the board as needed.

(c) The board shall:

(1) Establish minimum caging or enclosure requirements for various dangerous wild animals;

(2) Create a comprehensive list of dangerous wild animals, excluding wildlife, livestock and domestic animals as defined herein. The list may include, but not be limited to:

- (A) Bears;
- (B) Big cats;
- (C) Canids;
- (D) Primates;

(E) Constrictor snakes greater than six feet, and venomous snakes; and

(F) Alligators and caimans;

(3) Enforce the permit requirements and set the fees for permits;

(4) Issue, renew, revoke and maintain records for dangerous wild animal permits;

(5) Annually review the list of prohibited dangerous wild animals to determine if animals should be added or subtracted from the list; and

(6) Address any other issues required by this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 5J. MEDICAL WASTE ACT.

§20-5J-2. Legislative findings and purpose.

The Legislature finds that the proper and environmentally-sound disposal of infectious and noninfectious medical waste is an important issue facing all West Virginians.

The Legislature further finds that effective controls for the management of medical waste are necessary to ensure the protection of the public health, safety and welfare, and the environment.

The Legislature further finds that regulation of the generation, handling, storage, transportation, treatment and disposal of medical waste is an important and necessary function of state government.

The Legislature further finds that toxic pollutants emitted by medical waste incinerators are an important public health hazard.

The Legislature further finds that commercial incineration of medical waste, and its transportation in the infectious state, pose a

potentially serious threat to the health, safety and welfare of West Virginians.

The Legislature further finds that safe and cost-effective alternatives to the incineration of infectious and noninfectious medical waste should be encouraged.

The Legislature further finds that the public interest is best served by:

(1) Efforts to reduce the volume of medical waste generated at all levels;

(2) On-site separation and treatment of infectious medical waste;

(3) Treatment and disposal of infectious medical waste in local infectious medical waste management facilities; and

(4) Treatment and disposal in approved regional infectious waste management facilities when administrative proceedings result in a finding that on-site or local treatment of infectious medical waste is not feasible.

The Legislature further finds that local responsibility for the minimization in volume, and for the treatment and disposal of infectious and noninfectious medical waste is an important part of a sound and rational waste management program.

The Legislature further finds that small quantity generators of infectious medical waste should either render such waste noninfectious on-site, or properly label and package the waste for transportation to a local infectious waste management facility for proper treatment and disposal.

The Legislature further finds that generators of medical waste should be informed and educated in its management; that training should be provided to all workers likely to come in contact with medical waste, including in-home health care workers; and that relevant information on the potential for infection and disease

related to medical waste should be made available to the general public, including in-home health care patients.

The Legislature further finds that the necessity for transporting infectious medical waste be minimized, and that any infectious medical waste transported be safely packaged and identified by source and content.

The Legislature further finds that public policy favors a reduction in the volume of infectious and noninfectious medical waste, the separation of infectious medical waste from noninfectious medical waste, and that efforts to reduce medical waste should be fostered and strongly encouraged at all levels of generation.

The Legislature further finds that noninfectious medical waste is solid waste.

The Legislature further finds that noninfectious medical waste should be handled by environmentally sound disposal technologies, and that alternative disposal technologies promoting safe recycling and limiting the need for incineration should be emphasized, developed and utilized.

Therefore, it is the policy of the State of West Virginia to prohibit commercial infectious medical waste facilities; to regulate and control the generation, handling, storage, transportation, treatment and disposal of infectious and noninfectious medical waste; to reduce the generation of infectious and noninfectious medical waste; to encourage local responsibility for the minimization, management and disposal of infectious and noninfectious medical waste; and to authorize the Department of Health to promulgate rules and regulations necessary to carry out the purposes of this article.

§20-5J-3. Definitions.

As used in this article:

(1) "Commercial infectious medical waste facility" means any infectious medical waste management facility at which thirty-five

percent or more by weight of the total infectious medical waste stored, treated, or disposed of by said facility in any calendar year is generated off-site.

(2) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any infectious medical waste into or on any land or water so that such waste, or any constituent thereof, may be emitted into the air, discharged into any waters, including groundwater, or otherwise enter into the environment.

(3) "Generator" means any person, by site location, whose act or process produces medical waste.

(4) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(5) "Infectious medical waste" means medical waste identified as capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. For the purposes of this article, infectious medical waste shall include the following:

- (A) Cultures and stocks of microorganisms and biologicals;
- (B) Blood and blood products;
- (C) Pathological wastes;
- (D) Sharps;
- (E) Animal carcasses, body parts, bedding and related wastes;

(F) Isolation wastes;

(G) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of any infectious medical waste; and

(H) Any waste contaminated by or mixed with infectious medical waste.

(6) "Medical waste" means infectious and noninfectious solid waste generated in the course of the diagnosis, treatment or immunization of human beings or animals, or in research pertaining thereto, or in the production or testing of biologicals. Such term does not include low-level radioactive waste, any hazardous waste identified or listed under Subtitle C, or any household waste as defined in the regulations promulgated pursuant to Subtitle C.

(7) "Noncommercial infectious medical waste facility" means any infectious medical waste facility at which less than thirty-five percent by weight of the total infectious medical waste stored, treated or disposed of by said facility in any calendar year is generated off-site.

(8) "Noninfectious medical waste" means any medical waste not capable of producing an infectious disease or infectious medical waste which has been rendered noninfectious. Noninfectious medical waste is considered solid waste for purposes of this code.

(9) "Off-site" means a facility or area for the collection, storage, transfer, processing, treatment or disposal of infectious medical waste that is not on the generator's site, or a facility or area that received infectious medical waste for storage or treatment that has not been generated on-site.

(10) "On-site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by

the same person but connected by a right-of-way controlled by said person and to which the public does not have access is also considered on-site property. Hospitals with more than one facility located in the same county shall be considered one site.

(11) "Secretary" means the secretary of the Department of Health or his or her designee.

(12) "Small quantity generator" means any generator of infectious medical waste who generates fifty pounds or less during a one-month period.

(13) "Storage" means the containment of infectious medical waste on a temporary basis. Storage shall not constitute disposal of the waste.

(14) "Subtitle C" means Subtitle C of the federal Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, as amended.

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any infectious medical waste so as to render such waste noninfectious.

§20-5J-5. Designation of Secretary of the Department of Health as the state infectious medical waste management primary agency; prohibitions; requiring permits.

(a) The secretary is designated as the infectious medical waste management primary agency for this state and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of this legislation pertaining to infectious medical waste. In carrying out the purposes of this article, the secretary is hereby authorized to cooperate with agencies of the federal government, this state and other states, and other interested persons, in all matters relating to medical waste management.

(b) No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of infectious medical waste, nor shall any person store, treat or dispose of any

such infectious medical waste without first obtaining a permit from the secretary, unless specifically excluded or exempted by rules promulgated by the secretary.

ARTICLE 5K. COMMERCIAL INFECTIOUS MEDICAL WASTE FACILITY SITING APPROVAL.

§20-5K-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article the terms:

(a) "Commercial infectious medical waste facility" means any infectious medical waste management facility at which thirty-five percent or more by weight of the total infectious medical waste stored, treated or disposed of by the facility in any calendar year is generated off-site.

(b) "Infectious medical waste" means medical waste identified as capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. For the purposes of this article, infectious medical waste includes the following:

- (1) Cultures and stocks of microorganisms and biologicals;
- (2) Blood and blood products;
- (3) Pathological wastes;
- (4) Sharps;
- (5) Animal carcasses, body parts, bedding and related wastes;
- (6) Isolation wastes;

(7) Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of any infectious medical waste; and

(8) Any waste contaminated by or mixed with infectious medical waste.

(c) "Off-site" means a facility or area for the collection, storage, transfer, processing, treatment or disposal of infectious medical waste that is not on the generator's site, or a facility or area that received infectious medical waste for storage or treatment that has not been generated on-site.

(d) "Secretary" means the Secretary of the Department of Health or his or her designee.

§20-5K-3. Procedure for public participation.

(a) From and after the effective date of this article, in order to obtain approval to locate a commercial infectious medical waste facility, currently not under permit to operate, an applicant shall:

(1) File a presiting notice with the county commission and local solid waste authority of the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the secretary;

(2) File a presiting notice with the secretary; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the commercial infectious medical waste facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the

preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary or general election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial infectious medical waste management facility be located in the county. Any election at which such question of locating a commercial infectious medical waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address, and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located within the county:

Shall a commercial infectious medical waste management facility be located within _____ County.

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the local solid waste authority, the Division of Environmental Protection, and the Secretary of the Department of Health of the result and the commercial infectious medical waste management facility may not proceed any further with the application. If a

majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §20-5j-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the secretary to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-16. Child support intercept of unemployment benefits.

(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as hereafter defined under subsection (g) of this section. If any such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the child support enforcement division of the Department of Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes such child support obligations as defined under subsection (g) of this section:

(1) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither subdivision (2) nor subdivision (3) is applicable;

(2) The amount, if any, determined pursuant to an agreement submitted to the commissioner under section 454 (19)(B)(i) of the Social Security Act, (B)(i), by the Department of Human Services, unless subdivision (3) is applicable; or

(3) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 459 (i)(5) of the Social Security Act, as codified in 42 U.S.C. §659 (i)(5), properly served upon the commissioner.

(c) Any amount deducted and withheld under subsection (b) of this section shall be paid by the commissioner to the child support enforcement division of the Department of Human Services.

(d) Any amount deducted and withheld under subsection (b) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the child support enforcement division of the Department of Human Services in satisfaction of the individual's child support obligations.

(e) For purposes of subsections (a) through (d) of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(f) This section applies only if appropriate arrangements have been made for reimbursement by the child support enforcement division of the Department of Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(g) The term "child support obligations" means, for purposes of these provisions, only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act, as codified in 42 U.S.C. §654, which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b.

§21A-6-17. Food stamp overissuance intercept of unemployment benefits.

(a) Notwithstanding the provisions of section two, article ten of this chapter, the commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes an uncollected overissuance of food stamp coupons, as defined under subsection (f) of this section:

(1) The amount, if any, determined pursuant to a written agreement between the individual and the Department of Human Services under Section 13(c)(3)(A) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(3)(A), and submitted to the commissioner; or

(2) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is used in Section 13(c)(3)(B) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(3)(B) properly served upon the commissioner.

(b) Any amount deducted and withheld under subsection (a) of this section shall be paid by the commissioner to the Department of Human Services.

(c) Any amount deducted and withheld under subsection (a) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the Department of Human Services in satisfaction of the individual's uncollected overissuance.

(d) For purposes of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

(e) This section applies only if appropriate arrangements have been made for reimbursement by the Department of Human Services for the administrative costs incurred by the commissioner under this section which are attributable to uncollected overissuance being enforced by the state or Department of Human Services.

(f) The term "uncollected overissuance" means, for purposes of this section, obligations which are being enforced pursuant to a plan described in Section 13(c)(1) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(1).

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-9. Powers reserved to Secretary of the Department of Health, Commissioner of Bureau for Public Health, local health boards and political subdivisions; conflicting statutes repealed.

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the Secretary of the Department of Health, the Commissioner of the Bureau for Public Health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: *Provided*, That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-10. Department to administer funds for waste tire remediation; rules authorized; duties of secretary.

(a) The department shall administer all funds made available to the department by legislative appropriation or by funds made available by the Division of Highways, as well as federal, state or

private grants for remediation of waste tire piles and for the proper disposal of waste tires removed from waste tire piles.

(b) All authority to promulgate legislative rules necessary to implement the provisions of this article is transferred from the Division of Highways to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 of the Legislature. Any legislative rules promulgated by the Commissioner of the Division of Highways in furtherance of the waste tire remediation program established in former article twenty-four, chapter seventeen of this code shall remain in force and effect as if promulgated by the secretary until they are amended in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(c) The secretary also has the following powers:

(1) To apply and carry out the provisions of this article and the rules promulgated under this article.

(2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the Governor.

(d) The secretary shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.

(e) The secretary may contract with the Department of Health or the Division of Corrections, or both, to remediate or assist in remediation of waste tire piles throughout the state. Use of available Division of Corrections work programs shall be given priority status in the contract process so long as such programs prove a cost-effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped upon the discovery of any potentially hazardous material at a remediation site. The department shall respond to the discovery in accordance with the provisions of article nineteen of this chapter.

(g) The secretary may establish a tire disposal program within the department to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at locations designated by the department that have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The secretary may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the department. The secretary may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The secretary may in his or her discretion authorize commercial businesses to participate in the collection program: *Provided*, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The Commissioner of the Division of Highways may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin Fund created by section nine of this article to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the Water Development Authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: *Provided*, That a waste tire processing facility shall be determined by the Solid Waste Management Board, established pursuant to the provisions of article three, chapter twenty-two-c of this code, to meet all applicable federal and state environmental laws and rules and to aid the state in efforts to promote and encourage recycling and use of constituent component parts of waste tires in an environmentally sound manner: *Provided, however*, That the waste tire processing facility shall have a capital cost of not less than \$300 million and the council for community and economic development shall determine that the waste tire processing facility is a viable economic development project of benefit to the state's economy.

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-6. Promulgation of rules by director.

(a) The director has overall responsibility for the promulgation of rules under this article. The director shall promulgate the following rules, in consultation with the Department of Health, the Office of Emergency Services, the Public Service Commission, the state Fire Marshal, the department of public safety, the Division of Highways, the Department of Agriculture, and the environmental quality board. In promulgating and revising such rules, the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

(1) Rules establishing a plan for the safe and effective management of hazardous wastes within the state;

(2) Rules establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of this article: *Provided, That:*

(A) Each waste listed below shall, except as provided in paragraph (B) of this subdivision, be subject only to regulation under other applicable provisions of federal or state law in lieu of this article until proclamation by the Governor finding that at least six months have elapsed since the date of submission of the applicable study required to be conducted under Section 8002 of the federal Solid Waste Disposal Act, as amended, and that regulations have been promulgated with respect to such wastes in accordance with Section 3001 (b)(3)(C) of the Resource Conservation and Recovery Act, and finding in the case of the wastes identified in subparagraph (iv) of this paragraph that the regulation of such wastes has been authorized by an act of Congress in accordance with Section 3001 (b)(2) of the Resource Conservation and Recovery Act:

(i) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in paragraph (A) of this subdivision may be required by the director through rule prescribed under authority of this section:

(i) As to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future; and

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record;

(3) Rules establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting: (A) Record-keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to public health or the environment and the disposition of such wastes; (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste; (C) use of appropriate containers for such hazardous waste; (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting,

treating, storing or disposing of such wastes; (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required: (i) By this article or any rule required by this article to be promulgated; (ii) by Subtitle C of the Resource Conservation and Recovery Act; (iii) by the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the Resource Conservation and Recovery Act; or (iv) by Title I of the federal Marine Protection, Research and Sanctuaries Act; and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules establishing such performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such rules and shall include, but need not be limited to, requirements respecting: (A) Maintaining records of all hazardous wastes identified or listed under this article which are treated, stored or disposed of, as the case may be, and the manner in which such wastes were treated, stored or disposed of; (B) satisfactory reporting, monitoring and inspection and compliance with the manifest system referred to in subdivision (3) of subsection (a) of this section; (C) treatment, storage or disposal of all such waste received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the director; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such hazardous waste; (F) the

maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however, no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight of this article respecting permits for treatment, storage or disposal;

(5) Rules specifying the terms and conditions under which the director shall issue, modify, suspend, revoke or deny such permits as may be required by this article;

(6) Rules for the establishment and maintenance of records; the making of reports; the taking of samples and the performing of tests and analyses; the installing, calibrating, operating and maintaining of monitoring equipment or methods; and the providing of any other information as may be necessary to achieve the purposes of this article;

(7) Rules establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites;

(8) Rules for public participation in the implementation of this article;

(9) Rules establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;

(10) Rules establishing procedures and requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as necessary or desirable for closure of the facility, post-

closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

(11) Rules establishing a schedule of fees to recover the costs of processing permit applications and permit renewals;

(12) Rules, including exemptions and variances, as appropriate: (A) Establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods; (B) establishing standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes; (C) establishing standards applicable to producers, distributors or marketers of hazardous waste fuels; and (D) as are otherwise necessary to allow the state to assume primacy for the administration of the federal hazardous waste management program under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984: *Provided*, That such rules authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C;

(13) Rules: (A) Establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article and in accordance with the provisions of article five of this chapter. Such permits shall be in addition to those permits required by section eight of this article;

(B) For the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment; and

(C) Establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section or which

is produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section and any other material, as may be necessary to protect human health and the environment: *Provided*, That such legislative rules shall be consistent with Subtitle C.

Any person aggrieved or adversely affected by an order of the director made and entered to implement or enforce the rules required by this subdivision or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of the rules required by this subdivision, may appeal to the air quality board in accordance with the procedure set forth in article one, chapter twenty-two-b of this code, and orders made and entered by said board are subject to judicial review in accordance with the procedures set forth in article one, chapter twenty-two-b of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(14) Rules developing performance standards and other requirements under this section as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil. The director shall ensure that such rules do not discourage the recovery or recycling of used oil. For these purposes, "used oil" shall mean any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

(15) Such other rules as are necessary to effectuate the purposes of this article.

(b) The rules required by this article to be promulgated shall be reviewed and, where necessary, revised not less frequently than every three years. Additionally, the rules required to be

promulgated by this article shall be revised, as necessary, within two years of the effective date of any amendment of the Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules required to be promulgated by the Resource Conservation and Recovery Act.

(c) Notwithstanding any other provision in this article, the director shall not promulgate rules which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.

§22-18-7. Authority and jurisdiction of other state agencies.

(a) The Commissioner of the Division of Highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules issued by the federal Department of Transportation and consistent with this article: *Provided*, That such legislative rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the Commissioner of the Division of Highways elsewhere by law with respect to the transportation of hazardous waste, the Commissioner of the Division of Highways has the same enforcement and inspection powers as those granted to the director, or authorized representative or agent, or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article. The limitations of this subsection do not affect in any way the powers of the Division of Highways with respect to weight enforcement.

(b) The Public Service Commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules governing the transportation of hazardous wastes by railroad in this state. Such rules shall be consistent with applicable rules and regulations issued by the federal Department of Transportation and consistent with this article: *Provided*, That such rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the Public Service Commission elsewhere by law with respect to the transportation of hazardous waste, the Public Service Commission has the same enforcement and inspection powers as those granted to the director or authorized representative or agent or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article.

(c) The rules required to be promulgated pursuant to subsections (a) and (b) of this section apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves or combinations thereof. Such rules shall establish such standards, applicable to transporters of hazardous waste identified or listed under this article, as may be necessary to protect public health, safety and the environment. Such standards shall include, but need not be limited to, requirements respecting: (A) Recordkeeping concerning such hazardous waste transported, and its source and destination; (B) transportation of such waste only if properly labeled; (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article; and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a

permit issued under: (1) This article or any rule required by this article to be promulgated; (2) Subtitle C; (3) the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the Resource Conservation and Recovery Act; or (4) Title I of the Federal Marine Protection, Research and Sanctuaries Act.

(d) The Secretary of the Department of Health, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, shall promulgate rules pursuant to article five-j, chapter twenty of this code. The Secretary of the Department of Health shall have the same enforcement and inspection powers as those granted to the director or agent or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article, and in addition thereto, the Department of Health shall have those inspection and enforcement powers with respect to hazardous waste with infectious characteristics as provided for in article five-j, chapter twenty of this code.

(e) The Environmental Quality Board, in consultation with the director, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate water quality standards governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of hazardous waste as may be required by this article. The standards shall be consistent with this article.

(f) All legislative rules promulgated pursuant to this section shall be consistent with rules and regulations promulgated by the federal environmental protection agency pursuant to the resource conservation and recovery act.

(g) The director shall submit written comments to the Legislative Rule-Making Review Committee regarding all legislative rules promulgated pursuant to this article.

ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-21. Interagency cooperation.

(a) In implementation of this article, the secretary shall coordinate with the Department of Health, the West Virginia Public Service Commission, the Division of Homeland Security and Emergency Management and local health departments to ensure the successful planning and implementation of this act, including consideration of the role of those agencies in providing services to owners and operators of regulated aboveground storage tanks and public water systems.

(b) The Division of Homeland Security and Emergency Management shall also coordinate with state and local emergency response agencies to facilitate a coordinated emergency response and incident command and communication between the owner or operator of the regulated aboveground storage tank, the state and local emergency response agencies, and the affected public water systems.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-4. Solid Waste Management Board; organization of board; appointment and qualification of board members; their term of office, compensation, and expenses; director of board.

The Solid Waste Management Board is a governmental instrumentality of the state and a body corporate. The exercise by the board of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and are for a public purpose.

The board is composed of seven members. The Secretary of the Department of Health and the Director of the Division of

Environmental Protection, or their designees, are members ex officio of the board. The other five members of the board are appointed by the Governor, by and with the advice and consent of the Senate, for terms of one, two, three, four, and five years, respectively. Two appointees shall be persons having at least three years of professional experience in solid waste management, civil engineering, or regional planning and three appointees shall be representatives of the general public. The successor of each such appointed member shall be appointed for a term of five years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor.

Not more than three of the appointed board members may at any one time be from the same congressional district or belong to the same political party. No appointed board member may be an officer or employee of the United States or this state. Appointed board members may be reappointed to serve additional terms. All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of §6-1-1 *et seq.*, of this code and give bond in the sum of \$25,000. Appointed members may be removed from the board only for the same causes as elective state officers may be removed.

Annually the board shall elect one of its appointed members as chair, another as vice chair and appoint a secretary-treasurer, who need not be a member of the board. Four members of the board are a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board. The person appointed as secretary-treasurer shall give bond in the sum of \$50,000. If a board member is appointed as secretary-

treasurer, he or she shall give bond in the sum of \$25,000 in addition to the bond required in the preceding paragraph.

The ex officio members of the board shall not receive any compensation for serving as a board member. Each of the five appointed members of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred by board members are payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriation.

The board shall meet at least four times annually and at any time upon the call of its chair or upon the request in writing to the chair of four board members.

The board shall appoint a director as its chief executive officer. The director shall have successfully completed an undergraduate education and, in addition, shall have two years of professional experience in solid waste management, civil engineering, public administration, or regional planning.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2A. REDUCED RATES FOR LOW-INCOME RESIDENTIAL CUSTOMERS OF ELECTRICITY AND GAS.

§24-2A-5. Special rates for certain water, sewer, or combined water and sewer utility customers.

(a) The commission may authorize a privately owned water, sewer or combined water and sewer utility to voluntarily implement a rate design featuring reduced rates and charges for service for residential utility customers receiving:

- (1) Social Security Supplemental Security Income (SSI);
- (2) Temporary Assistance for Needy Families (TANF);
- (3) Temporary Assistance for Needy Families-Unemployed Parent Program (TANF-UP);or
- (4) Assistance from the Supplemental Nutrition Assistance Program (SNAP) if they are sixty years of age or older.

(b) The special reduced rate offered by each water, sewer, or combined water and sewer utility to its eligible customers shall be a percentage less, which shall be approved by the commission, than the rate that would be applicable to such customers if they were not receiving any of the four forms of assistance that confer eligibility for the special reduced rates approved by the commission: *Provided*, That such rate reduction shall not exceed 20 percent of the rate that would be otherwise applicable.

(c) Before any individual may qualify to receive the special reduced rates, the following requirements must be met:

(1) The special reduced rates may apply only to current customers or to those persons who subsequently become customers in their own right. If an SSI, TANF, TANF-UP or SNAP recipient is living in a household that is served under the name of a person who is not an SSI, TANF, TANF-UP or SNAP recipient, that service may not be changed or have been changed subsequent to July 1, 2011, to the name of the SSI, TANF, TANF-UP or SNAP recipient in order to qualify for service under the special reduced rates.

(2) The burden of proving eligibility for the special reduced rates shall be on the customer requesting such rates. The Department of Human Services shall establish by rules and procedures:

(A) To inform persons receiving any of the four forms of assistance that confer eligibility for the special reduced rates about the availability of the special reduced rates;

(B) To assist applicants for the special reduced rates in proving their eligibility therefor; and

(C) To assist water, sewer, or combined water and sewer utilities offering the special reduced rates in determining on a continuing basis the eligibility therefor of persons receiving or applying for such rates.

The commission shall establish rules and procedures for the application for and provision of service under the special reduced rates and for the determination and certification of revenue deficiencies resulting from the special reduced rates.

(3) In order to provide each eligible residential utility customer the special reduced rates, each utility providing the special reduced rates shall credit against amounts otherwise owed by each customer an amount equal to the difference between the total amount that each customer was actually billed during the previous month and the total amount that each customer would have been entitled to be billed under the special reduced rates. Each credit shall be fully reflected on the first bill issued to each customer after approval of each customer's application for the special reduced rates, except in cases where the interval between the approval and the issuance of the next bill is so short that it is administratively impracticable to do so, in which case, such credits shall be fully reflected on the second bill issued to each customer after approval of that customer's application. If the interval between the approval and the issuance of the next bill is 15 days or more, it may not be deemed administratively impracticable to reflect the credit on the customer's first bill.

ARTICLE 2C. REDUCED RATES FOR CERTAIN LOW-INCOME RESIDENTIAL CUSTOMERS OF TELEPHONE SERVICE.

§24-2C-4. Availability of tel-assistance service; determination of eligibility; promulgation of rules.

(a) All eligible telecommunications carriers shall make tel-assistance services available to qualified low-income consumers

pursuant to tariffs or agreements filed with and approved by the Public Service Commission.

(b) Insofar as permitted under federal law, eligible telecommunications carriers may file with the Public Service Commission tariffs or agreements that, without limitation, offer tel-assistance service which includes a broader group of services, or make tel-assistance service available to a broader group of low-income residential consumers.

(c) The Public Service Commission shall establish rules to implement the provisions of this article. The rules shall include, but not be limited to, procedures governing the application for and the provision of tel-assistance service; the determination, calculation and certification of the revenue deficiency resulting from the provision of tel-assistance service; criteria for establishing maximum levels of revenue deficiencies that may be claimed; establishing the methods by which telephone utilities shall maintain records pertaining to such deficiency and the methods by which such deficiency shall be calculated; and providing for alternate methodologies to simplify the record keeping of the eligible telecommunications carriers. The rules shall be promulgated pursuant to section seven, article one of this chapter and adopted within one hundred twenty days of the effective date of this article. The Public Service Commission shall timely amend the rules thereafter as may be required by any provision of state or federal law.

(d) The Department of Human Services shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish, procedures to inform eligible telecommunications carriers of the eligibility of applicants for tel-assistance service, to assist applicants for tel-assistance service in proving their eligibility therefor, to determine on a continuing basis the eligibility of persons receiving tel-assistance service, and communicate such determinations to the eligible telecommunications carriers. Initially, rules shall be adopted and filed in the state register within one hundred twenty days of the effective date of this article and shall not otherwise be subject to the requirements of chapter twenty-nine-a of this code.

Rules promulgated pursuant to this subsection shall become effective immediately upon filing in the state register and remain in effect until supplanted by legislative rules promulgated pursuant to chapter twenty-nine-a of this code.

(e) The secretary of the Department of Human Services or the Public Service Commission may propose emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement additional provisions of this article as may be required.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-7. Administrator and clinical director.

(a) The administrator of a state-operated treatment facility is its chief executive officer and has the authority to manage and administer the financial, business and personnel affairs of such facility. All other persons employed at the state-operated treatment facility are under the jurisdiction and authority of the administrator of the treatment facility who need not be a physician.

(b) The clinical director has the responsibility for decisions involving clinical and medical treatment of patients in a state-operated mental health facility. The clinical director must be a physician duly licensed to practice medicine in this state who has completed training in an accredited program of post-graduate education in psychiatry.

(c) In any facility designated by the Secretary of the Department of Health Facilities as a facility for individuals with an intellectual disability in which programs and services are designed primarily to provide education, training and rehabilitation rather than medical or psychiatric treatment, the duties and responsibilities, other than those directly related to medical treatment services, assigned to the clinical director by this section or elsewhere in this chapter, are assigned to and become the responsibility of the administrator of that facility, or of a person

with expertise in the field of intellectual disability, who need not be a physician, designated by the administrator.

ARTICLE 1A. DEPARTMENT OF HEALTH FACILITIES.

§27-1A-4. Powers and duties of the secretary.

In addition to the powers and duties set forth in any other provision of this code, the Secretary of the Department of Health Facilities has the following powers and duties:

(a) To develop and maintain a state plan which sets forth needs of the state in the areas of mental health and intellectual disability; goals and objectives for meeting those needs; plan of operation for achieving the stated goals and objectives, including organizational structure; and statement of requirements in personnel funds and authority for achieving the goals and objectives.

(b) To appoint deputies and assistants to supervise the departmental programs, including hospital and residential services, and such other assistants and employees as may be necessary for the efficient operation of the department and all its programs.

(c) To promulgate rules clearly specifying the respective duties and responsibilities of program directors and fiscal administrators, making a clear distinction between the respective functions of these officials.

(d) To delegate to any of his or her appointees, assistants or employees all powers and duties vested in the commissioner, including the power to execute contracts and agreements in the name of the department as provided in this article, but the commissioner shall be responsible for the acts of such appointees, assistants and employees.

(e) To supervise and coordinate the operation of the state hospitals named in article two of this chapter and any other state hospitals, centers or institutions hereafter created for the care and treatment of the mentally ill or intellectually disabled, or both.

(f) To transfer a patient from any state hospital to any other state hospital or clinic under his or her control and, by agreement with the state Division of Corrections, transfer a patient from a state hospital to an institution, other than correctional, under the supervision of the state Division of Corrections.

(g) To make periodic reports to the Governor and to the Legislature on the condition of the state hospitals, centers and institutions or on other matters within his or her authority, which shall include recommendations for improvement of any mental health facility and any other matters affecting the mental health of the people of the state.

The Secretary of the Department of Health Facilities has all of the authority vested in the divisions of the former Department of Mental Health, as hereinafter provided.

The Secretary of the Department of Health Facilities is authorized and empowered to accept and use for the benefit of a state hospital, center or institution, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state hospital, center or institution, it shall be used as specified. Any gift or devise of any property or thing which lawfully may be given and whatever profit may arise from its use or investment shall be deposited in a special revenue fund with the State Treasurer, and shall be used only as specified by the donor or donors.

***§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.**

There is a Division of Professional Services established in the Department of Health Facilities. The supervisor of this division shall assist the director in the operation of the programs or services of the department and shall be a qualified psychiatrist.

The supervisor of this division has the following powers and duties:

***NOTE:** This section was also amended by S. B. 300 (Chapter 208), which passed subsequent to this Act.

(1) To develop professional standards, provide supervision of state hospitals, analyze hospital programs and inspect individual hospitals.

(2) To assist in recruiting professional staff.

(3) To take primary responsibility for the education and training of professional and subprofessional personnel.

(4) To carry on or stimulate research activities related to medical and psychiatric facilities of the department, and render specialized assistance to hospital superintendents.

(5) To establish liaison with appropriate state agencies and with private groups interested in mental health, including the state Bureau for Public Health, Division of Corrections, the Department of Education, the Board of Governors of West Virginia University, and the West Virginia Association for Mental Health, Incorporated.

(6) To license, supervise and inspect any hospital, center or institution, or part of any hospital, center or institution, maintained and operated by any political subdivision or by any person, persons, association or corporation to provide inpatient care and treatment for the mentally ill, or individuals with an intellectual disability, or both.

(7) To perform any other duties assigned to the division by the Secretary of the Department of Health Facilities.

§27-1A-12. Independent Informal Dispute Resolution.

(a) A behavioral health provider licensed by the Office of Health Facility Licensure and Certification adversely affected by an order or citation of a deficient practice issued pursuant to this article or pursuant to federal law may request to use the independent informal dispute resolution process established by this section. A licensee may contest a cited deficiency as contrary to rule, regulation or law or unwarranted by the facts, or any combination thereof.

(b) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilization of the independent informal dispute resolution process does not waive the right of the licensee to request a formal hearing with the secretary.

(c) The independent informal dispute resolution process shall consist of the following:

(1) The secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than ten working days following the last day of the survey or inspection, or no later than ten working days following the last day of a complaint investigation. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(2) When the licensee returns its plan of correction to the secretary, the licensee may request, in writing, to participate in the independent informal dispute resolution process to protest or refute all or part of the cited deficiencies within ten working days. The secretary may not release the final report until all dispute processes are resolved.

(3) The Secretary of the West Virginia Department of Health (hereinafter "secretary") shall approve and establish a panel of at least three independent review providers: *Provided*, That in lieu of establishing a panel, the secretary may use an existing panel of approved independent review providers. The secretary shall contract with the independent review providers to conduct the independent informal dispute resolution processes. Each independent review provider shall be accredited by the Utilization Review Accreditation Commission. When a licensee requests an independent informal dispute resolution process, the secretary shall choose one independent review provider from the approved panel to conduct the process.

(4) The secretary shall refer the request to an independent review provider from the panel of certified independent review

providers approved by the department within five working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The secretary shall vary the selection of the independent review providers on a rotating basis. The secretary shall acknowledge in writing to the licensee that the request for independent review has been received and forwarded to the independent review provider. The notice shall include the name and professional address of the independent review provider.

(5) The independent review provider shall hold an independent informal dispute resolution conference, unless additional time is requested by either the licensee, the Office of Health Facility Licensure and Certification or the independent review provider and approved by the secretary, within ten working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The licensee or the Office of Health Facility Licensure and Certification may submit additional information before the independent informal dispute resolution conference.

(6) Neither the secretary nor the licensee may be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

(A) A review of written information submitted by the licensee;

(B) A telephonic conference; or

(C) A face-to-face conference held at a mutually agreed upon location.

(7) If the independent review provider determines the need for additional information, clarification or discussion at the conclusion of the independent informal dispute resolution conference, the secretary and the licensee shall present the requested information.

(8) The independent review provider shall make a determination within ten working days of receipt of any additional information as provided in subdivision (7) of this section or the

conclusion of the independent informal dispute resolution conference, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the secretary.

(9) If the secretary disagrees with the determination, the secretary may reject the determination made by the independent review provider and shall issue an order setting forth the rationale for the reversal of the independent review provider's decision to the licensee within ten working days of receiving the independent review provider's determination.

(10) If the secretary accepts the determination, the secretary shall issue an order affirming the independent review provider's determination within ten working days of receiving the independent review provider's determination.

(11) If the independent review provider determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the secretary accepts the determination, the secretary shall transmit a revised statement of deficiencies to the licensee within ten working days of the independent review provider's determination.

(12) The licensee shall submit a revised plan to correct any remaining deficiencies to the secretary within ten working days of receipt of the secretary's order and the revised statement of deficiencies.

(d) Under the following circumstances, the licensee is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the secretary within sixty days of the informal conference order:

(1) If the licensee requests a face-to-face conference, the licensee shall pay any costs incurred by the independent review provider that exceed the cost of a telephonic conference, regardless of which party ultimately prevails;

(2) If the independent review provider's decision supports the entirety of the originally written contested deficiency or adverse

action taken by the secretary, the licensee shall reimburse the secretary for the cost charged by the independent review provider; or

(3) If the independent review provider's decision supports some of the originally written contested deficiencies, but not all of them, the licensee shall reimburse the secretary for the cost charged by the independent review provider on a pro-rata basis as determined by the secretary.

(e) Establishment of the independent informal dispute resolution process does not preclude licensees from utilizing other informal dispute resolution processes provided by statute or rule in lieu of the independent informal dispute resolution process.

(f) Administrative and judicial review of a decision rendered through the independent informal dispute resolution process may be made in accordance with article five, chapter twenty-nine-a of this code.

(g) Any decision issued by the secretary as a result of the independent informal dispute resolution process shall be made effective from the date of issuance.

(h) The pendency of administrative or judicial review does not prevent the secretary or a licensee from obtaining injunctive relief as provided by statute or rule.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1. State hospitals and other facilities; transfer of control and property from Department of Mental Health to Department of Health and Human Resources; civil service coverage.

The state hospitals established at Weston, Huntington and Lakin, are continued and known respectively as the William R. Sharpe, Jr. Hospital, Mildred-Mitchell Bateman Hospital and Lakin Hospital. These state hospitals and centers are managed, directed and controlled by the Department of Health Facilities. Any person employed by the Department of Mental Health who on the

effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-2 of this code, remain in the civil service system as a covered employee. The Secretary of the Department of Health Facilities is authorized to bring the state hospitals into structural compliance with appropriate fire and health standards. All references in this code or elsewhere in law to the "West Virginia Training School" shall be taken and construed to mean and refer to the "Colin Anderson Center."

The control of the property, records, and financial and other affairs of state mental hospitals and other state mental health facilities is transferred from the Department of Mental Health to the Department of Health Facilities. The secretary shall, in respect to the control and management of the state hospitals and other state mental health facilities, perform the same duties and functions as were heretofore exercised or performed by the Director of Health. The title to all property of the state hospitals and other state facilities is transferred to and vested in the Department of Health Facilities.

Notwithstanding any other provisions of this code to the contrary, whenever in this code there is a reference to the Department of Mental Health, it shall be construed to mean and is a reference to the Department of Health Facilities.

ARTICLE 2A. MENTAL HEALTH-INTELLECTUAL DISABILITY CENTERS.

§27-2A-1. Comprehensive community mental health-intellectual disability centers; establishment, operation and location; access to treatment.

(a) The Department of Human Services is directed to establish, maintain and operate comprehensive community mental health centers and comprehensive intellectual disability facilities, at locations within the state that are determined by the secretary in accordance with the state's comprehensive mental health plan and the state's comprehensive intellectual disability plan. Such facilities may be integrated with a general health care or other facility or remain separate as the Secretary of the Department of

Human Services may by rules prescribe: *Provided*, That nothing contained herein may be construed to allow the Department of Human Services to assume the operation of comprehensive regional mental health centers or comprehensive intellectual disability facilities which have been heretofore established according to law and which, as of the effective date of this article, are being operated by local nonprofit organizations.

(b) Any new mental health centers and comprehensive mental retardation facilities herein provided may be operated and controlled by the Department of Human Services or operated, maintained and controlled by local nonprofit organizations and licensed according to rules promulgated by the Secretary of the Department of Human Services. All comprehensive regional mental health and intellectual disability facilities licensed in the state shall:

(1) Have a written plan for the provision of diagnostic, treatment, supportive and aftercare services, and written policies and procedures for implementing these services;

(2) Have sufficient employees appropriately qualified to provide these services;

(3) Maintain accurate medical and other records for all patients receiving services;

(4) Render outpatient services in the aftercare of any patient discharged from an inpatient hospital, consistent with the needs of the individual. No person who can be treated as an outpatient at a community mental health center may be admitted involuntarily into a state hospital.

(5) Have a chief administrative officer directly responsible to a legally constituted board of directors of a comprehensive mental health or intellectual disability facility operated by a local nonprofit organization, or to the Secretary of the Department of Human Services if the comprehensive mental health or intellectual disability center or facility is operated by the Department of Human Services; and

(6) Have a written plan for the referral of patients for evaluation and treatment for services not provided.

The state's share of costs of operating the facilities may be provided from funds appropriated for this purpose within the budget of the Department of Human Services. The Secretary of the Department of Human Services shall administer these funds among all comprehensive mental health and intellectual disability facilities that are required to best provide comprehensive community mental health care and services to the citizens of the state.

After July 1, but not later than August 1 of each year, the chief administrative officer of each comprehensive regional mental health center and intellectual disability facility shall submit a report to the Secretary of the Department of Human Services and to the Legislative Auditor containing a listing of:

- (1) All funds received by the center or facility;
- (2) All funds expended by the center or facility;
- (3) All funds obligated by the center or facility;
- (4) All services provided by the center or facility;
- (5) The number of persons served by the center or facility; and
- (6) Other information as the Secretary of the Department of Human Services prescribes by regulation.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

(a) *Appointment of mental hygiene commissioners.* — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional

attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of a commissioner, take the oath required of other special commissioners as provided in §6-1-1 *et seq.* of this code.

Prior to presiding over an involuntary hospitalization hearing, each newly appointed person to serve as a mental hygiene commissioner and all magistrates shall attend and complete an orientation course that consists of training provided annually by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health Facilities. In addition, existing mental hygiene commissioners and all magistrates trained to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health Facilities. Persons attending the courses outside the county of their residence shall be reimbursed out of the budget of the Supreme Court—General Judicial for reasonable expenses incurred. The Supreme Court of Appeals shall establish curricula and rules for the courses, including rules providing for the reimbursement of reasonable expenses as authorized in this section. The Secretary of the Department of Health Facilities shall consult with the Supreme Court of Appeals regarding the development of the orientation program.

(b) *Duties of mental hygiene commissioners.* —

(1) Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and may make conclusions of law, but the findings and conclusions are not binding on the circuit court. All mental hygiene

commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by the chief judge. A mental hygiene commissioner shall conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak, or who speaks a foreign language, and who may be subject to involuntary commitment to a mental health facility.

(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuits may serve in that capacity in a jurisdiction other than that of his or her original appointment if it is agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during hours when the courthouse is closed or on nonjudicial days.

(c) *Duties of prosecuting attorney.* —The prosecuting attorney or one of his or her assistants shall represent the applicants in all final commitment proceedings filed pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the provisions of this article if he or she determines it to be in the public interest.

(d) *Duties of sheriff.* — Upon written order of the circuit court, mental hygiene commissioner, or magistrate in the county where the individual formally accused of being mentally ill or having a substance use disorder is a resident or is found, the sheriff of that

county shall take the individual into custody and transport him or her to and from the place of hearing and the mental health facility. The sheriff shall also maintain custody and control of the accused individual during the period of time in which the individual is waiting for the involuntary commitment hearing to be convened and while the hearing is being conducted: *Provided*, That an individual who is a resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her state of residence for treatment pursuant to §27-5-4(p) of this code: *Provided, however*, That where an individual is a resident of West Virginia but not a resident of the county in which he or she is found and there is a finding of probable cause, the county in which the hearing is held may seek reimbursement from the county of residence for reasonable costs incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit courts and county commissions, by which transportation and security responsibilities for hearings held pursuant to the provisions of this article during hours when the courthouse is closed or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment. In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff shall contact the state hospital in advance of the transportation to determine if the state hospital has available suitable bed capacity to place the individual.

(e) *Duty of sheriff upon presentment to mental health care facility.* — When a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed, or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) *Duties of Supreme Court of Appeals.* — The Supreme Court of Appeals shall provide uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

(g) *Duties of the Department of Health Facilities.* — The secretary shall develop an orientation program as provided in subsection (a) of this section. The orientation program shall include, but not be limited to, instruction regarding the nature and treatment of mental illness and substance use disorder; the goal and purpose of commitment; community-based treatment options; and less restrictive alternatives to inpatient commitment.

§27-5-1b. Pilot projects and other initiatives.

(a) *Duties of the Department of Human Services.* — The Secretary shall, in collaboration with designees of the Supreme Court of Appeals, the Sheriff's Association, the Prosecuting Attorney's Association, the Public Defender Services, the Behavioral Health Providers Association, Disability Rights of West Virginia, and a designee of the Dangerousness Assessment Advisory Board, undertake an evaluation of the utilization of alternative transportation providers and the development of standards that define the role, scope, regulation, and training necessary for the safe and effective utilization of alternative transportation providers and shall further identify potential financial sources for the payment of alternative transportation providers. Recommendations regarding such evaluation shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2022. The Legislature requests the Supreme Court of Appeals cooperate with the listed parties and undertake this evaluation.

(b) *Civil Involuntary Commitment Audits.* — The secretary shall establish a process to conduct retrospective quarterly audits of applications and licensed examiner forms prepared by certifiers for the involuntary civil commitment of persons as provided in §27-5-1 *et seq.* of this code. The process shall determine whether the licensed examiner forms prepared by certifiers are clinically justified and consistent with the requirements of this code and, if

not, develop corrective actions to redress identified issues. The Legislature requests the Supreme Court of Appeals participate in this process with the secretary. The process and the findings thereof shall be confidential, not subject to subpoena, and not subject to the provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code.

(i) *Duties of the Mental Health Center for Purposes of Evaluation for Commitment.* — Each mental health center shall make available as necessary a qualified and competent licensed person to conduct prompt evaluations of persons for commitment in accordance with §27-5-1 *et seq.* of this code. Evaluations shall be conducted in person, unless an in-person evaluation would create a substantial delay to the resolution of the matter, and then the evaluation may be conducted by videoconference. Each mental health center that performs these evaluations shall exercise reasonable diligence in performing the evaluations and communicating with the state hospital to provide all reasonable and necessary information to facilitate a prompt and orderly admission to the state hospital of any person who is or is likely to be involuntarily committed to such hospital. Each mental health center that performs these evaluations shall explain the involuntary commitment process to the applicant and the person proposed to be committed and further identify appropriate alternative forms of potential treatment, loss of liberty if committed, and the likely risks and benefits of commitment.

(k) Notwithstanding any provision of this code to the contrary, the Supreme Court of Appeals, mental health facilities, law enforcement, Department of Human Services and the Department of Health Facilities may participate in pilot projects in Cabell, Berkeley, and Ohio Counties to implement an involuntary commitment process. Further, notwithstanding any provision of this code to the contrary, no alternative transportation provider may be utilized until standards are developed and implemented that define the role, scope, regulation, and training necessary for an alternative transportation provider as provided in subsection (a) of this section.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined has a substance use disorder as defined by the most recent edition of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and certification by a physician, psychologist, licensed professional counselor, licensed independent social worker, an advanced nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*, That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be a basis for involuntary commitment to a state hospital.

(b) Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services necessary to treat the individual's mental illness or substance use.

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides, or of the county in which he or she may be found. A magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further

proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody as provided in §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in §27-5-2 of this code. An examination of the individual to determine whether the individual meets involuntary hospitalization criteria shall be conducted in person unless an in person examination would create a substantial delay in the resolution of the matter in which case the examination may be by video conference, and shall be performed by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section. The examination shall be provided or arranged by a community mental health center designated by the Secretary of the Department of Human Services to serve the county in which the action takes place.

The order is to specify that the evaluation be held within a reasonable period of time not to exceed two hours and shall provide for the appointment of counsel for the individual: *Provided, however,* That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or if there is a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by this subsection the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately, but no later than 60 minutes after completion of the examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the state hospital to which the individual may be involuntarily hospitalized, the results of the examination on the form provided for this purpose by the Supreme

Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing shall be held promptly before a magistrate, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing unless the individual or his or her attorney object for good cause or unless the magistrate, mental hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is requested to develop regional mental hygiene collaboratives where mental hygiene commissioners can share on-call responsibilities, thereby reducing the burden on individual circuits and commissioners.

The individual shall be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or to others. Any such order entered shall be provided to the state hospital to which the individual may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: use videoconferencing and telephonic technology; permit persons hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify

other alternative or modified procedures that are consistent with the purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or others and because of mental illness or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the

individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

The commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional under subsection (e) of this section, who is acting in a manner consistent with the standard of care establishes that the commitment or treatment of that individual

requires an inpatient hospital placement. Outpatient treatment will be based upon a plan jointly prepared by the Department of Health Facilities and the comprehensive community mental health center or licensed behavioral health provider.

(i) If the certifying professional determines that an individual requires involuntary hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretaries of the Department of Human Services and Department of Health Facilities shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) *Involuntary commitment.* — Except as provided in §27-5-2 and §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the

county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 *et al.* of this code shall be held by the circuit court of the county that has jurisdiction over the person for the criminal charges and such circuit court shall have jurisdiction over the involuntary final civil commitment of such person.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found. Notwithstanding anything any provision of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 *et seq.* of this code shall be commenced only upon the filing of a Certificate of the Licensed Certifier at the mental health facility where the person is currently committed.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* —

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or substance use disorder. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the

applicant shall state in detail the recent overt acts upon which the clinical opinion is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents filed with a circuit court, mental hygiene commissioner, or magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.* —

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or has a substance use disorder and that because of the mental illness or substance use disorder, the individual is likely to cause serious harm to self or others and requires continued commitment and treatment, and should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the certificate shall state in detail the recent overt acts on which the conclusion is based, including facts that less restrictive interventions and placements

were considered but are not appropriate and available. The applicant shall further file with his or her application the names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician, psychologist, advanced nurse practitioner, or physician assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, and except when a Certificate of the Licensed Examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner with psychiatric certification, or a physician assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others. Any such report shall include the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

(2) If the designated physician, psychologist, advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of

an immediate examination by the designated physician, psychologist, nurse practitioner, or physician assistant. All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician assistant do not confirm that the individual is mentally ill or has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

(h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel required.* —

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) If the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(i) *Duties of counsel representing individual; payment of counsel representing indigent.* —

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where

an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize, and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* —

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following based upon clear and convincing evidence:

(A) Whether the individual is mentally ill or has a substance use disorder;

(B) Whether, as a result of illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and requires continued commitment and treatment;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual that is appropriate and available. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists that is appropriate and available in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.* —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et seq.* of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement and treatment at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the Department of Health Facilities and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment and treatment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment and treatment. The chief

medical officer shall provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable, that the individual requires commitment and treatment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual continues to meet commitment criteria and the need for ongoing commitment and treatment. The court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if applicable, may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment and treatment. The court may hold any hearing that it considers appropriate.

(2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:

(A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in substantial remission;

(B) Whether the individual has the independent ability to manage safely the risk factors resulting from his or her mental illness or substance use disorder and is not likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others without continued commitment and treatment;

(C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;

(D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;

(E) Whether the individual is capable of surviving safely in freedom by himself or herself or with the help of willing and responsible family members, guardian, or friends; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

(3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(4) An individual committed pursuant to §27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.

(5) If the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(m) *Dismissal of proceedings.* — If the individual is discharged as provided in subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

(n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.* —

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* — In lieu of ordering the individual to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be immediately given to the Secretary of the Department of Health Facilities, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) *Report to the Secretary of the Department of Health Facilities.* —

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall immediately make a report of the admission to the Secretary of the Department of Health Facilities or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall immediately, after the release of the individual, make a report to the Secretary of the Department of Health Facilities or to his or her designee of the failure to comply.

(s) Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission. —

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

(3) Effective July 1, 2022, the Department of Health Facilities shall reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement agency for the actual costs related to transporting a patient who has been involuntary committed.

§27-5-9. Rights of patients.

(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to

register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity.

(b) Each patient of a mental health facility receiving services from the facility shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.

(c) Every patient has the following rights regardless of adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no less frequently than once every three months;

(3) Periodic physical examination by a physician no less frequently than once every six months; and

(4) Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

(d) The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he or she is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations entitles the patient to release.

(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall

contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

(f) Every patient, upon his or her admission to a hospital and at any other reasonable time, shall be given a copy of the rights afforded by this section.

(g) The Secretary of the Department of Health Facilities shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to protect the personal rights of patients not inconsistent with this section.

§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; instituting modified mental hygiene procedures; establishing procedures; providing for forms and reports.

(a) The Supreme Court of Appeals shall, in consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health services consumers and providers, implement throughout the state modified mental hygiene procedures that are consistent with the requirements set forth in this section. The judicial circuits selected for implementing the modified procedures shall be circuits in which the Supreme Court of Appeals determines, after consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health consumers and service providers, that adequate resources will be available to implement the modified procedures. After July 1, 2012, the Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities in consultation with local mental health consumers and providers may

add programs for modified mental hygiene procedures in any judicial circuit that establishes a need for the same.

(b) The Secretaries of the Department of Human Services and Department of Health Facilities, after consultation with the Supreme Court of Appeals and local mental health services consumers and service providers, shall prescribe appropriate forms to implement the modified procedures and shall annually prepare reports on the efficacy of the modified procedures and transmit the report to the Legislature on or before the first day of the 2013 and 2014 regular sessions of the Legislature.

(c) The Supreme Court of Appeals may, after consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health services consumers and providers further modify any specific modified procedures that are implemented pursuant to this section. The modified procedures must be consistent with the requirements of this chapter and this section. If the Secretaries of the Department of Human Services and Department of Health Facilities determines that the use of any modified procedure in one or more judicial circuits is placing an unacceptable additional burden upon state mental health resources, the Supreme Court of Appeals shall, in consultation with the secretary, modify the procedures used in such a fashion as will address the concerns of the secretary, consistent with the requirements of this chapter. The provisions of this section and the modified procedures thereby authorized shall cease to have any force and effect on June 30, 2014, unless extended by an act of the Legislature prior to that date.

(1) The modified procedures shall authorize that a verified petition seeking a treatment compliance order may be filed by any person alleging:

(A) That an individual, on two or more occasions within a twenty-four month period prior to the filing of the petition, as a result of mental illness or addiction or both, has been hospitalized pursuant to the provisions of this chapter; or that the individual has been convicted of one or more crimes of violence against the person within a twenty-four month period prior to the filing of the

petition and the individual's failure to take prescribed medication or follow another prescribed regimen to treat a mental illness or addiction or both was a significant aggravating or contributing factor in the circumstances surrounding the crime;

(B) That the individual's previous hospitalizations due to mental illness or addiction or both or the individual's crime of violence occurred after or as a result of the individual's failure to take medication or other treatment as prescribed by a physician to treat the individual's mental illness or addiction or both; and

(C) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or follow other regimen or treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against the person.

(2) Upon the filing of a petition seeking a treatment compliance order and the petition's review by a circuit judge or mental hygiene commissioner, counsel shall be appointed for the individual if the individual does not already have counsel and a copy of the petition and all supporting evidence shall be furnished to the individual and their counsel. If the circuit judge or mental hygiene commissioner determines on the basis of the petition that it is necessary to protect the individual or to secure their examination, a detention order may be entered ordering that the individual be taken into custody and examined by a psychiatrist or licensed psychologist. A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to the provisions of section two of this article or a final commitment hearing conducted pursuant to the provisions of section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken into custody and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(3) If the allegations in the petition seeking a treatment compliance order are proved by the evidence adduced at the hearing, which must include expert testimony by a psychiatrist or licensed psychologist, the circuit judge or mental hygiene commissioner may enter a treatment compliance order for a period not to exceed six months upon making the following findings:

(A) That the individual is eighteen years of age or older;

(B) That on two or more occasions within a twenty-four month period prior to the filing of the petition an individual, as a result of mental illness, has been hospitalized pursuant to the provisions of this chapter; or that on at least one occasion within a twenty-four month period prior to the filing of the petition has been convicted of a crime of violence against any person;

(C) That the individual's previous hospitalizations due to mental illness or addiction or both occurred as a result of the individual's failure to take prescribed medication or follow a regimen or course of treatment as prescribed by a physician or psychiatrist to treat the individual's mental illness or addiction; or that the individual has been convicted for crimes of violence against any person and the individual's failure to take medication or follow a prescribed regimen or course of treatment of the individual's mental illness or addiction or both was a significant aggravating or contributing factor in the commission of the crime;

(D) That a psychiatrist or licensed psychologist who has personally examined the individual within the preceding twenty-four months has issued a written opinion that the individual, without the aid of the medication or other prescribed treatment, is likely to cause serious harm to himself or herself or to others;

(E) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or other treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against any person;

(F) That, where necessary, a responsible entity or individual is available to assist and monitor the individual's compliance with an order requiring the individual to take the medication or follow other prescribed regimen or course of treatment;

(G) That the individual can obtain and take the prescribed medication or follow other prescribed regimen or course of treatment without undue financial or other hardship; and

(H) That, if necessary, a medical provider is available to assess the individual within forty-eight hours of the entry of the treatment compliance order.

(4) The order may require an individual to take medication and treatment as prescribed and if appropriate to attend scheduled medication and treatment-related appointments: *Provided*, That a treatment compliance order shall be subject to termination or modification by a circuit judge or mental hygiene commissioner if a petition is filed seeking termination or modification of the order and it is shown in a hearing on the petition that there has been a material change in the circumstances that led to the entry of the original order that justifies the order's modification or termination: *Provided, however*, That a treatment compliance order may be extended by a circuit judge or mental hygiene commissioner for additional periods of time not to exceed six months, upon the filing of a petition seeking an extension and after a hearing on the petition or upon the agreement of the individual.

(5) After the entry of a treatment compliance order in accordance with the provisions of subdivisions (3) and (4) of this subsection if a verified petition is filed alleging that an individual has not complied with the terms of a medication and treatment compliance order and if a circuit judge or mental hygiene commissioner determines from the petition and any supporting evidence that there is probable cause to believe that the allegations in the petition are true, counsel shall be appointed for the individual and a copy of the petition and all supporting evidence shall be furnished to the individual and his or her counsel. If the circuit judge or mental hygiene commissioner considers it necessary to protect the individual or to secure his or her examination, a

detention order may be entered to require that the individual be examined by a psychiatrist or psychologist. (A) A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to section two of this article or a final commitment hearing conducted pursuant to section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(B) At a hearing on any petition filed pursuant to the provisions of paragraph (A) of this subdivision, the circuit judge or mental hygiene commissioner shall determine whether the individual has complied with the terms of the medication and treatment compliance order. If the individual has complied with the order, the petition shall be dismissed. If the evidence presented to the circuit judge or mental hygiene commissioner shows that the individual has complied with the terms of the existing order, but the individual's prescribed medication, dosage or course of treatment needs to be modified, then the newly modified medication and treatment prescribed by a psychiatrist who personally examined the individual may be properly incorporated into a modified order. If the order has not been complied with, the circuit judge or mental hygiene commissioner, after inquiring into the reasons for noncompliance and whether any aspects of the order should be modified, may continue the individual upon the terms of the original order and direct the individual to comply with the order or may modify the order in light of the evidence presented at the hearing. If the evidence shows that the individual at the time of the hearing is likely to cause serious harm to himself or herself, herself or others as a result of the individual's mental illness, the circuit judge or mental hygiene commissioner may convert the proceeding into a probable cause proceeding and enter a probable cause order directing the involuntary admission of the individual to a mental health facility for examination and treatment. Any procedures conducted pursuant to this subsection must comply with and satisfy all applicable due process and hearing requirements of sections two and three of this article.

(d) The modified procedures may authorize that upon the certification of a qualified mental health professional, as described in subsection (e) of this section, that there is probable cause to believe that an individual who has been hospitalized two or more times in the previous twenty-four months because of mental illness is likely to cause serious harm to himself or herself, herself or to others as a result of the mental illness if not immediately restrained and that the best interests of the individual would be served by immediate hospitalization, a circuit judge, mental hygiene commissioner or designated magistrate may enter a temporary probable cause order directing the involuntary hospitalization of the individual at a mental health facility for immediate examination and treatment.

(e) The modified procedures may authorize the chief judge of a judicial circuit, or circuit judge if there is no chief judge, to enter orders authorizing specific psychiatrists or licensed psychologists, whose qualifications and training have been reviewed and approved by the Supreme Court of Appeals, to issue certifications that authorize and direct the involuntary admission of an individual subject to the provisions of this section on a temporary probable cause basis to a mental health facility for examination and treatment. The authorized psychiatrist or licensed psychologist must conclude and certify based on personal observation prior to certification that the individual is mentally ill and, because of such mental illness or addiction or both, is imminently likely to cause serious harm to himself or herself or to others if not immediately restrained and promotion of the best interests of the individual requires immediate hospitalization. Immediately upon certification, the psychiatrist or licensed psychologist shall provide notice of the certification to a circuit judge, mental hygiene commissioner or designated magistrate in the county where the individual resides.

(f) No involuntary hospitalization pursuant to a temporary probable cause determination issued pursuant to the provisions of this section shall continue in effect for more than forty-eight hours without the filing of a petition for involuntary hospitalization and

the occurrence of a probable cause hearing before a circuit judge, mental hygiene commissioner or designated magistrate. If at any time the chief medical officer of the mental health facility to which the individual is admitted determines that the individual is not likely to cause serious harm as a result of mental illness or addiction or both, the chief medical officer shall discharge the individual and immediately forward a copy of the individual's discharge to the circuit judge, mental hygiene commissioner or designated magistrate.

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

(a) For purposes of this article:

(1) "Competency restoration" means the treatment or education process for attempting to restore a criminal defendant's ability to consult with his or her attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person. Competency restoration services may be provided in a jail-based, outpatient, or inpatient setting as may be ordered by the court.

(2) "Competency to stand trial" means the ability of a criminal defendant to consult with his or her attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the procedure and charges against him or her.

(3) "Court" or "court of record" means the circuit court with jurisdiction over the charge or charges against the defendant or acquittee.

(4) "Department" means the Department of Health Facilities.

(5) A "qualified forensic evaluator" is either a qualified forensic psychiatrist or a qualified forensic psychologist as defined in this section.

(6) A "qualified forensic psychiatrist" is:

(A) A psychiatrist licensed under the laws in this state to practice medicine who has completed post-graduate education in psychiatry in a program accredited by the Accreditation Council of Graduate Medical Education; and

(B) Board-eligible or board-certified in forensic psychiatry by the American Board of Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program accredited by the Accreditation Council of Graduate Medical Education to make the evaluator eligible for board certification by the American Board of Psychiatry and Neurology in forensic psychiatry or has two years of experience in completing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(7) A "qualified forensic psychologist" is:

(A) A licensed psychologist licensed under the laws of this state to practice psychology; and

(B) Board-eligible or board-certified in forensic psychology by the American Board of Professional Psychology or actively enrolled in good standing in a West Virginia training program approved by the American Board of Forensic Psychology to make the evaluator eligible for board certification in forensic psychology or has at least two years of experience in performing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(b) (A) qualified forensic evaluator may not perform a forensic evaluation on an individual under §27-1-1 *et seq.* of this code if the qualified forensic evaluator has been the individual's treating psychologist or psychiatrist within one year prior to any evaluation order.

***§27-6A-12. Development of a strategic plan for a Sequential Intercept Model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities, and substance use disorders away from the criminal justice system into treatment and to promote continuity of care and interventions; directing submission of a report to the Legislature.**

(a) The Legislature finds that the state's adult and juvenile forensic patient populations continue to increase and that the placement of forensic patients at state health care facilities, diversion facilities, group homes, transitional living facilities, in the community, and other settings continues to rapidly escalate. The Legislature further finds that persons with mental illness, developmental disabilities, cognitive disabilities, and/or substance use disorder may be overrepresented in the criminal justice system, and many of these people might not present a danger to the public if they could participate in a functioning community behavioral health continuum of care. The Legislature further finds that the increasing adult and juvenile forensic patient populations, the placement and treatment of adult and juvenile forensic patients, and the release of persons with mental illness, developmental disabilities, and other disabilities creates significant clinical, public safety, staffing, and fiscal needs and burdens for the judiciary, law enforcement, state health care facilities, correctional facilities, behavioral health professionals, hospitals, and the public. The Legislature further finds that there is a need for improved coordination among the Department of Human Services, the Division of Corrections and Rehabilitation, and the Division of Rehabilitation Services to promote the identification, safe discharge, and effective community intervention and placement of persons who suffer from mental illness, a developmental disability, a cognitive disability, and/or substance use disorder. The Legislature further finds that there is a need to develop functional standards and protocols for the identification, management, qualified assessment, and treatment of adult and juvenile forensic patients.

***NOTE:** This section was also amended by S. B. 632 (Chapter 183), which passed subsequent to this Act.

(b) The Chairman of the Dangerousness Assessment Advisory Board (DAAB) shall convene a multi-disciplinary study group of the following persons:

- (1) The Statewide Forensic Clinical Director;
- (2) The Statewide Forensic Coordinator;
- (3) The two forensic psychiatrists who are members of the board;
- (4) The two psychologists who are members of the board;
- (5) The Director of the Office of Drug Control Policy;
- (6) A designee of the Supreme Court of Appeals;
- (7) A designee of the Bureau of Children and Families with experience in juvenile forensic matters;
- (8) A designee of the Division of Corrections and Rehabilitation;
- (9) A designee of the Division of Rehabilitation Services;
- (10) A designee of the Prosecuting Attorneys Institute;
- (11) A designee of the Public Defender Services;
- (12) A designee of the West Virginia Behavioral Healthcare Providers Association who is a licensed clinician with forensic patient experience;
- (13) A designee of the West Virginia Hospital Association;
- (14) A designee of the West Virginia Housing Development Fund;
- (15) A designee of Disability Rights of West Virginia;
- (16) A designee of the West Virginia Sheriff's Association;
- (17) A designee of the Juvenile Justice Commission; and

(18) A designee of the West Virginia University Center for Excellence in Disabilities.

(c) The purpose of the multi-disciplinary study group is to provide opinion, guidance, and informed objective expertise to the Legislature regarding each of the following areas:

(1) The development and implementation of a Sequential Intercept Model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities, and/or substance use disorders away from the criminal justice system and into community-based treatment or other settings where appropriate;

(2) The review and recommendation of standards and protocols for the evaluation, treatment, management, and stabilization of adult and juvenile forensic patients;

(3) A recommendation regarding standards and protocols to promote continuity of care and interventions for adult and juvenile forensic patients and inmates released from correctional facilities;

(4) The recommendation of a model to coordinate services and interventions among the Department of Human Services, the Division of Corrections and Rehabilitation, the Division of Rehabilitation Services, behavioral healthcare providers, law enforcement, and the court system to facilitate the appropriate diversion, identification, evaluation, assessment, management, and placement of adults and juveniles who suffer from mental illness, a development disability, a cognitive disability, and/or substance use disorder to ensure public safety and the effective clinical management of such persons;

(5) The identification of potential funding sources and the scope of resources needed for the implementation of the study group's recommendations; and

(6) Any other issues related to addressing the Legislature's findings.

(d) The provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code are inapplicable to the operation of the study group.

(e) The written recommendations of the study group shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before November 30, 2023.

(f) Each member of the multi-disciplinary study group whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the study group. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

(a)(1) The board has, without limitation and in its discretion as it seems necessary for the benefit of the insurance program, general supervision and control over the insurance of state property, activities and responsibilities, including:

(A) The acquisition and cancellation of state insurance;

(B) Determination of the kind or kinds of coverage;

(C) Determination of the amount or limits for each kind of coverage;

(D) Determination of the conditions, limitations, exclusions, endorsements, amendments and deductible forms of insurance coverage;

(E) Inspections or examinations relating to insurance coverage of state property, activities and responsibilities;

(F) Reinsurance; and

(G) Any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of such state property, activities and responsibilities.

(2) The board shall endeavor to secure reasonably broad protection against loss, damage or liability to state property and on account of state activities and responsibilities by proper, adequate, available and affordable insurance coverage and through the introduction and employment of sound and accepted principles of insurance, methods of protection and principles of loss control and risk.

(3) The board is not required to provide insurance for every state property, activity or responsibility.

(4) Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the Constitutional immunity of the State of West Virginia against claims or suits: *Provided*, That nothing herein shall bar a state agency or state instrumentality from relying on the Constitutional immunity granted the State of West Virginia against claims or suits arising from or out of any state property, activity or responsibility not covered by a policy or policies of insurance: *Provided, however*, That nothing herein shall bar the insurer of political subdivisions from relying upon any statutory immunity granted such political subdivisions against claims or suits.

(5) The board shall make a complete survey of all presently owned and subsequently acquired state property subject to insurance coverage by any form of insurance, which survey shall include and reflect inspections, appraisals, exposures, fire hazards, construction and any other objectives or factors affecting or which might affect the insurance protection and coverage required.

(6) The board shall keep itself currently informed on new and continuing state activities and responsibilities within the insurance coverage herein contemplated. The board shall work closely in cooperation with the state Fire Marshal's office in applying the

rules of that office insofar as the appropriations and other factors peculiar to state property will permit.

(7) The board may negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to covered state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. Any discussion or consideration of the financial or personal information of an insured may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

(8) The board may employ an executive director and such other employees, including legal counsel, as may be necessary to carry out its duties. The executive director shall receive an annual salary as provided in section two-a, article seven, chapter six of this code. The legal counsel may represent the board before any judicial or administrative tribunal and perform such other duties as may be requested by the board.

(9) The board may enter into any contracts necessary to the execution of the powers granted to it by this article or to further the intent of this article.

(10) The board may make rules governing its functions and operations and the procurement of state insurance. Except where otherwise provided by statute, rules of the board are subject to the provisions of article three, chapter twenty-nine-a of this code.

(11) The funds received by the board, including, but not limited to, state agency premiums, mine subsidence premiums and political subdivision premiums, shall be deposited with the West Virginia Investment Management Board with the interest income and returns on investment a proper credit to such property insurance trust fund or liability insurance trust fund as applicable.

(b) (1) *Definitions.* — The following words and phrases when used in this subsection, for the purposes of this subsection, have the meanings respectively ascribed to them in this subsection;

(A) "Political subdivision" has the same meaning as in section three, article twelve-a of this chapter;

(B) "Charitable" or "public service organization" means any hospital in this state which has been certified as a critical access hospital by the federal Centers for Medicare and Medicaid upon the designation of the state Office of Rural Health Policy, the Office of Community and Rural Health Services, the Bureau for Public Health or the Department of Health and any bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office; and

(C) "Emergency medical service agency" has the same meaning as in §16-4C-3 of this code.

(2) If requested by a political subdivision, a charitable or public service organization or an emergency medical services agency, the board may, but is not required to, provide property and liability insurance to insure the property, activities and responsibilities of the political subdivision, charitable or public service organization or emergency medical services agency. The board may enter into any contract necessary to the execution of the powers granted by this article or to further the intent of this article.

(A) Property insurance provided by the board pursuant to this subsection may also include insurance on property leased to or loaned to the political subdivision, a charitable or public service organization or an emergency medical services agency which is required to be insured under a written agreement.

(B) The cost of insurance, as determined by the board, shall be paid by the political subdivision, the charitable or public service organization or the emergency medical services agency and may include administrative expenses. For purposes of this section, if an emergency medical services agency is a for-profit entity, its claims history may not adversely affect other participants' rates in the same class.

(c)(1) The board has general supervision and control over the optional medical liability insurance programs providing coverage to health care providers as authorized by the provisions of article twelve-b of this chapter. The board is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article.

(2) The board shall:

(A) Administer the preferred medical liability program and the high risk medical liability program and exercise and perform other powers, duties and functions specified in this article;

(B) Obtain and implement, at least annually, from an independent outside source, such as a medical liability actuary or a rating organization experienced with the medical liability line of insurance, written rating plans for the preferred medical liability program and high-risk medical liability program on which premiums shall be based;

(C) Prepare and annually review written underwriting criteria for the preferred medical liability program and the high-risk medical liability program. The board may utilize review panels, including, but not limited to, the same specialty review panels to assist in establishing criteria;

(D) Prepare and publish, before each regular session of the Legislature, separate summaries for the preferred medical liability program and high-risk medical liability program activity during the preceding fiscal year, each summary to be included in the board of Risk and Insurance Management audited financial statements as "other financial information" and which shall include a balance

sheet, income statement and cash flow statement, an actuarial opinion addressing adequacy of reserves, the highest and lowest premiums assessed, the number of claims filed with the program by provider type, the number of judgments and amounts paid from the program, the number of settlements and amounts paid from the program and the number of dismissals without payment;

(E) Determine and annually review the claims history debit or surcharge for the high-risk medical liability program;

(F) Determine and annually review the criteria for transfer from the preferred medical liability program to the high-risk medical liability program;

(G) Determine and annually review the role of independent agents, the amount of commission, if any, to be paid therefor and agent appointment criteria;

(H) Study and annually evaluate the operation of the preferred medical liability program and the high-risk medical liability program and make recommendations to the Legislature, as may be appropriate, to ensure their viability, including, but not limited to, recommendations for civil justice reform with an associated cost-benefit analysis, recommendations on the feasibility and desirability of a plan which would require all health care providers in the state to participate with an associated cost-benefit analysis, recommendations on additional funding of other state-run insurance plans with an associated cost-benefit analysis and recommendations on the desirability of ceasing to offer a state plan with an associated analysis of a potential transfer to the private sector with a cost-benefit analysis, including impact on premiums;

(I) Establish a five-year financial plan to ensure an adequate premium base to cover the long-tail nature of the claims-made coverage provided by the preferred medical liability program and the high-risk medical liability program. The plan shall be designed to meet the program's estimated total financial requirements, taking into account all revenues projected to be made available to the program and apportioning necessary costs equitably among

participating classes of health care providers. For these purposes, the board shall:

(i) Retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group malpractice plans, to estimate the total financial requirements of the program for each fiscal year and to review and render written professional opinions as to financial plans proposed by the board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the board or the executive director. All reasonable fees and expenses for actuarial services shall be paid by the board. Any financial plan or modifications to a financial plan approved or proposed by the board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs, including incurred but not reported claims, for the fiscal year for which the plan is proposed. The actuary's opinion for any fiscal year shall include a requirement for establishment of a reserve fund;

(ii) Submit its final, approved five-year financial plan, after obtaining the necessary actuary's opinion, to the Governor and to the Legislature no later than January 1, preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the executive director on July 1, of the fiscal year. In addition to each final, approved financial plan required under this section, the board shall also simultaneously submit an audited financial statement based on generally accepted accounting practices (GAAP) and which shall include allowances for incurred but not reported claims: *Provided*, That the financial statement and the accrual-based financial plan restatement shall not affect the approved financial plan. The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section;

(iii) Submit to the Governor and the Legislature a prospective five-year financial plan beginning on January 1, 2003, and every

year thereafter, for the programs established by the provisions of article twelve-b of this chapter. Factors that the board shall consider include, but shall not be limited to, the trends for the program and the industry; claims history, number and category of participants in each program; settlements and claims payments; and judicial results;

(iv) Obtain annually certification from participants that they have made a diligent search for comparable coverage in the voluntary insurance market and have been unable to obtain the same;

(J) Meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the medical liability programs established in article twelve-b of this chapter. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of these programs for the current fiscal year are met;

(K) To analyze the benefit of and necessity for excess verdict liability coverage;

(L) Consider purchasing reinsurance, in the amounts as it may, from time to time, determine is appropriate, and the cost thereof shall be considered to be an operating expense of the board;

(M) Make available to participants optional extended reporting coverage or tail coverage: *Provided*, That, at least five working days prior to offering such coverage to a participant or participants, the board shall notify the President of the Senate and the Speaker of the House of Delegates in writing of its intention to do so and such notice shall include the terms and conditions of the coverage proposed;

(N) Review and approve, reject or modify rules that are proposed by the executive director to implement, clarify or explain administration of the preferred medical liability program and the

high-risk medical liability program. Notwithstanding any provisions in this code to the contrary, rules promulgated pursuant to this paragraph are not subject to the provisions of sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The board shall comply with the remaining provisions of article three and shall hold hearings or receive public comments before promulgating any proposed rule filed with the Secretary of State: *Provided*, That the initial rules proposed by the executive director and promulgated by the board shall become effective upon approval by the board notwithstanding any provision of this code;

(O) Enter into settlements and structured settlement agreements whenever appropriate. The policy may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the policyholder. The board may own or assign any annuity purchased by the board to a company licensed to do business in the state;

(P) Refuse to provide insurance coverage for individual physicians whose prior loss experience or current professional training and capability are such that the physician represents an unacceptable risk of loss if coverage is provided;

(Q) Terminate coverage for nonpayment of premiums upon written notice of the termination forwarded to the health care provider not less than thirty days prior to termination of coverage;

(R) Assign coverage or transfer insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier with the comparable coverage conditions as determined by the board. Any transfer of obligation or risk shall effect a novation of the transferred contract of insurance and if the terms of the assumption reinsurance agreement extinguish all liability of the board and the State of West Virginia, such extinguishment shall be absolute as to any and all parties; and

(S) Meet and consult with and consider recommendations from the Medical Malpractice Advisory Panel established by the provisions of article twelve-b of this chapter.

(d) If, after September 1, 2002, the board has assigned coverages or transferred all insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier, and the board otherwise has no covered participants, then the board shall not thereafter offer or provide professional liability insurance to any health care provider pursuant to the provisions of subsection (c) of this section or the provisions of article twelve-b of this chapter unless the Legislature adopts a concurrent resolution authorizing the board to reestablish medical liability insurance programs.

ARTICLE 15. STATE COMMISSION ON INTELLECTUAL DISABILITY.

§29-15-1. Creation and composition.

There is created the State Commission on Intellectual Disability hereinafter referred to as the commission.

Pursuant to §5F-2-1(g) of this code, the commission created by this section is now incorporated into and administered as part of the Department of Human Services. All references to the commission in this article shall be construed to mean the Department of Human Services.

§29-15-5. Purposes.

The Department of Human Services shall take action to carry out the following purposes:

(a) Plan for and take other steps leading to comprehensive state and community action to combat intellectual disability.

(b) Determine what action is needed to combat intellectual disability in the state and the resources available for this purpose.

(c) Develop public awareness of the intellectual disability problem and of the need for combating it.

(d) Coordinate state and local activities relating to the various aspects of intellectual disability and its prevention, treatment, or amelioration.

(e) Consult with and advise the Governor and Legislature on all aspects of intellectual disability.

(f) Consult with and advise state agencies, boards or departments with intellectual disability responsibilities relative to the effective discharge of such responsibilities.

§29-15-6. State agency for federal intellectual disability program.

The Department of Human Services is designated and established as the sole state agency for receiving appropriations under and carrying out the purposes of section five of Public Law 88-156, eighty-eighth Congress approved October 24, 1963, and any law amending, revising, supplementing or superseding section five of said Public Law 88-156.

The department constitutes the designated state agency for handling all programs of the federal government relating to intellectual disability requiring action within the state which are not the specific responsibility of another state agency under the provisions of federal law, rules or regulations, or which have not been specifically entrusted to another state agency by the Legislature.

ARTICLE 20. WOMEN'S COMMISSION.

§29-20-1. Membership; appointment and terms of members; organization; reimbursement for expenses.

There is continued within the Department of Human Services the West Virginia Women's Commission, to consist of eighteen members, seven of whom shall be ex officio members, not entitled to vote: The Attorney General, the state Superintendent of Schools, the commissioner of labor, the commissioner of the bureau of human resources of the Department of Human Services, the director of the Human Rights Commission, the director of the Division of Personnel and the chancellor of the board of directors of the state college system. Each ex officio member may designate one representative employed by his or her department to meet with the commission in his or her absence. The Governor shall appoint the additional eleven members, by and with the advice and consent

of the Senate, from among the citizens of the state. The Governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning July 1, 1977, three to serve for a term of one year, four to serve for a term of two years and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.

No member may receive any salary for his or her services, but each may be reimbursed for actual and necessary expenses incurred in the performance of his or her duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.

§29-20-2. Powers and duties of commission.

It is the duty of the commission:

- (a) To review and study the status of women in this state;
- (b) To recommend methods of overcoming discrimination against women in public and private employment and in the exercise of their civil and political rights;
- (c) To promote more effective methods for enabling women to develop their skills, to continue their education and to be retrained;
- (d) To strengthen home life by directing attention to critical problems confronting women as wives, mothers, homemakers and workers;
- (e) To make surveys in the fields of, but not limited to, education, social services, labor laws and employment policies,

law enforcement, health, new and expanded services of benefit to women, legal rights, family relations and volunteer services;

(f) To secure appropriate recognition of women's accomplishments and contributions to this state;

(g) To disseminate information for the purpose of educating the public as to the existence and functions of the commission and as to matters of general beneficial interest to women; and

(h) To advise, consult and cooperate with other offices of the Department of Human Services and other agencies of state government, and to receive assistance therefrom, in the development of activities and programs of beneficial interest to women and on matters relating generally to women.

§29-20-3. Commission administrative personnel.

The commission may, consistent with state personnel procedures and with the approval of the secretary of the Department of Human Services or his or her designee, appoint an executive director, who shall act as the chief administrative officer of the commission, in addition to such other duties as he or she may be assigned. The commission may also, consistent with state personnel procedures and with the approval of the secretary of the Department of Human Services or his or her designee, appoint such other personnel as may be deemed necessary to accomplish its objectives. All persons so employed shall be paid from funds received by the Department of Human Services or the commission under section four of this article.

§29-20-4. Power of commission to accept funds.

The commission, or the Department of Human Services on behalf of the commission, may accept gifts, grants and bequests of funds from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions; make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of this article.

§29-20-6. Annual report.

The commission shall, with the approval of the secretary of the Department of Human Services or his or her designee, submit an annual report to the Legislature and the Governor, including recommendations based on its studies.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.**§29-22A-19. Compulsive Gambling Treatment Fund; contract requirements for compulsive gamblers treatment program.**

(a) There is established a separate special account to be known as the "Compulsive Gambling Treatment Fund". The fund shall be appropriated from the Commission's administrative expense account and shall be not less than \$150,000 nor more than \$500,000 per fiscal year, as determined by the commission, as well as other amounts designated for in this chapter to provide funds for compulsive gambling treatment programs in the state.

(b) The Department of Human Services shall administer the grants and funds issued from the "Compulsive Gambling Treatment Fund".

(c) The Department of Human Services shall develop criteria consistent with this section which a treatment program for compulsive gamblers must meet in order to become eligible for a grant from the funds made available for treatment programs pursuant to this provision.

(d) The Department of Human Services is not subject to the purchasing requirements as set forth in the legislative rule of the Purchasing Division of the Department of Administration: *Provided*, That the Department of Human Services shall comply with all contract requirements set forth in this section.

(e) The Department of Human Services shall develop procedures for bidding and awarding the contract, which must include:

(1) The procedures to be followed for submitting bids and the procedures for making awards;

(2) The proposed general terms and conditions for the contract;

(3) The description of the commodities and services required for the contract, with sufficient clarity to assure that there is a comprehensive understanding of the project's scope and requirements, including, but not limited to, the following elements:

(A) Services to be provided, including education, prevention, crisis intervention, outreach, assessment, referral and treatment for problem gamblers, and protocols for emergency treatment;

(B) Requirements for the business and professional licensing of providers, parameters for media-related advertising and public service announcements;

(C) Training, licensing, monitoring, evaluation and reporting requirements;

(D) Requirements for maintaining the confidentiality of the client population; and

(E) Rights to conduct financial and performance audits;

(4) A proposed time schedule commencement and completion of the contract;

(5) A budget for the contract;

(6) Requirements or restrictions for the subletting of specific portions of the contract, if any; and

(7) Requirements for professional liability and other insurance coverage.

(f) The Department of Human Services may award the contract based on low bid, best value, sole source or other basis, or may choose to reject all bids and reissue an invitation for bids: *Provided*, That the Department of Human Services shall document the basis

of its decisions under this subsection and shall report its decisions in the annual report required in subsection (j) of this section.

(g) The Department of Human Services shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of department and contractor key personnel, and discussion of the following items:

(1) The scope of the contract, including specifications of requirements set forth in the bid request;

(2) The contract terms and conditions, particularly any special contract provisions;

(3) The technical and reporting requirements of the contract;

(4) The contract administration procedures, including contract monitoring and progress measurement;

(5) The rights and obligations of both parties and the contractor performance evaluation procedures;

(6) An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

(7) Potential contract problem areas and possible solutions;

(8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to outcomes achieved by the contractor; and

(9) An explanation of the limits of authority of the personnel of both the department and the contractor.

(h) The Department of Human Services shall develop a comprehensive and objective monitoring checklist which:

- (1) Measures treatment outcomes;
- (2) Monitors compliance with contract requirements; and
- (3) Assesses contractor performance on a quarterly and annual basis.

(i) The commission may not influence or interfere with the operation of the program or the advertising and marketing decisions of the contractor.

(j) The Department of Human Services may monitor contract performance, review compliance with the contract's terms and conditions, request and review pertinent information in support of tendered invoices and conduct other investigation so as to enable it to properly assess whether the project's objectives and the contract's terms and conditions are being met. However, the Department of Human Services may not unduly influence or interfere with the operation of the program or the advertising and marketing decisions of the contractor.

(k) Once any contract to render services under a compulsive gambling treatment program is awarded pursuant to this section, the contract shall be administrated by the Department of Human Services, and the department shall maintain all records pertaining to each request for reimbursement and disbursement for under said contract for a minimum of five (5) years.

(l) The contractor may prominently promote, display or advertise the Compulsive Gambler's Treatment Program, its purpose, its hotline or its program events in any location in which the Lottery Commission promotes, displays, advertises or conducts operations or in any other location: *Provided*, That the Lottery Commission's name, logo or other indicia may not appear on any advertising, marketing or promotional material of the contractor.

(m) The Department of Human Services shall report annually to the Joint Committee on Government and Finance on the amount of program funds distributed, the amount of administrative fee retained by the department and its use of the fee, the number of

persons served by the program, and on each requirement set forth in this section.

ARTICLE 30. EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT.

§29-30-8. Administrative sanctions.

(a) Subject to subsections (b) and (c) of this section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts or other laws of this state.

(b) Except as otherwise provided in subsection (c) of this section, this section does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

(c) The State Health Officer may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this article. An order issued pursuant to this section takes effect immediately.

(d) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this article.

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) The practitioner knows the limitation, modification or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by law of this state other than this to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) May impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose administrative sanctions under subsection (f) of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience and specialized skill.

§29-30-9. Relation to other laws.

(a) Nothing contained in this article limits rights, privileges or immunities provided to volunteer health practitioners by laws other than this article. Except as otherwise provided in subsection (b) of this section, this article does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

(b) The Department of Health, pursuant to the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who

are not officers or employees of this state, a political subdivision of this state or a municipality or other local government within this state.

§29-30-11. Rulemaking.

The Secretary of the Department of Health may promulgate rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this article. These rules shall include measures to facilitate the receipt of benefits for injury or death pursuant to the workers' compensation laws of this state by volunteer health practitioners who reside in other states.

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State resiliency office, officer, deputy, and board.

(a) It is determined that a state authority is required to provide a coordinated effort and planning for disaster recovery and resiliency between government agencies, first responders, and all other entities to reduce the loss of life and property, lessen the impact of future disasters, protect property and the environment, meet basic human needs, and provide economic growth and resilience prior to and in the aftermath of an incident. Therefore, the State Resiliency Office is created. The office shall be organized within the Office of the Governor. The office will serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant to §29-31-3, §29-31-6, §29-31-7 and §29-31-8 of this code.

(b)(1) The State Resiliency Office Board is also established and shall consist of the following members: The State Resiliency Officer; the Secretary of the Department of Commerce or his or her designee; the Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the

State Conservation Agency or his or her designee; the President of the West Virginia Emergency Management Council or his or her designee; the Secretary of the Department of Health or his or her designee; the Secretary of the Department of Homeland Security or his or her designee; the Secretary of Transportation or his or her designee; the Adjutant General of the West Virginia National Guard or his or her designee; the Director of the Division of Emergency Management within the Department of Homeland Security or his or her designee; two nonvoting members of the West Virginia Senate, one from each party, to be appointed by the President of the Senate; and two nonvoting members of the West Virginia House of Delegates, one from each party, to be appointed by the Speaker of the House of Delegates.

(2) A member of the board holds office so long as he or she retains the office or position by virtue of which he or she is serving on the board. A majority of the voting members of the board is a quorum and the concurrence of a board in any matter within their duties is required for its determination. The members of the board may not receive compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the board.

(3) The board shall:

(A) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted, and of its other official actions;

(B) Shall adopt a seal, which shall be judicially noticed;

(C) Provide for an annual audit of the accounts of receipts and disbursements of the State Resiliency Office; and

(D) Perform those acts necessary for the execution of its functions under this article.

(1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board and shall be appointed by the Governor with the advice and consent of the Senate. The State Resiliency

Officer may cast a vote only in the event of a tie vote. The board shall elect from its voting membership a vice chair. The vice chair shall preside over the meetings of the board in the absence of the chair. In the absence of both the chair and the vice chair any member designated by the members present may act as chair.

(2) The State Resiliency Officer shall be vested with the authority and duties prescribed to the office within this article.

(3) The State Resiliency Officer shall be a person who has:

(A) At least five years' managerial or strategic planning experience in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field;

(B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field.

(4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy position shall at a minimum:

(A) Have at least three years' managerial or strategic planning experience in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in disaster recovery,

emergency management, community and economic development, regional planning, economics, or related public policy field;

(B) Have at least a level IS-800 NIMS certification: *Provided*, That if the deputy State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control, hazard mitigation, and disaster resiliency, or alternatively, in matters relating to disaster recovery, emergency management, community and economic development, regional planning, economics, or related public policy field.

(5) The State Resiliency Officer shall employ additional staff as necessary to assist the State Resiliency Officer in carrying out the duties of the office.

(d) The board shall meet no less than once each calendar quarter at the time and place designated by the chair and the board shall work together with the State Resiliency Officer to fulfill the mission given to the State Resiliency Office to coordinate efforts for disaster planning, recovery, and resiliency between government agencies, first responders and others.

The board will assist and advise the State Resiliency Officer in developing policies to accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will assist the State Resiliency Officer in devising plans and developing procedures which will ensure that agencies and political subdivisions of the state carry out these following specific tasks:

(1) Establish mechanisms to coordinate disaster recovery and resiliency-related programs and activities among state agencies and to encourage intergovernmental as well as cross-sector coordination and collaboration;

(2) Evaluate the state's role in construction permitting process and identify opportunities to expedite the permitting process post-disaster and for selected types of mitigation and adaptation actions;

(3) Conduct a review of laws and regulations to identify those that create or add to risk, or interfere with the ability to reduce risk or to improve disaster recovery and resiliency;

(4) Conduct an inventory of relevant critical planned activity by state agencies to determine their proposed impact upon disaster recovery and resiliency;

(5) Make recommendations regarding practical steps that can be taken to improve efficiencies, and to pool and leverage resources to improve disaster recovery and resiliency;

(6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and adaptation actions, including, but not limited to, the effect of increasing flood risk in context of zoning and other land use regulations, possible conflicts between public hazard mitigation/adaptation planning and private property interests (e.g. buy-out programs, projects to increase flood storage), develop guidance for cities and towns, real estate professionals, property owners under existing law and regulations; and develop proposals for changes in laws, policies, and regulations, as needed;

(7) Ensure all counties and municipalities are covered by up-to-date Hazard Mitigation Plans and Local Comprehensive Disaster Plans that are consistent with, and coordinated to, the state's Hazard Mitigation Plans Comprehensive Disaster Plans, and the state's Flood Resiliency Plan; including, but not limited to, assisting them in developing planning guidance for cities and towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet these standards; and provide notice to counties and municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation Plans;

(8) Conduct risk assessments, including, but not limited to, examining state highway corridors and associated drainage systems for stormwater inundation, impacts of downed trees, effects on utilities, and comparable facilities; assessment of known stormwater impacts between state highways and municipal drainage systems, options to eliminate or mitigate such impact; a

housing vulnerability assessment for structures in riparian zones; a vulnerability assessment of critical infrastructure at the state and municipal levels including hospitals, schools, fire stations, and comparable facilities, and a vulnerability assessment of the state's historic and cultural resources;

(9) Establish working groups that will conduct assessments for varied sectors of the economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism; these assessments should address vulnerabilities and economic impacts, options to mitigate impacts, options to improve preparedness, response and recovery, and economic opportunities associated with design, engineering, technological and other skills and capabilities that can improve resilience;

(10) Establish emergency permitting procedures to expedite issuance of state permits following disasters, and develop guidance (model procedures) for political subdivisions to follow; and

(11) Lead long-term recovery planning efforts on behalf of the state in the event of the proclamation of the existence of a state of emergency due to a natural hazards event, or upon a Presidential declaration of a major disaster under Section 406 of the Stafford Act.

All decisions of the board shall be decided by a majority vote of the members.

(e) The State Resiliency Office shall provide adequate staff from that office to ensure the meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept, and that reports of the board are produced in a timely manner.

(f) Notwithstanding any other provisions of this code:

(1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq.* of this code.

(2) The following are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code:

(A) All deliberations of the board;

(B) The materials, in any medium, including hard copy and electronic, placed in the custody of the board as a result of any of its duties; and

(C) All records of the board, in the possession of the board, and generated by the board, due to their falling under several exceptions to public disclosure including, but not limited to, that for security or disaster recovery plans and risk assessments.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-7. Powers and duties of West Virginia Board of Medicine.

(a) The board is autonomous and, in accordance with this article, shall determine qualifications of applicants for licenses to practice medicine and surgery, to practice podiatry, and to practice as a physician assistant for a physician licensed under this article, and shall issue licenses to qualified applicants and shall regulate the professional conduct and discipline of such individuals. In carrying out its functions, the board may:

(1) Adopt such rules as are necessary to carry out the purposes of this article;

(2) Hold hearings and conduct investigations, subpoena witnesses and documents and administer oaths;

(3) Institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and enjoin violations of this article and of any rules promulgated under it;

(4) Employ investigators, attorneys, hearing examiners, consultants and such other employees as may be necessary, who

shall be exempt from the classified service of the Division of Personnel and who shall serve at the will and pleasure of the board.

(5) Enter into contracts and receive and disburse funds according to law;

(6) Establish and certify standards for the supervision and certification of physician assistants;

(7) Authorize medical and podiatry corporations in accordance with the limitations of section fifteen of this article to practice medicine and surgery or podiatry through duly licensed physicians or podiatrists; and

(8) Perform such other duties as are set forth in this article or otherwise provided for in this code.

(b) The board shall submit an annual report of its activities to the Legislature. The report shall include a statistical analysis of complaints received, charges investigated, charges dismissed after investigation, the grounds for each such dismissal and disciplinary proceedings and disposition.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-3. Definitions.

As used in §30-4-1 *et seq.*, §30-4A-1 *et seq.*, and §30-4B-1 *et seq.* of this code, the following words and terms have the following meanings:

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons;

"AAPD" means the American Academy of Pediatric Dentistry;

"ACLS" means advanced cardiac life support;

"ADA" means the American Dental Association;

"AMA" means the American Medical Association;

"ASA" means American Society of Anesthesiologists;

"Anxiolysis/minimal sedation" means removing, eliminating, or decreasing anxiety by the use of a single anxiety or analgesia medication that is administered in an amount consistent with the manufacturer's current recommended dosage for the unsupervised treatment of anxiety, insomnia, or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient at home for the treatment of anxiety;

"Approved dental hygiene program" means a program that is approved by the board and is accredited, or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

"Approved dental school, college, or dental department of a university" means a dental school, college, or dental department of a university that is approved by the board and is accredited, or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

"Authorize" means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist's diagnosis and treatment plan;

"BLS" means basic life support;

"Board" means the West Virginia Board of Dentistry;

"Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company, or other entity;

"Central nervous system anesthesia" means an induced, controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

"Certificate of qualification" means a certificate authorizing a dentist to practice a specialty;

"CPR" means cardiopulmonary resuscitation;

"Conscious sedation/moderate sedation" means an induced, controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

"CRNA" means certified registered nurse anesthetist;

"Defibrillator" means an electronic device that applies an electric shock to the heart to restore the normal functional rhythm of a fibrillating, nonfunctional heart and includes an Automatic Electronic Defibrillator (AED);

"Delegated procedures" means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist;

"Dentist anesthesiologist" means a dentist who is trained in the practice of anesthesiology and has completed an additional approved anesthesia education course;

"Dental anesthesiology" is the specialty of dentistry and discipline of anesthesiology encompassing the art and science of managing pain, anxiety, and overall patient health during dental, oral, maxillofacial, and adjunctive surgical or diagnostic procedures throughout the entire perioperative period. The specialty is dedicated to promoting patient safety as well as access to care for all dental patients, including the very young and patients with special health care needs;

"Dental assistant" means a person qualified by education, training, or experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures as

specified by the board by rule or who may perform nonclinical duties in the dental office;

"Dental auxiliary personnel" or "auxiliary" means dental hygienists and dental assistants who assist the dentist in the practice of dentistry;

"Dental hygiene" means the performance of educational, preventive or therapeutic dental services and as further provided in §30-4-11 of this code and legislative rule;

"Dental hygienist" means a person licensed by the board to practice and who provides dental hygiene and other services as specified by the board by rule to patients in the dental office and in a public health setting;

"Dental laboratory" means a business performing dental laboratory services;

"Dental laboratory services" means the fabricating, repairing, or altering of a dental prosthesis;

"Dental laboratory technician" means a person qualified by education, training, or experience who has completed a dental laboratory technology education program and who fabricates, repairs, or alters a dental prosthesis in accordance with a dentist's work authorization;

"Dental office" means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

"Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

"Dental public health" is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which considers the community to be the patient rather than any individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of

group dental care programs as well as the prevention and control of dental diseases on a community basis;

"Dentist" means an individual licensed by the board to practice dentistry;

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent, and associated structures and their impact on the human body;

"Direct supervision" means supervision provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

"Endodontics" is the branch of dentistry which is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp and associated periradicular conditions;

"Facility permit" means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

"General anesthesia" means an induced, controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation or the inability to respond purposefully to verbal command;

"Deep conscious sedation/general anesthesia" includes partial loss of protective reflexes while the patient retains the ability to independently and continuously maintain an airway;

"General supervision" means a dentist is not required to be in the office or treatment facility when procedures are being performed, has personally authorized the procedures to be

completed, and will evaluate the treatment provided at a future appointment, by the dental auxiliary personnel;

"Health care provider BLS/CPR" means health care provider basic life support/cardiopulmonary resuscitation;

"License" means a license to practice dentistry or dental hygiene;

"Licensee" means a person holding a license;

"Mobile dental facility" means any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed, or transported from one location to another;

"Portable dental unit" means any non-facility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis in an out-of-office location, including, but not limited to, patients' homes, schools, nursing homes, or other institutions;

"Oral medicine" is the specialty of dentistry responsible for the oral health care of medically complex patients and for the diagnosis and management of medically related disorders or conditions affecting the oral and maxillofacial region;

"Oral pathology" is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations;

"Oral and maxillofacial radiology" is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region;

"Oral and maxillofacial surgery" is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region;

"Orofacial pain" is the specialty of dentistry that encompasses the diagnosis, management and treatment of pain disorders of the jaw, mouth, face and associated regions, which specialty is dedicated to the evidenced-based understanding of the underlying pathophysiology, etiology, prevention, and treatment of these disorders and improving access to interdisciplinary patient care. These disorders as they relate to orofacial pain include but are not limited to temporomandibular muscle and joint (TMJ) disorders, jaw movement disorders, neuropathic and neurovascular pain disorders, headache, and sleep disorders;

"Orthodontics and dentofacial orthopedics" is the dental specialty that includes the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures;

"PALS" means pediatric advanced life support;

"Pediatric dentistry" is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs;

"Pediatric patient" means infants and children;

"Periodontics" is that specialty of dentistry which encompasses the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function, and aesthetics of these structures and tissues;

"Physician anesthesiologist" means a physician, medical doctor, or doctor of osteopathy who is specialized in the practice of anesthesiology;

"Prosthodontics" is the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial tissues using biocompatible substitutes;

"Public health practice" means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general, or no supervision of a dental hygienist by a dentist;

"Public health setting" means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health Facilities, public health facilities, homebound settings, accredited dental hygiene education programs, and any other place designated by the board by rule;

"Qualified monitor" means an individual who by virtue of credentialing and/or training is qualified to check closely and document the status of a patient undergoing anesthesia and observe utilized equipment;

"Relative analgesia/minimal sedation" means an induced, controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

"Specialty" means the practice of a certain branch of dentistry;

"Subcommittee" means West Virginia Board of Dentistry Subcommittee on Anesthesia; and

"Work authorization" means a written order for dental laboratory services which has been issued by a licensed dentist.

ARTICLE 7B. CENTER FOR NURSING.

§30-7B-4. Board of directors.

(a) The center is governed by a board of directors consisting of the following members appointed by the Governor:

(1) Two representatives from the West Virginia Board of Examiners for Registered Professional Nurses, as follows:

(A) One representing a bachelor or higher degree program; and

(B) One representing an associate degree program;

(2) One representative from the West Virginia Board of Examiners for Licensed Practical Nurses;

(3) One representative from the West Virginia Nurses Association;

(4) One nurse representing a rural health care facility;

(5) One director of nursing;

(6) One health care administrator;

(7) One registered professional staff nurse engaged in direct patient care;

(8) One licensed practical nurse engaged in direct patient care;

(9) Two citizen members as required by section four-a, article one, chapter thirty of this code;

(10) Two ex officio, nonvoting members, as follows:

(A) The Secretary of the Department of Health or his or her designee; and

(B) A representative from WorkForce West Virginia.

(b) Members are appointed for four-year terms. A member may not serve more than two consecutive terms.

(c) The board shall elect annually from its voting members a president and a secretary as required by §30-1-3 of this code. A majority of the appointed members constitutes a quorum.

(d) The Governor shall fill any vacancy within thirty days of occurrence.

(e) The members of the board who are in office on the effective date of this section, unless sooner removed, shall continue to serve until their successors have been appointed and qualified.

ARTICLE 30. SOCIAL WORKERS.

§30-30-16. Provisional license to practice as a social worker.

(a) To be eligible for a provisional license to practice as a social worker, the applicant must:

(1) Submit an application to the board;

(2) Be at least 18 years of age;

(3) Have a baccalaureate degree in a related field, as provided by legislative rule;

(4) Have obtained regular supervised employment, or the reasonable promise of regular supervised employment, contingent upon receiving a provisional license, in a critical social work workforce shortage position, area, or setting requiring a social work license: *Provided*, That such employment shall not be as an independent practitioner, contracted employee, sole proprietor, consultant, or other nonregular employment;

(5) Have satisfied the board that he or she merits the public trust by providing the board with three letters of recommendation from persons not related to the applicant;

(6) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program, may be considered;

(7) Not have been convicted of a felony in any jurisdiction within five years preceding the date of application for license, which conviction remains unreversed;

(8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of social work, which conviction remains unreversed; and

(9) Meet any other requirements established by the board.

(b) The board shall promulgate emergency rules, in accordance with §29A-3-15 of this code, to implement the provisions of subsection (a) of this section.

(c) A provisionally licensed social worker may become a licensed social worker by completing the following:

(1) Be continuously employed for four years as a social worker and supervised: *Provided*, That should an individual lose his or her employment due to a reduction in force, or be unable to work due to medical reasons, the individual may request that the Board allow for a reasonable interruption in continuous employment and provide additional time for the individual to complete the requirements of the provisional license. The board shall promulgate by legislative rule the supervision requirements;

(2) Complete 12 credit hours of core social work study from a program accredited by the council on social work education, as defined by legislative rule, within the four-year provisional license period;

(3) Complete continuing education as required by legislative rule; and

(4) Pass an examination approved by the board.

§30-30-30. Registration as a Bureau for Children and Families service worker.

To be eligible to be registered as a service worker for the Bureau for Children and Families of the Department of Human Services, the applicant must:

- (1) Submit an application to the board;
- (2) Be at least 18 years of age;
- (3) Have a baccalaureate degree;
- (4) Have obtained employment by the bureau;
- (5) Satisfy the requirements of the West Virginia Clearance for Access: Registry and Employment Screening Act provided in §16-49-1 *et seq.* of this code;
- (6) Satisfy the requirements provided in §30-1-24 of this code;
- (7) Complete 240 hours of pre-service training developed by the bureau;
- (8) Complete 20 hours of board-approved continuing social work education every two years, up to 10 of which may be earned through board-approved online education hours: *Provided*, That at least two of the hours shall be related to the Code of Ethics adopted by the board, and at least two hours shall be related to social, health, and mental health concerns of veterans and their families; and
- (9) Pay the application fee.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-7. Current and prospective planning; roads and highways; report to Division of Highways.

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the Division of Highways for the development and building of new roads. Upon completion of an environmental impact study, the commissioner of

highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the commissioner of the Division of Highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the Division of Highways from the region where the new road is being built; a designee of the Division of Highways from the central state office; a designee from the Environmental Engineers Division; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the Public Service Commission; a designee from the Division of Environmental Protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the Division of Highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the Division of Highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines. After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be

presented to the commissioner of the Division of Highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance with the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the Division of Highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed \$1 million to the restricted account: *Provided*, That at no time may the balance of the restricted account exceed \$1 million.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road, these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.

§31A-2A-4. Exceptions.

(a) Nothing in this article is intended to, or shall prohibit, apply to, or interfere with:

(1) The lawful authority or ability of the commissioner of banking or any other state or federal regulatory agency of a bank, savings and loan association, trust company, or credit union to

obtain or to share between such regulatory agencies any records which the commissioner of banking or such state or federal regulatory agency may deem appropriate for the examination and regulation of the financial institution: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq.* of this code;

(2) The lawful authority or ability of the Insurance Commissioner or the State Auditor to obtain any records from a financial institution relating to the financial institution's sale of insurance or securities;

(3) The dissemination or publication of information derived from financial records if the information cannot be identified to any particular customer, deposit, or account, or if the information is in composite form and is not disseminated or published in a way which identifies any particular customer, deposit, or account;

(4) The making of reports or returns specifically required or permitted by federal or state law, including applicable tax law or regulations;

(5) The disclosure of any information under the provisions of the uniform commercial code governing the dishonor of a negotiable instrument, or the disclosure to any purported state entity payee or to any purported state entity holder of a check, draft, order, or other item, whether or not such instrument has been accepted by such payee or holder as payment, as to whether or not such instrument would be honored if presented at the time of such disclosure;

(6) A state entity obtaining a credit report or consumer credit report from anyone other than a financial institution;

(7) The exchange, in the regular course of business, of information showing the outstanding balance of a mortgage loan account in connection with a sale, refinancing, or foreclosure of real property in a transaction to which the state entity is a party; or the disclosure, in the regular course of business, of information on a mortgage or deed of trust on a subject property to a state entity as

holder of any subordinate mortgage, deed of trust or security interest;

(8) The disclosure to the Department of Human Services, upon written request, of an individual's financial records which the department determines are necessary to verify or confirm the individual's eligibility or ineligibility for public assistance;

(9) The disclosure of an individual's financial records in response to a written request by the Department of Human Services, as authorized by the federal parent locator service of the United States Department of Health and Human Services;

(10) The examination or audit of financial records relating to preneed funeral trust accounts pursuant to §47-14-1 *et seq.* of this code;

(11) The disclosure of financial records relating to unclaimed property pursuant to §36-8-1 *et seq.* of this code, including the examination of financial records by the State Treasurer or his or her agent to determine compliance with the handling and reporting of unclaimed property as provided by, and subject to, the limitations set forth in §36-8-20 of this code;

(12) The presentation to appropriate local, state, or federal law-enforcement authorities of a certificate under oath by an authorized representative of a financial institution drawee that declares the dishonor of the check, draft, or order by the drawee, the lack of an account with the drawee at the time of utterance or the insufficiency of the drawer's funds at the time of presentation and utterance in connection with any criminal action for obtaining property or services by a worthless check, draft, or order;

(13) The notification to appropriate local, state, or federal law-enforcement authorities or regulatory agencies that the financial institution, its officers, employees or agents thereof have information which may be relevant to a possible violation of any statute or regulation: *Provided*, That nothing in this subdivision permits disclosure of protected financial information in violation of §31A-2B-1 *et seq.* of this code. The disclosure of any information pursuant to this subdivision may only include the name

or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity;

(14) The disclosure of information or records by a financial institution to any court or other appropriate state entity which is incidental to recording a lien, perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary;

(15) The disclosure of information or records by a financial institution which is incidental to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement, or which is incidental to processing a default on, or administering, a government guaranteed or insured loan or to initiating contact with an appropriate state entity for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement;

(16) The disclosure of information incidental to a transaction in the normal course of business of the financial institution where there is no reasonable cause to believe that the information is intended to be used by the state entity in connection with an investigation of the customer;

(17) The preparation, review, handling, or maintenance of financial records in the ordinary course of business by any officer, employee, or agent of a financial institution having custody of the records; or

(18) The disclosure to appropriate law-enforcement officials of the financial records of any officer, director, employee, or controlling shareholder of a financial institution by a financial institution or by any state or federal regulatory agency having authority to regulate the financial institution, if there is reason to believe that the financial record is relevant to a possible violation by such person of any law relating to a crime against the financial institution or any such state or federal regulatory agency. No state or federal regulatory agency which discloses any information pursuant to this subdivision shall be deemed to have waived any privilege applicable to that record under law.

(b) Nothing in this article shall preclude a state entity from obtaining information that is public record without regard to this article although the information may have been derived from financial records.

(c) Nothing in this article shall preclude a state entity from obtaining information or financial records voluntarily submitted to it by others in an attempt to seek governmental assistance or redress of a grievance, including legislative change: *Provided*, That the financial record or information was not solicited by the state entity in an effort to evade the requirements of this article or submitted by a financial institution in contravention of §31A-2A-7 of this code.

(d) Notwithstanding the exceptions set forth in this section, a financial institution may not disclose financial records to a state entity and a state entity may not compel disclosure of financial records in a manner that singles out or discriminates against any person based on activity protected by the Second Amendment to the United States Constitution or Section 22, Article III of the West Virginia Constitution.

CHAPTER 33. INSURANCE.

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

§33-15B-3. Insurance commissioner to propose rules; use of standardized forms and classifications; advisory group.

(a) The commissioner shall propose rules for legislative approval, in accordance with the provisions of chapter twenty-nine-a of this code, regarding the implementation and use of uniform health care administrative forms. Such rules shall establish, where practicable, the acceptance and use throughout the health care system of standard administrative forms, terms or procedures, including, but not limited to, the following:

(1) The standard CMS 1500 health insurance claim form, as amended, or other similar forms, terms, and definitions to be used which are consistent with health care and insurance industry standards.

(2) International classification of disease, ninth clinical modifications (ICD-9-CM) and common procedural terminology (CPT) codes, as amended, or other similar forms, terms, and definitions to be used which are consistent with health care and insurance industry standards.

(3) National uniform billing data element specifications (UB-04), as amended, and as supplemented by the West Virginia uniform billing committee, or other similar forms, terms, and definitions to be used which are consistent with health care and insurance industry standards.

(4) Consideration of current practices involving reimbursement of claims and explanation of benefits, and the implementation of standards and guidelines regarding explanation of benefits, including, but not limited to, consideration of line item explanations of payments or denial of payments.

(b) The legislative rules required herein shall be developed with the advice of an advisory group to be appointed by the commissioner. Such advisory group shall consist of representatives of consumers, providers, payors, and regulatory agencies, including representatives from the following: The Department of Human Services; the West Virginia health care authority; West Virginia dental association; West Virginia pharmacists association; the West Virginia hospital association; commercial health insurers; third party administrators; the West Virginia state medical association; the West Virginia nurses association; public employees insurance agency; and consumers.

(c) The commissioner and the advisory group shall review the legislative rules to be proposed pursuant to this section as necessary and update the same in a timely manner in order to conform to current legislation and health care and insurance industry standards and trends.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-7b. Loss ratio.

If a health maintenance organization considers a loss ratio at the time of renewal of a policy, plan, or contract, the health maintenance organization shall, upon request of a subscriber, provide the loss ratio and the components of the loss ratio calculation to the subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, "loss ratio" means the total losses paid out in medical claims divided by the total earned premiums: *Provided, however,* That medical claims do not include dental only or vision only coverage. For purposes of this section, "subscriber" does not include a subscriber or beneficiary of any policy, plan, or contract approved by the Bureau of Medical Services and entered into by a health maintenance organization with Medicaid or the Children's Health Insurance Program.

§33-25A-9. Annual report.

Every health maintenance organization shall comply with and is subject to the provisions of §33-4-14 relating to filing of financial statements with the commissioner and the national association of Insurance Commissioners. The annual financial statement required by that section shall include, but not be limited to, the following:

(a) A statutory financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent certified public accountant, reflecting at least: (i) All prepayment and other payments received for health care services rendered; (ii) expenditures to all providers, by classes or groups of providers, and insurance companies or nonprofit health service plan corporations engaged to fulfill obligations arising out of the health maintenance contract; (iii) expenditures for capital improvements, or additions thereto, including, but not limited to, construction, renovation or purchase of facilities and capital equipment; and (iv) the organization's fidelity bond;

(b) The number of new enrollees enrolled during the year, the number of enrollees as of the end of the year and the number of

enrollees terminated during the year on a form prescribed by the commissioner;

(c) A summary of information compiled pursuant to §33-25A-4(1)(c) in such form as may be required by the Department of Human Services or a nationally recognized accreditation and review organization or as the commissioner may by rule require;

(d) A report of the names and residence addresses of all persons set forth in §33-25A-3(1)(c) who were associated with the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements or other payments to those individuals for services to the health maintenance organization, including a full disclosure of all financial arrangements during the preceding year required to be disclosed pursuant to §33-25A-3(1)(c); and

(e) Any other information relating to the performance of the health maintenance organization as is reasonably necessary to enable the commissioner to carry out his or her duties under this article.

§33-25A-17. Examinations.

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and providers with whom the organization has contracts, agreements or other arrangements as often as he or she considers it necessary for the protection of the interests of the people of this state but not less frequently than once every five years.

(b) The Commissioner may contract with the Department of Human Services, any entity which has been accredited by a nationally recognized accrediting organization and has been approved by the Commissioner to make examinations concerning the quality of health care services of any health maintenance organization and providers with whom the organization has contracts, agreements or other arrangements, or any entity contracted with by the Department of Human Services, as often as it considers necessary for the protection of the interests of the

people of this state, but not less frequently than once every three years: *Provided*, That in making the examination, the Department of Human Services or the accredited entity shall use the services of persons or organizations with demonstrable expertise in assessing quality of health care.

(c) Every health maintenance organization and affiliated provider shall submit its books and records to the examinations and in every way facilitate them. For the purpose of examinations, the Commissioner and the Department of Human Services have all powers necessary to conduct the examinations, including, but not limited to, the power to issue subpoenas, the power to administer oaths to and examine the officers and agents of the health maintenance organization and the principals of the providers concerning their business.

(d) The health maintenance organization and any other entity subject to examination pursuant to this article are subject to the provisions of sections four, five, six, seven, eight and nine, article two of this chapter in regard to the expense and conduct of examinations.

(e) In lieu of the examination, the Commissioner may accept the report of an examination made by other states.

(f) The expenses of an examination assessing quality of health care under subsection (b) of this section and section seventeen-a of this article shall be reimbursed pursuant to subsection (n), section nine, article two of this chapter.

§33-25A-18. Suspension or revocation of certificate of authority.

(1) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this article if he or she finds that any of the following conditions exist:

(a) The health maintenance organization is operating significantly in contravention of its basic organization document, in any material breach of contract with an enrollee, or in a manner contrary to that described in and reasonably inferred from any other

information submitted under section three of this article unless amendments to the submissions have been filed with an approval of the commissioner;

(b) The health maintenance organization issues evidence of coverage or uses a schedule of premiums for health care services which do not comply with the requirements of section eight of this article;

(c) The health maintenance organization does not provide or arrange for basic health care services;

(d) The Department of Human Services or other accredited entity certifies to the commissioner that: (i) The health maintenance organization is unable to fulfill its obligations to furnish health care services as required under its contract with enrollees; or (ii) the health maintenance organization does not meet the requirements of subsection (l), section four of this article;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees or is otherwise determined by the commissioner to be in a hazardous financial condition;

(f) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section six of this article;

(g) The health maintenance organization has failed to implement the grievance procedure required by section twelve of this article in a manner to reasonably resolve valid grievances;

(h) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(j) The health maintenance organization has otherwise failed to substantially comply with this article;

(k) The health maintenance organization has violated a lawful order of the commissioner; or

(l) The health maintenance organization has not complied with the requirements of section seventeen-a of this article.

(2) A certificate of authority shall be suspended or revoked only after compliance with the requirements of section twenty-one of this article.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(4) When the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to terminate its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as he or she may find to be in the best interests of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

§33-25A-27. Authority to contract with health maintenance organizations under Medicaid.

The Department of Human Services may to enter into contracts with health maintenance organizations certified and permitted to market under the laws of this state, and to furnish to recipients of medical assistance under Title XIX of the Social Security Act, 42 U.S.C. Section 1396, *et. seq.*, health care services offered to such recipients under the medical assistance plan of West Virginia.

§33-25A-36. Assignment of certain benefits in dental care insurance coverage.

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is

optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

(f) The provisions of this section shall not apply to insurers or managed care organizations with respect to their Medicaid or CHIP plans or contracts which are reviewed and approved by the Bureau for Medical Services.

ARTICLE 25B. FEDERAL INSURANCE SUBSIDY FOR CHILDREN'S HEALTH.

§33-25B-6. Duties and responsibilities of Department of Human Services to provide training and other services.

(a) The Department of Human Services shall design and provide the vouchers to any corporation wishing to participate in the program at a cost not to exceed the actual cost of the voucher.

(b) No later than ninety days after a request is made by a corporation wishing to participate in the insurance subsidy program, the Department of Human Services in cooperation with the corporations participating in the program, shall begin to conduct regional training and information sessions in all regions of the state. The purpose of these sessions is to train guardians and potential applicant aides in the necessary rules to qualify under the federal guidelines for earned income credits and the requirements of this section. These sessions shall be open to the public and potential applicant aides, at a charge not to exceed \$10 which shall be used solely to defray the costs of conducting the training sessions. Sessions shall be available in at least the first and fourth quarter of the calendar year in all regions of the state after a request has been made by a corporation to commence such training sessions. The Department of Human Services may waive the fee for guardians.

(c) Potential applicant aides shall be tested by the Department of Human Services. Potential applicant aides who successfully complete the test shall be awarded a certificate entitling them to work as an applicant aide. The Department of Human Services

shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-18. Examinations.

(a) The commissioner may make an examination of the affairs of any prepaid limited health service organization and providers with whom the organization has contracts, agreements or other arrangements as often as he or she considers it necessary for the protection of the interests of the people of this state but not less frequently than once every five years.

(b) The commissioner may contract with the Department of Human Services, any entity which has been accredited by a nationally recognized accrediting organization and has been approved by the commissioner to make examinations concerning the quality of health care services of any prepaid limited health service organization and providers with whom the organization has contracts, agreements or other arrangements, or any such entity contracted with by the Department of Human Services, as often as it considers necessary for the protection of the interests of the people of this state, but not less frequently than once every five years: *Provided*, That in making the examination, the Department of Human Services or the accredited entity shall utilize the services of persons or organizations with demonstrable expertise in assessing quality of health care.

(c) Every prepaid limited health service organization and affiliated provider shall submit its books and records to the examinations and in every way facilitate them. For the purpose of examinations, the commissioner and the Department of Human Services have all powers necessary to conduct the examinations, including, but not limited to, the power to issue subpoenas, the power to administer oaths to and examine the officers and agents of the prepaid limited health service organization and the principals of the providers concerning their business.

(d) The prepaid limited health service organization is subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of examinations.

(e) In lieu of the examination, the commissioner may accept the report of an examination made by another state.

(f) The expenses of an examination assessing quality of health care under subsection (b) of this section and section nineteen of this article shall be reimbursed pursuant to subdivision (5), subsection (i), section nine, article two of this chapter.

§33-25D-20. Suspension or revocation of certificate of authority.

(a) The commissioner may suspend or revoke any certificate of authority issued to a prepaid limited health service organization under this article if he or she finds that any of the following conditions exist:

(1) The prepaid limited health service organization is operating significantly in contravention of its basic organizational document, in any material breach of contract with an enrollee, or in a manner contrary to that described in and reasonably inferred from any other information submitted under section three of this article unless amendments to the submissions have been filed with an approval of the commissioner;

(2) The prepaid limited health service organization issues an evidence of coverage or uses a schedule of premiums limited health services which do not comply with the requirements of section eleven of this article;

(3) The prepaid limited health service organization does not provide or arrange for those limited health services which it has contracted to provide to enrollees;

(4) The Department of Human Services or other accredited entity certifies to the commissioner that:

(A) The prepaid limited health service organization is unable to fulfill its obligations to furnish limited health services as required under its contract with enrollees; or

(B) The prepaid limited health service organization does not meet the requirements of subsection (a), section five of this article;

(5) The prepaid limited health service organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees or is otherwise determined by the commissioner to be in a hazardous financial condition;

(6) The prepaid limited health service organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section eight of this article;

(7) The prepaid limited health service organization has failed to implement the grievance procedure required by section fourteen of this article in a manner to reasonably resolve valid grievances;

(8) The prepaid limited health service organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(9) The continued operation of the prepaid limited health service organization would be hazardous to its enrollees;

(10) The prepaid limited health service organization has otherwise failed to substantially comply with this article;

(11) The prepaid limited health service organization has violated a lawful order of the commissioner; or

(12) The prepaid limited health service organization has failed to implement or maintain a quality assurance program considered satisfactory by the commissioner which meets the minimum standards set forth in section nineteen of this article.

(b) A certificate of authority may be suspended or revoked only after compliance with the requirements of section twenty-three of this article.

(c) When the certificate of authority of a prepaid limited health service organization is suspended, the prepaid limited health service organization may not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and may not engage in any advertising or solicitation.

(d) When the certificate of authority of a prepaid limited health service organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to terminate its affairs, and may conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It may engage in no further advertising or solicitation. The commissioner may, by written order, permit further operation of the organization as he or she may find to be in the best interests of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing limited health service coverage.

§33-25D-29. Authority to contract with prepaid limited health service organizations under Medicaid.

The Department of Human Services is authorized to enter into contracts with prepaid limited health service organizations certified and permitted to market under the laws of this state, and to furnish to recipients of medical assistance under Title XIX of the Social Security Act, 42 U.S.C. §1396, *et seq.*, limited health services offered to such recipients under the medical assistance plan of West Virginia. The children's health policy board, the Department of Human Services, and the Division of Juvenile Services within the Department of Military Affairs and Public Safety are further authorized to enter into contracts with prepaid limited health service organizations to furnish behavioral health services to adults and children who are eligible to receive such services under chapter five, chapter sixteen, chapter twenty-seven or chapter forty-nine of this code.

ARTICLE 46. THIRD-PARTY ADMINISTRATOR ACT.**§33-46-18. Exemption for administrators of public health programs.**

Programs supervised by the Department of Human Services, pursuant to chapter nine of this code; the Public Employees Insurance Agency, pursuant to articles sixteen and sixteen-c, chapter five of this code; and the Department of Administration, pursuant to article sixteen-b, chapter five of this code, are exempted from the provisions of this article. Third-party administrators who administer the above-referenced programs are exempt from the provisions of this article with respect to these specific programs only.

ARTICLE 54. REQUIRING ACCOUNTABLE PHARMACEUTICAL TRANSPARENCY, OVERSIGHT, AND REPORTING ACT.**§33-54-2. Definitions.**

For the purpose of this article:

"Auditor" means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

"Brand-name drug" means a prescription drug approved under 21 USC §355(b) or 42 USC §262.

"Drug" or "prescription drug" refers to a brand-name, specialty, or generic prescription drug.

"Drug manufacturer" means any entity that holds the national drug code for a prescription drug and is engaged in the production, preparation, propagation, compounding, conversion, or processing of drug products; or is engaged in the packaging, repackaging, labeling, relabeling, or distribution of drug products, and is not a wholesale distributor of drugs or a retail pharmacy licensed under state law.

"Generic drug" means a prescription drug approved under 21 USC §355(j).

"Health benefit plan" means an individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health benefit plan issuer in the state.

"Health benefit plan issuer" means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the Insurance Commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including government agencies and any insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code. For purposes of this article, the term "health benefit plan issuer" does not include insurers or managed care organizations with respect to their Medicaid or CHIP plans or contracts which are reviewed and approved by the Bureau of Medical Services.

"Market introduction" means the month and year in which the manufacturer acquired or first marketed the drug for sale in the United States.

"National drug code" or "NDC" means the numerical code maintained by the United States Food and Drug Administration that includes the labeler code, product code, and package code.

"Specialty drug" means a prescription drug covered under Medicare Part D that exceeds the specialty tier cost threshold established by the Centers for Medicare and Medicaid Services.

"Total spending" means the total of allowed amounts associated with payment for a specified drug or drug group, for all covered lives.

"Utilization management" means a set of formal techniques designed to monitor the use of, or evaluate the medical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings.

"Wholesale acquisition cost" or "WAC" is the manufacturer's list price to wholesalers or direct purchasers in the United States on December 31 of the reference year, as reported in wholesale price guides or other publications of drug or biological pricing data; it does not include prompt pay or other discounts, rebates, or reductions in price. The current or proposed WAC is the amount that prompts reporting under this act. If reported by a drug group, it is the average WAC weighted by the relevant number of WAC units.

"Wholesale drug distributor" means an entity licensed by the West Virginia State Board of Pharmacy that is engaged in the sale of generic, brand-name, or specialty drugs to persons other than a consumer or patient.

ARTICLE 55. HEALTH BENEFIT PLAN NETWORK ACCESS AND ADEQUACY ACT.

§33-55-1. Definitions.

For purposes of this article:

"Authorized representative" means:

(A) A person to whom a covered person has given express written consent to represent the covered person;

(B) A person authorized by law to provide substituted consent for a covered person; or

(C) The covered person's treating health care professional, only when the covered person is unable to provide consent, or a family member of the covered person.

"Commissioner" means the Insurance Commissioner of this state.

"Covered benefit" or "benefit" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan.

"Emergency medical condition" means a physical, mental, or behavioral health condition that manifests itself by acute symptoms of sufficient severity, including severe pain that would lead a prudent layperson, possessing an average knowledge of medicine and health, to reasonably expect, in the absence of immediate medical attention, to result in:

(A) Placing the individual's physical, mental, or behavioral health, or, with respect to a pregnant woman, the woman's or her fetus's health in serious jeopardy;

(B) Serious impairment to a bodily function;

(C) Serious impairment of any bodily organ or part; or

(D) With respect to a pregnant woman who is having contractions:

(i) Inadequate time to affect a safe transfer to another hospital before delivery; or

(ii) When transfer to another hospital may pose a threat to the health or safety of the woman or fetus.

"Emergency services" means, with respect to an emergency condition:

(A) A medical or mental health screening examination that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate the emergency medical condition; and

(B) Any further medical or mental health examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital to stabilize the patient.

"Essential community provider" or "ECP" means a provider that:

(A) Serves predominantly low-income, medically underserved individuals, including a health care provider defined in Section 340B(a)(4) of the Public Health Service Act (PHSA); or

(B) Is described in Section 1927(c)(1)(D)(i)(IV) of the Social Security Act, as set forth by Section 221 of Pub.L.111-8.

"Facility" means an institution providing health care services or a health care setting, including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, urgent care centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

"Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified (physical, mental, or behavioral) health care services consistent with their scope of practice under state law.

"Health care provider" or "provider" means a health care professional, a pharmacy, or a facility.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a physical, mental, or behavioral health condition, illness, injury, or disease, including mental health and substance use disorders.

"Health carrier" or "carrier" means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer issuing an accident and sickness insurance policy pursuant to §33-15-1 *et seq.* of this code, an insurer issuing an accident and sickness group policy pursuant to §33-16-1 *et seq.* of this code, a hospital medical and dental corporation licensed pursuant to §33-

24-1 *et seq.* of this code, a health care corporation licensed pursuant to §33-25-1 *et seq.* of this code, or a health maintenance organization licensed pursuant to §33-25A-1 *et seq.* of this code. For purposes of this article, the term "health carrier" or "carrier" does not include insurers or managed care organizations with respect to their Medicaid or Children's Health Insurance Program (CHIP) plans or contracts which are reviewed and approved by the Bureau for Medical Services.

"Intermediary" means a person authorized to negotiate and execute provider contracts with health carriers on behalf of health care providers or on behalf of a network.

"Limited scope dental plan" means a plan that provides coverage, substantially all of which is for treatment of the mouth, including any organ or structure within the mouth, which is provided under a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a group benefit plan.

"Limited scope vision plan" means a plan that provides coverage, substantially all of which is for treatment of the eye, that is provided under a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a group benefit plan.

"Network" means the group or groups of participating providers providing services under a network plan.

"Network plan" means a health benefit plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by the health carrier.

"Participating provider" means a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than

coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

"Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

"Primary care" means health care services for a range of common physical, mental, or behavioral health conditions provided by a physician or nonphysician primary care professional.

"Primary care professional" means a participating health care professional designated by the health carrier to supervise, coordinate, or provide initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

"Specialist" means a physician or non-physician health care professional who:

(A) Focuses on a specific area of physical, mental, or behavioral health or a group of patients; and

(B) Has successfully completed required training and is recognized by the state in which he or she practices to provide specialty care.

"Specialist" includes a subspecialist who has additional training and recognition above and beyond his or her specialty training.

"Specialty care" means advanced medically necessary care and treatment of specific physical, mental, or behavioral health conditions, or those health conditions which may manifest in particular ages or subpopulations, that are provided by a specialist, preferably in coordination with a primary care professional or other health care professional.

"Telemedicine" or "Telehealth" means health care services provided through telecommunications technology by a health care professional who is at a location other than where the covered person is located.

"Tiered network" means a network that identifies and groups some or all types of providers and facilities into specific groups to which different provider reimbursement, covered person cost-sharing, or provider access requirements, or any combination thereof, apply for the same services.

"To stabilize" means with respect to an emergency medical condition to provide such medical treatment of the condition as may be necessary to assure, within a reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual to or from a facility, or, with respect to an emergency birth with no complications resulting in a continued emergency to deliver the child and the placenta.

"Transfer" means the movement, including the discharge, of an individual outside a hospital's facilities at the direction of any person employed by, or affiliated or associated, directly or indirectly, with the hospital, but does not include the movement of an individual who:

(A) Has been declared dead; or

(B) Leaves the facility without the permission of any such person.

ARTICLE 56. HEALTH CARE SERVICES PROVIDED BY PHARMACISTS.

§33-56-1. Services provided by pharmacists.

(a) For health plans, policies, contracts, or agreements issued, amended, adjusted, or renewed on or after January 1, 2021:

(1) Benefits may not be denied for any health care service performed by a pharmacist licensed under §30-5-1 *et seq.* of this code if:

(A) The service performed was within the lawful scope of the pharmacist's license;

(B) The plan would have provided benefits if the service had been performed by another health care provider; and

(C) The pharmacist is included in the plan's network of participating providers.

(2) The health plan shall include an adequate number of pharmacists in its network of participating health care providers.

(b) The participation of pharmacies in the plan network's drug benefit does not satisfy the requirement that plans include pharmacists in their network of participating health care providers.

(c) Health benefit plans, policies, contracts, or agreements issued, amended, adjusted, or renewed on or after January 1, 2020, but before January 1, 2021, that delegate credentialing agreements to contracted health care facilities shall accept credentialing for pharmacists employed or contracted by those facilities. Health plans shall reimburse facilities for covered services provided by network pharmacists within the pharmacists' scope of practice per negotiations with the facility.

(d) For purposes of this section, health plans, policies, contracts, or agreements do not include Medicaid or Children's Health Insurance Program health plans, policies, contracts, or agreements that are approved by the Bureau of Medical Services.

ARTICLE 59. REQUIRED COVERAGE FOR HEALTH INSURANCE.

§33-59-1. Cost sharing in prescription insulin drugs.

(a) Findings. —

(1) It is estimated that over 240,000 West Virginians are diagnosed and living with type 1 or type 2 diabetes and another 65,000 are undiagnosed;

(2) Every West Virginian with type 1 diabetes and many with type 2 diabetes rely on daily doses of insulin to survive;

(3) The annual medical cost related to diabetes in West Virginia is estimated at \$2.5 billion annually;

(4) Persons diagnosed with diabetes will incur medical costs approximately 2.3 times higher than persons without diabetes;

(5) The cost of insulin has increased astronomically, especially the cost of insurance copayments, which can exceed \$600 per month. Similar increases in the cost of diabetic equipment and supplies, and insurance premiums have resulted in out-of-pocket costs for many West Virginia diabetics in excess of \$1,000 per month;

(6) National reports indicate as many as one in four type 1 diabetics underuse, or ration, insulin due to these increased costs. Rationing insulin has resulted in nerve damage, diabetic comas, amputation, kidney damage, and even death; and

(7) It is important to enact policies to reduce the costs for West Virginians with diabetes to obtain life-saving and life-sustaining insulin.

(b) As used in this section:

“Cost-sharing payment” means the total amount a covered person is required to pay at the point of sale in order to receive a prescription drug that is covered under the covered person’s health plan.

“Covered person” means a policyholder, subscriber, participant, or other individual covered by a health plan.

“Device” means a blood glucose test strip, glucometer, continuous glucose monitor (CGM), lancet, lancing device, or

insulin syringe used to cure, diagnose, mitigate, prevent, or treat diabetes or low blood sugar, but does not include insulin pumps;

“Health plan” means any health benefit plan, as defined in §33-16-1a(h) of this code, that provides coverage for a prescription insulin drug.

“Pharmacy benefits manager” means an entity that engages in the administration or management of prescription drug benefits provided by an insurer for the benefit of its covered persons.

“Prescription insulin drug” means a prescription drug that contains insulin and is used to treat diabetes.

(c) Each health plan shall cover at least one type of insulin in all the following categories:

- (1) Rapid-acting;
- (2) Short-acting;
- (3) Intermediate-acting;
- (4) Long-acting;
- (5) Pre-mixed insulin products;
- (6) Pre-mixed insulin/GLP-1 RA products; and
- (7) Concentrated human regular insulin.

(d) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code which issues or renews a health insurance policy on or after January 1, 2023, shall provide coverage for prescription insulin drugs and equipment pursuant to this section.

(e) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed \$35 in aggregate, including situations where the covered person is prescribed more than one insulin drug, per 30-day supply, regardless of the amount or type of insulin

needed to fill such covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not exceed \$100 in aggregate, including situations where the covered person is prescribed more than one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's deductible, copayment, coinsurance or any other cost-sharing requirement.

(f) Nothing in this section prevents an insurer from reducing a covered person's cost sharing to an amount less than the amount specified in subsection (e) of this section.

(g) No contract between an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code or its pharmacy benefits manager and a pharmacy or its contracting agent may contain a provision: (i) Authorizing the insurer's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the insurer pursuant to subsection (e) of this section.

(h) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code shall provide coverage for the following equipment and supplies for the treatment and/or management of diabetes for both insulin-dependent and non-insulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of this code shall include coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets.

(j) All health care plans must offer an appeals process for persons who are not able to take one or more of the offered prescription insulin drugs noted in subsection (c) of this section. The appeals process shall be provided to covered persons in writing and afford covered persons and their health care providers a meaningful opportunity to participate with covered persons health care providers.

(k) Diabetes self-management education shall be provided by a health care practitioner who has been appropriately trained. The Secretary of the Department of Health shall promulgate legislative rules to implement training requirements and procedures necessary to fulfill provisions of this subsection: *Provided*, That any rules promulgated by the secretary shall be done after consultation with the Coalition for Diabetes Management, as established in §16-5Z-1 *et seq.* of this code.

(l) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and may not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

(m) A prescription is not required to obtain a blood testing kit for ketones.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 16. TRUSTS FOR CHILDREN WITH AUTISM.

§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.

(a) The West Virginia Children with Autism Trust Board is created to qualify and oversee trust accounts created pursuant to this article and held by approved banks or trust companies for administration by qualified trustees.

(b) The West Virginia Children with Autism Trust Board shall consist of the following governmental officials: The Tax Commissioner or his or her designee, who shall serve as the chair, the Secretary of the Department of Human Services, or his or her designee, and the Commissioner of Banking as set forth in article one, chapter thirty-one-a of this code, or his or her designee. The board shall also consist of the following six public members who shall be appointed by the Governor with advice and consent of the Senate:

(1) An attorney at law, licensed to practice law in this state pursuant to article two, chapter thirty of this code. The attorney should have extensive knowledge and experience in the creation, management and administration of trusts;

(2) A counselor licensed in this state pursuant to the provisions of article thirty-one, chapter thirty of this code. The counselor should have experience in the delivery of vocational, rehabilitative or support services to persons with disabilities;

(3) A physician or psychiatrist licensed in this state pursuant to the provisions of article three, chapter thirty of this code. Such physician or psychiatrist must have extensive knowledge and experience in diagnosis and treatment of persons with autism;

(4) One public member with a background in advocacy on behalf of persons with disabilities; and

(5) Two citizen members.

(c) Each of the appointments shall be for a period of five years and appointees are eligible for reappointment at the expiration of their terms. Of the public members of the board first appointed, one shall be appointed for a term ending June 30, 2012, and a second for a four-year term. The remainder shall be appointed for the full five-year terms as provided in this section. In the event of a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(d) Members of the board may not be compensated in their capacity as members, but shall be reimbursed for reasonable

expenses incurred in the performance of their duties by the Department of Administration. Expense payments are to be made at the same rate paid to state employees.

(e) The board shall meet at least once per month to review and recommend to the Tax Department approval of proposed qualified trust funds or to conduct other business as required by this article or section twelve-i, article twenty-one, chapter eleven of this code. Board meetings shall be held in person, by video conference or by teleconference, or a combination thereof. Five members of the board shall constitute a quorum.

(f) Notwithstanding the provision of section four, article six, chapter six of this code, the Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(g) The Department of Administration shall provide support staff and office space for the board.

(h) Nothing in this section creates an obligation of State General Revenue Funds: *Provided*, That funding for expenses and offices of the West Virginia Children with Autism Trust Board shall be paid, subject to appropriation.

(i) The board may propose rules for legislative approval and may adopt procedural and interpretive rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-8. Persons and entities qualified to serve as guardian and conservator; default guardian and conservator; exemptions from conservator appointment.

(a) Any adult individual may be appointed to serve as a guardian, a conservator or both upon a showing by the individual of the necessary education, ability and background to perform the duties of guardian or conservator and upon a determination by the

court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person. The individual may not be employed by or affiliated with any public agency, entity or facility that is providing substantial services or financial assistance to the protected person except as set forth in section fifteen of this article.

(b) The court may, after first determining it to be in the best interest of the protected person, appoint coguardians, coconservators or both.

(c) Any person being considered by a court for appointment as a guardian or conservator shall provide information regarding any crime, other than traffic offenses, of which he or she was convicted and the court or mental hygiene commissioner may order a background check to be conducted by the State Police or county sheriff. The court shall consider this information in determining the person's fitness to be appointed a guardian or conservator.

(d) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (e) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator or both so long as the entity is capable of providing an active and suitable program of guardianship or conservatorship for the protected person and is not otherwise providing substantial services or financial assistance to the protected person.

(e) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the Secretary of Department of Human Services. The secretary shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of nonprofit corporations and shall provide for the review of the licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for guardianship or conservatorship:

(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the protected person;

(3) Will protect and advocate the legal human rights of the protected person;

(4) Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

(5) Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

(6) Does not provide educational, vocational, residential or medical services to the protected person; and

(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the Department of Human Services or otherwise becomes unable to serve as guardian.

(f) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section thirteen of this article.

(g) Except as provided in sections thirteen and fifteen of this article, no guardian or conservator nor any officer, agent, director, servant or employee of any guardian or conservator may do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom services are being performed by the guardian or conservator.

(h) A person who has an interest as a creditor of a protected person is not eligible for appointment as either a guardian or conservator of the protected person except that a bank or trust company authorized to exercise trust powers or to engage in trust business in this state may be appointed as a conservator if the court determines it is capable of providing suitable conservatorship for the protected person.

(i) The Secretary of the Department of Human Services shall designate the adult protective services division of the county of appointment, or another agency under his or her jurisdiction, to be appointed as guardian when there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve. The department may not refuse to accept the guardianship appointment when ordered by the court but may not be appointed as conservator.

(j) The sheriff of the county in which a court has jurisdiction shall be appointed as conservator when there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve. The sheriff may not refuse to accept the conservatorship appointment when ordered by the court but may not be appointed as guardian.

(k) A conservator shall not be appointed when the alleged protected person's total assets are worth less than \$2,000 or the alleged protected person's income is:

(1) From the Social Security Administration and a representative payee has been appointed to act in the best interest of the individual;

(2) From Medicaid and the only income distributed to the individual is the personal account allotment; or

(3) Less than \$50 per month or \$600 per year. In these instances, the guardian, representative payee or health care facility, if there is no other person or entity, shall manage the personal care account or assets.

§44A-1-9. Posting of bonds; actions on bond.

(a) The court has the discretion to determine whether the posting of a bond by a guardian, once appointed, is necessary. No bond is required of any sheriff or representative of the Department of Human Services appointed as conservator or guardian, respectively.

(b) The court shall order the posting of a bond by a conservator prior to appointment except where the conservator is excused from posting bond under the provisions of section eighteen, article four, chapter thirty-one-a of this code. In determining the amount or type of a conservator's bond, the court or mental hygiene commissioner shall consider:

(1) The value of the personal estate and annual gross income and other receipts within the conservator's control;

(2) The extent to which the estate has been deposited under an arrangement requiring an order of court for its removal;

(3) Whether an order has been entered waiving the requirement that accountings be filed and presented or permitting accountings to be presented less frequently than annually;

(4) The extent to which the income and receipts are payable directly to a facility responsible for or which has assumed responsibility for the care or custody of the protected person;

(5) The extent to which the income and receipts are derived from state or federal programs that require periodic accountings;

(6) Whether a guardian has been appointed, and if so, whether the guardian has presented reports as required; and

(7) Whether the conservator was appointed pursuant to a nomination which requested that bond be waived.

(c) Any required bond may be with a surety and in an amount and form as the court may order and the court may order additional bond or reduce the bond whenever the court finds that a

modification is in the best interests of the protected person or of the estate. The court may allow a property bond in lieu of a cash bond. Proof of bonding must be submitted to the court within thirty days of entry of the order regarding bond.

(d) In case of a breach of any condition placed on the bond of any guardian or conservator, an action may be instituted by any interested person for the use and benefit of the protected person, for the estate of the protected person or for the beneficiaries of the estate.

(e) The following requirements and provisions apply to any bond which the court may require under this section:

(1) Sureties are jointly and severally liable with the guardian or conservator and with each other;

(2) By executing an approved bond of a guardian or conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party respondent. Notice of any proceeding must be delivered to the surety or mailed by registered or certified mail to the address of the surety listed with the court in which the bond is filed. If the party initiating a proceeding possesses information regarding the address of a surety which would appear to be more current than the address listed with the court, notice shall also be mailed by registered or certified mail to the last address of the surety known to the party initiating the proceeding;

(3) On petition of a successor guardian or conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the preceding guardian or conservator; and

(4) The bond of the guardian or conservator is not void after any recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(f) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the guardian or conservator is barred by adjudication or limitation.

§44A-1-15. Eligibility of guardians or conservators employed pursuant to a Department of Human Services waiver program.

(a) A person employed pursuant to a written contract or other employment arrangement with a licensed provider of behavioral health services for the purpose of providing services to a protected person, may be appointed by a court as the guardian or conservator of the protected person if:

(1) Payment for services provided under the contract or employment agreement is made pursuant to a waiver program;

(2) The person is related to the protected person by blood, marriage or adoption;

(3) The contract or arrangement is disclosed in writing to the court; and

(4) The court finds that the appointment is in the best interests of the protected person.

(b) Without the prior approval of a court, a guardian or conservator may not enter into a written contract or other employment arrangement with a licensed provider of behavioral health services in which the guardian or conservator will receive compensation pursuant to a waiver program.

(c) For the purposes of this section:

(1) "Behavioral health services" means services provided for the care and treatment of persons with mental illness, intellectual disability, developmental disabilities or alcohol or drug abuse problems in an inpatient, residential or outpatient setting, including, but not limited to, habilitative or rehabilitative interventions or services and cooking, cleaning, laundry and personal hygiene services provided for such care; and

(2) "Waiver program" means a Department of Human Services administered waiver program, including, but not limited to, the "MR/DD" or "Intellectual and Developmental Disabilities" waiver program authorized by section 1915(c) of the Social Security Act.

(d) A person appointed to serve as a guardian or conservator prior to the effective date of this section, enacted during the 2011 Regular Session of the Legislature, who meets the requirements contained in subsection (a), shall retain his or her authority, powers and duties in that capacity under the provisions of this section: *Provided*, That the guardian or conservator informs the court, in writing, that he or she is employed pursuant to a written contract or other employment arrangement with a licensed provider of behavioral health services under the waiver program.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-2. Who may file petition; contents.

(a) A petition for the appointment of a guardian, a conservator, or both, may be filed by the individual alleged to be a protected person, by a person who is responsible for the individual's care or custody, by the facility providing care to the individual, by the person that the individual has nominated as guardian or conservator, by a person acting as a de facto guardian or de facto conservator or by any other interested person, including, but not limited to, the Department of Human Services.

(b) A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship to the alleged protected person, and shall, to the extent known as of the date of filing, include the following:

(1) The alleged protected person's name, date of birth, place of residence or location and post office address;

(2) The names and post office addresses of the alleged protected person's nearest relatives, in the following order:

(i) The spouse and children, if any; or if none

(ii) The parents and brothers and sisters, if any; or if none

(iii) The nearest known relatives who would be entitled to succeed to the person's estate by intestate succession as set forth in article one, chapter forty-two of this code.

Once a relative or several relatives have been identified in one of the aforementioned categories, relatives in a lower category do not have to be listed in the petition;

(3) The name, place of residence or location and post office address of the individual or facility that is responsible for the person's care or custody, any person acting as a de facto guardian or de facto conservator or any medical power of attorney representative or appointed surrogate, and a detailed list of the acts performed by such person on behalf of the protected person;

(4) The name, place of residence or location and post office address of any person designated as a surrogate decisionmaker for the alleged protected person, or of any representative or representatives designated under a durable power of attorney, medical power of attorney or living will, of which the alleged protected person is the principal, and the petitioner shall attach a copy of any of those documents, if available;

(5) The name, post office address and phone number of the attorney representing the petitioner in the petition and appointment proceedings;

(6) Whether the person's incapacity will prevent attendance at the hearing and the reasons therefor;

(7) The type of guardianship or conservatorship requested and the reasons for the request;

(8) The proposed guardian or conservator's name, post office address and, if the proposed guardian or conservator is an individual, the individual's age, occupation, criminal history and relationship to the alleged protected person;

(9) The name and post office address of a guardian nominated by the alleged protected person if different from the proposed guardian or conservator, and, if the person nominated as a guardian or conservator is an individual, the individual's age, occupation, criminal history and relationship to the alleged protected person;

(10) The name and post office address of any guardian or conservator currently acting, whether in this state or elsewhere;

(11) If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment;

(12) If the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment; and

(13) If the appointment of a conservator is requested for a missing person, the specific circumstances under which the person is considered missing.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-11. Filing of reports and accountings; misdemeanor for failure to file; reporting elder abuse.

(a) Reports of guardians and accountings of conservators, as described in this article shall be filed with the circuit clerk of the county in which appointed and also with the fiduciary commissioner of the county or other person if the court has made a referral in its order:

(1) Within six months of being appointed;

(2) By December 31 of each year thereafter;

(3) When the court orders additional reports or accountings to be filed;

(4) When the guardian or conservator resigns or is removed;
and

(5) When the appointment of the guardian or conservator is terminated, except that in the case of a guardian, the court may determine that there is no need for a report upon the termination; and in the case of a conservator, no accounting is required if all persons entitled to any proceeds of the estate consent thereto.

(b) The circuit clerk shall notify the court if the required reports are not filed or are administratively incomplete. The fiduciary commissioner, or other person appointed by the court or mental hygiene commissioner, shall review the reports and accountings multiannually, and may request additional information from the guardian or conservator. If the reports or accountings are not filed, or if there are any questions or discrepancies in the reports or accountings, the person reviewing the report shall notify the court or mental hygiene commissioner for further investigation or action of the court, including, but not limited to, a court order requesting copies of bank or investment records, appointing counsel to investigate the matter or setting a hearing on the matter.

(c) If the court has in its order made a referral to the fiduciary commissioner of the county:

(1) The accounting shall be governed by and the fiduciary commissioner shall handle the same under the provisions of sections ten, eleven, twelve, thirteen and fourteen, article four, chapter forty-four of this code, except that all compensation and expenses of the conservator shall be allowed and approved only by the circuit court in accordance with the provisions of section thirteen, article one of this chapter.

(2) The fiduciary commissioner may not publish any notice concerning the filing of a proposed accounting, but shall serve a copy of the proposed accounting of the conservator together with the notice by United States mail on the protected person, all individuals and entities given notice of the petition and any other person or entity found to be interested in the affairs of the protected person, all of whom have standing to file exceptions to or falsify the accounting before the fiduciary commissioner.

(3) In the settlement of the accounting of a conservator, the fiduciary commissioner is entitled to fees as are allowed for

fiduciary commissioners in the handling of accountings of a decedent's estate, or as otherwise set by order of the circuit court.

(4) If the court or mental hygiene commissioner appoints a person other than the fiduciary commissioner to review the reports, such person shall report to the court as required by this article. The court shall establish a fee for reviewing a report which shall be paid by the Supreme Court of Appeals from the Enforcement of Guardianship and Conservatorship Act Fund.

(5) Any party feeling aggrieved of a settlement or decision by the fiduciary commissioner concerning the accounting may on motion filed within four months of the settlement or decision appeal the same to the circuit court.

(d) Any guardian or conservator who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500.

(e) The parties, attorneys or mental hygiene commissioner shall report violations of this section, or any other alleged elder abuse violations, including criminal elder abuse pursuant to §61-2-29 of this code, to the Department of Human Services or county prosecutor for further investigation and action.

(f) The West Virginia Supreme Court of Appeals shall prescribe forms for reports, accountings and inventories required to be filed pursuant to the provisions of this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6L. THEFT OF CONSUMER IDENTITY PROTECTIONS.

§46A-6L-102. Security freeze; timing; effect; covered entities; cost.

(a) A consumer-reporting agency shall permit a consumer to place a security freeze on his or her credit report by the consumer selecting either of the following:

(1) A request in writing by certified or overnight mail to a consumer-reporting agency; or

(2) Making a request directly to the consumer-reporting agency through a secure electronic method, if available: *Provided*, That by January 31, 2009, a secure electronic method shall be made available to the consumer by the consumer-reporting agency.

(b) A consumer-reporting agency shall place a security freeze on a credit report no later than five business days after receiving a written request from the consumer. If a security freeze is in place, a report or information may not be distributed to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer-reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report. A consumer-reporting agency may, regardless of the existence of a security freeze, distribute information contained in a consumer file to the extent otherwise permitted by law if the information was lawfully obtained by or for a consumer-reporting agency from an open public record, without respect to the existence of a security freeze. Nothing herein prevents a consumer-reporting agency from choosing to apply the security freeze to the entire contents of the credit reporting file that is subject to the security freeze.

(c) The consumer-reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the distribution of his or her credit information.

(d) If the consumer wishes to allow his or her credit report to be accessed for a period of time while a freeze is in place, he or she shall contact the consumer-reporting agency by regular mail or a procedure developed under subsection (f) of this section and request that the freeze be temporarily lifted, providing all of the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer-reporting agency pursuant to subsection (c) of this section; and

(3) The time period for which the credit report shall be available to users of the credit report.

(e) A consumer-reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

(f) A consumer-reporting agency shall develop procedures involving the use of telephone, fax, the Internet or other electronic media to receive and process a request from a consumer pursuant to subsection (d) of this section to temporarily lift a freeze on a credit report in an expedited manner.

(g) (1) Beginning on September 1, 2008, a consumer-reporting agency shall temporarily lift a security freeze from a consumer's credit report within fifteen minutes after the consumer's request is received pursuant to subsection (f) of this section by the consumer-reporting agency.

(2) A consumer-reporting agency does not have to remove a security freeze within the time provided in this subsection if:

(A) The consumer fails to meet the requirements of subsection (d) of this section; or

(B) The consumer-reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

(i) An act of God, including fire, earthquakes, hurricanes, storms or similar natural disasters or phenomena;

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time or similar disruption;

(iv) Governmental action, including emergency orders or regulations, judicial or law-enforcement action or similar directives;

(v) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer-reporting agency's systems; or

(vi) Commercially reasonable maintenance of, or repair to, the consumer-reporting agency's systems that is unexpected or unscheduled.

(h) A consumer-reporting agency shall remove or temporarily lift a freeze placed on a credit report only upon the request of the consumer, pursuant to subsection (d) or (j) of this section.

(i) If a third party requests access to a credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer has not allowed his or her credit report to be accessed for a period of time, the third party may treat the application as incomplete.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer-reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer who provides the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer-reporting agency pursuant to subsection (c) of this section.

(k) A consumer-reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the distribution of a consumer credit report to any of the following:

(1) A person or the person's subsidiary, affiliate, agent or assignee with whom the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or debt;

(2) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under this section for purposes of facilitating the extension of credit or other permissible use;

(3) A person acting pursuant to a court order, warrant or subpoena;

(4) A state or local agency that administers a program for establishing and enforcing child support obligations;

(5) The West Virginia Department of Human Services or its agents or assigns acting to investigate fraud;

(6) The West Virginia Department of Revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(7) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act;

(8) A person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; and

(9) A person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

(10) Any person or entity for use in setting or adjusting a rate, adjusting a claim or underwriting for insurance purposes to the extent not otherwise prohibited by law.

(m) The provisions of this section do not apply to any of the following:

(1) A consumer-reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer-reporting agency or multiple consumer credit-reporting agencies and does not maintain a permanent database of credit information from which new consumer credit reports are produced. A consumer-reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer-reporting agency.

(2) A check services or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods of payments.

(3) A deposit account information service company which issues reports regarding account closures due to fraud, a substantial number of overdrafts, ATM abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(4) A consumer-reporting agency's database or file which consists of information concerning, and used for, criminal record information, fraud prevention or detection, personal loss history information and employment, tenant or background screening.

(n) Except as prohibited by subsection (o) of this section, a consumer-reporting agency may charge a reasonable fee, not to exceed \$5, to a consumer who elects to place, remove or temporarily lift a security freeze on the consumer's credit report. No fees except those authorized by this subsection and subsection (p) of this section may be charged in connection with a security freeze.

(o) A consumer-reporting agency may not charge a fee for security freeze services to a consumer who is a victim of identity theft and who provides a copy of a police report, an investigative report or a written complaint made to the Federal Trade Commission, to the office of the Attorney General of West Virginia or to a law-enforcement agency concerning the identity theft.

(p) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails to retain the original unique personal identification number or password provided by the consumer-reporting agency and must be reissued the same or a new unique personal identification number or password.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-104. West Virginia code replacement.

The Department of Human Services is not required to change any form or letter that contains a citation to this code that is changed or otherwise affected by the recodification of this chapter.

§48-1-206. Automatic data processing and retrieval system defined.

"Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

(1) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:

(A) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether

such individual is paying or is obligated to pay support in more than one jurisdiction;

(B) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(C) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(D) Delinquency and enforcement activities;

(2) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;

(3) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

(4) To provide access to the records of the Department of Human Services in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(5) To provide for security against unauthorized access to, or use of, the data in such system;

(6) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support and the prompt provision of notice to appropriate officials with respect to any arrearage in support payments which may occur; and

(7) To provide management information on all cases from initial referral or application through collection and enforcement.

§48-1-236. Secretary defined.

"Secretary" means the secretary of the Department of Human Services.

ARTICLE 2. MARRIAGES.**§48-2-701. Premarital education encouraged; requirements.**

(a) Persons applying for a marriage license may attend a premarital education course of at least four hours during the twelve months immediately preceding the date of the application for the license.

(b) A premarital education course offers instruction involving marital issues which may include, but not be limited to, the following:

- (1) Conflict management;
- (2) Communication skills;
- (3) Managing finances;
- (4) Child and parenting responsibilities;
- (5) Extended family roles; and
- (6) Key components of a successful marriage.

(c) Premarital education course instructors must have training in skills-based and research-based marriage preparation curricula.

(d) Premarital education courses may be performed by the following:

(1) A professional counselor or marriage and family therapist licensed pursuant to article thirty-one, chapter thirty of this code;

(2) A social worker licensed pursuant to article thirty, chapter thirty of this code;

(3) A psychiatrist who is licensed as a physician pursuant to article three, chapter thirty of this code;

(4) A psychologist who is licensed pursuant to article twenty-one, chapter thirty of this code; or

(5) An active member of the clergy or his or her designee, including retired clergy, provided that a designee is trained in skills-based and research-based marriage preparation curricula premarital education.

(e) The premarital education course curricula must meet the requirements of this section and provide a skills-based and research-based curricula of the following:

(1) The National Healthy Marriage Resource Center;

(2) A church, spiritual assembly, or religious organization; or

(3) Other substantially similar resource.

(f) The Department of Human Services shall maintain an Internet website on which individuals and organizations described in subsection (c) may electronically register with the department to indicate the skills-based and research-based curriculum in which the registrant is trained.

(g) The premarital education provider shall furnish each participant, who completes the premarital education required by this section, a certificate of completion.

§48-2-702. Marriage education fund.

(a) There is created a special revenue account within the State Treasury known as the Marriage Education Fund. The account shall be administered by the Secretary of the Department of Human Services.

(b) Any balance in the account at the end of each fiscal year shall not revert to the general revenue fund but shall remain in the account and be expended as provided by in this section.

(c) The account shall consist of all fees collected under the provisions of §59-1-10(c)(4)(C) of this code, legislative appropriations, and all interest or other returned earned from investment of the fund.

(d) Expenditures from the account shall be made by the secretary for the purposes set forth in section seven-hundred-one of this article, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for fiscal year ending June 30, 2013, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-209. Parenting plan; considerations.

When entering an order approving or implementing a temporary or permanent parenting plan order, including custodial allocation, the court shall consider whether a parent:

(1) Has abused, neglected, or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

(3) Has committed domestic violence, as defined in §48-27-202 of this code;

(4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering

parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent or another person regularly in the household of the parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of the parents;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with, or proximity to, the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising

custodial responsibility and in the 24-hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court determines to be necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(c) If a parent or a person regularly in the home of the parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part III of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against

the accusations. The reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5), subsection (a) of this section may move the court pursuant to §49-5-101(b)(4) of this code for the Department of Human Services to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

- (A) Substantiated;
- (B) Unsubstantiated;
- (C) Inconclusive; or
- (D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Human Services shall be in camera. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

(f) In determining whether the presumption for an equal (50-50) allocation of physical custody has been rebutted, a court shall consider all relevant factors including any of the following:

- (1) The factors set forth in subsection (a) of this section;
- (2) Whether the child:

(A) Was conceived as a result of sexual assault or sexual abuse by a parent as set forth in §48-9-209a of this code;

(B) Has special needs, a chronic illness, or other serious medical condition and would receive more appropriate care under another custodial allocation;

(C) Is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing: *Provided*, That the child reaching one year of age shall qualify as a substantial change in circumstances per §48-9-401 of this code; or

(D) Will be separated from his or her siblings or the arrangement would otherwise disrupt the child's opportunities to bond with his or her siblings;

(3) Whether a parent:

(A) Is willfully noncompliant with a previous order of the court regarding payment of child support payments for a child or children of the parties;

(B) Is unwilling to seek necessary medical intervention for the child who has a serious medical condition;

(C) Has a chronic illness or other condition that renders him or her unable to provide proper care for the child;

(D) Has intentionally avoided or refused involvement or not been significantly involved in the child's life prior to the hearing, except when the lack of involvement is the result of actions on the part of the other parent which were, without good cause, designed to deprive the parent of contact and involvement with his or her child or children without good cause;

(E) Repeatedly causes the child or children to be in the care of a third party rather than the other parent when he or she is available;

(F) Does not have a stable housing situation: *Provided*, That a parent's temporary residence with a child in a domestic violence shelter shall not constitute an unsafe housing situation; or

(G) Is unwilling or unable to perform caretaking functions for the child as required by §48-1-210 of this code;

(4) Whether a parent, partner, or other person living, or regularly in that parent's household:

(A) Has been adjudicated in an abuse and neglect proceeding to have abused or neglected a child, or has a pending abuse and neglect case;

(B) Has been judicially determined to have committed domestic violence or has a pending domestic violence case;

(C) Has a felony criminal record;

(D) Is addicted to a controlled substance or alcohol;

(E) Has threatened or has actually detained the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody: *Provided*, That a parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the parent's intent to retain or conceal the child from the other parent; or

(F) Has been involuntarily committed to a mental health facility, or suffers from a serious mental illness;

(5) Whether an equal (50-50) physical allocation is:

(A) Impractical because of the physical distance between the parents' residences;

(B) Impractical due to the cost and difficulty of transporting the child;

(C) Impractical due to each parent's and the child's daily schedules;

(D) Would disrupt the education of the child; or

(E) Contrary to the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(6) Whether the parents cannot work cooperatively and collaboratively in the best interest of the child; or

(7) Whether a parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-105. Modification of child support order.

(a) The court may modify a child support order, for the benefit of the child, when a motion is made that alleges a change in the circumstances of a parent or another proper person or persons. A motion for modification of a child support order may be brought by a custodial parent or any other lawful custodian or guardian of the child, by a parent or other person obligated to pay child support for the child or by the Bureau for Child Support Enforcement.

(b) The provisions of the order may be modified if there is a substantial change in circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered a substantial change.

(c) An order that modifies the amount of child support to be paid shall conform to the support guidelines set forth in section one hundred one, article thirteen, *et seq.*, of this chapter unless the court disregards the guidelines or adjusts the award as provided in section seven hundred two of said article.

(d) The Supreme Court of Appeals shall make available to the courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income or that the amount of support required to be aid is not within fifteen percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the family court shall make the forms available to persons

desiring to represent themselves in filing a motion for modification of the support award.

(e) Upon entry of an order modifying a child support amount the court shall, no later than five days from entry of the order, provide a copy of the modified order to the Bureau for Child Support Enforcement. If an overpayment to one of the parties occurs as a result of the modified terms of the order, funds properly withheld by the Bureau for Child Support Enforcement pursuant the terms of the original order shall not be returned until such time as the Bureau for Child Support Enforcement receives repayment from the party in possession of the overpayment.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-102. Who may bring action for child support order.

An action may be brought under the provisions of section one hundred one of this article by:

(1) A custodial parent of a child when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or

(4) The Bureau for Child Support Enforcement, on behalf of the state, when the Department of Human Services is providing assistance on behalf of the child or the person to whom a duty of support is owed, in the form of temporary assistance to needy families or medical assistance, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the Bureau for Child Support Enforcement.

§48-14-407. Contents of notice to source of income.

(a) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall

withhold from such obligor's income the amount specified by the notice and pay such amount to the Bureau for Child Support Enforcement for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order and no source of income may require additional information or documentation. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor's disposable earnings and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor's income to the Bureau for Child Support Enforcement, along with such identifying information as may be required by the bureau, the same day that the obligor is paid;

(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed \$1, for administrative costs incurred by the source of income for each withholding;

(4) That withholding is binding on the source of income until further notice by the Bureau for Child Support Enforcement or until the source of income notifies the Bureau for Child Support Enforcement of a termination of the obligor's employment in accordance with the provisions of section four hundred twelve of this article;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income

is liable for the accumulated amount the source of income should have withheld from the obligor's income;

(7) That the withholding under the provisions of this part shall have priority over any other legal process under the laws of this state against the same income and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the Bureau for Child Support Enforcement when the employer properly identifies each payment with the information listed in this part. A source of income is liable to an obligee, including the State of West Virginia or the Department of Human Services where appropriate, for any amount which the source of income fails to identify with the information required by this part and is therefore not received by the obligee;

(9) That the source of income shall implement withholding no later than the first pay period or first date for payment of income that occurs after fourteen days following the date the notice to the source of income was mailed; and

(10) That the source of income shall notify the Bureau for Child Support Enforcement promptly when the obligor terminates his or her employment or otherwise ceases receiving income from the source of income and shall provide the obligor's last known address and the name and address of the obligor's new source of income, if known.

(b) The Bureau for Child Support Enforcement shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this part. When a court reduces an order of support, the Bureau for Child Support Enforcement is not liable for refunding amounts which have been withheld pursuant to a court order enforceable at the time that the bureau received the funds unless the funds were kept by the state. The obligee or obligor who received the benefit of the withheld amounts shall be liable for

promptly refunding any amounts which would constitute an overpayment of the support obligation.

§48-14-413. Combining withheld amounts.

When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all withheld payments to the Bureau for Child Support enforcement when the employer properly identifies each payment with the information listed in this part 4. A source of income is liable to an obligee, including the State of West Virginia or the Department of Human Services where appropriate, for any amount which the source of income fails to identify in accordance with this part 4 and is therefore not received by the obligee.

§48-14-414. Sending amounts withheld to division; notice.

A source of income is liable to an obligee, including the State of West Virginia or the Department of Human Services where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under section 14-407: *Provided*, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of Support Enforcement Commission; number of members.

The West Virginia Support Enforcement Commission, consisting of nine members, is hereby created in the Department of Human Services and may use the administrative support and services of that department. The commission is not subject to control, supervision or direction by the Department of Human Services, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter.

The commission is a part-time commission whose members perform such duties as specified in this chapter. The ministerial duties of the commission shall be administered and carried out by the Commissioner of the Bureau for Child Support Enforcement, with the assistance of such staff of the Department of Human Services as the secretary may assign.

Each member of the commission shall devote the time necessary to carry out the duties and obligations of the office and the seven members appointed by the Governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the commission.

While the commission is self-sustaining and independent, it, its members, its employees and the commissioner are subject to article nine-a, chapter six of this code, chapter six-b of this code, chapter twenty-nine-a of this code and chapter twenty-nine-b of this code.

§48-17-102. Appointment of members of Support Enforcement Commission; qualifications and eligibility.

(a) Of the nine members of the commission, seven members are to be appointed by the Governor: *Provided*, That no more than five members of the commission may belong to the same political party.

(1) One member is to be a lawyer licensed by, and in good standing with, the West Virginia State Bar, with at least five years of professional experience in domestic relations law and the establishment and enforcement of support obligations;

(2) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;

(3) One member is to be an employer experienced in withholding support payments from the earnings of obligors;

(4) One member is to be a practicing family court judge, as an ex officio member, who will serve in an advisory capacity, without compensation or voting rights; and

(5) Three members are to be representatives of the public at large, with at least one being an obligor and one being an obligee.

(b) One member is to be the Commissioner of the Bureau for Children and Families, or his or her designee.

(c) The Commissioner of the Bureau for Child Support Enforcement, or his or her designee, is an ex officio nonvoting member of the commission.

(d) Each member of the commission is to be a citizen of the United States, a resident of the State of West Virginia and at least twenty-one years of age.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Continuation of the bureau for child support enforcement.

(a) The Bureau for Child Support Enforcement is continued in the Department of Human Services. The bureau is under the immediate supervision of the commissioner, who is responsible for the exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The bureau is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The department shall cooperate with the Bureau for Child Support Enforcement. At a minimum, such cooperation shall require that the department:

(1) Notify the Bureau for Child Support Enforcement when the department proposes to terminate or provide public assistance payable to any obligee;

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

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

§48-18-118. Obtaining support from state income tax refunds.

(a) The Tax Commissioner shall establish procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past-due support from state income tax refunds from overpayment made to the Tax Commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The Commissioner for the Bureau for Child Support Enforcement shall establish procedures necessary to enforce a support order through a notice to the Tax Commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) The procedures shall, at a minimum, prescribe:

(A) The time or times at which the Bureau for Child Support Enforcement shall serve on the obligor or submit to the Tax Commissioner notices of past-due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the Tax Commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the Tax Commissioner for the full cost of applying the procedure whereby past-due support is obtained from state income tax refunds; and

(E) Circumstances when the Bureau for Child Support Enforcement may deduct a \$25 fee from the obligor's state income tax refund. This procedure may not require a deduction from the state income tax refund of an applicant who is a recipient of assistance from the Bureau for Children and Families in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the Bureau for Child Support Enforcement has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past-due support which will be owed, at the time the withholding is to be made, will be \$100 or more. In determining whether the amount of past-due support will be \$100 or more, the Bureau for Child Support Enforcement shall consider the amount of all unpaid past-due support, including that which may have accrued prior to the time that the Bureau for Child Support Enforcement first agreed to enforce the support order.

(c) The Commissioner of the Bureau for Child Support Enforcement shall enter into agreements with the Secretary of the Treasury and the Tax Commissioner, and other appropriate governmental agencies, to secure information relating to the Social Security number or numbers and the address or addresses of any obligor, and the name or names and address or addresses of any employer or employers, in order to provide notice between such agencies to aid the Bureau for Child Support Enforcement in requesting state income tax deductions and to aid the Tax Commissioner in enforcing such deductions. In each such case, the Tax Commissioner, in processing the state income tax deduction, shall notify the Bureau for Child Support Enforcement of the obligor's home address and Social Security number or numbers. The Bureau for Child Support Enforcement shall provide this information to any other state involved in processing the support order;

(d) For the purposes of this section, "past-due support" means the amount of unpaid past-due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living; regardless of whether the amount has been reduced to a judgment or not.

(e) The Bureau for Child Support Enforcement may, under the provisions of this section, enforce the collection of past-due support on behalf of a child who has reached the age of majority.

(f) The procedure shall, at a minimum, provide that prior to notifying the Tax Commissioner of past-due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest the determination of the Bureau for Child Support Enforcement that past-due support is owed or the amount of the past-due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the Bureau for Child Support Enforcement is notified by the Tax Commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past-due support which is involved has not been assigned to the Department of Human Services, the Bureau for Child Support Enforcement may delay distribution of the amount withheld until such time as the Tax Commissioner notifies the Bureau for Child Support Enforcement that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the Tax Commissioner under the provisions of this section and paid to the Bureau for Child Support Enforcement, if the Bureau for Child Support Enforcement subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have owed the past due support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return.

(i) The amounts received by the Bureau for Child Support Enforcement shall be distributed in accordance with the provisions for distribution set forth in 42 U.S.C. §657.

§48-18-126. Review and adjustment of child support orders.

(a) Either parent or, if there has been an assignment of support to the Bureau for Child Support enforcement shall have the right to request an administrative review of the child support award in the following circumstances:

(1) Where the request for review is received thirty-six months or more after the date of the entry of the order or from the completion of the previous administrative review, whichever is later, the Bureau for Child Support enforcement shall conduct a review to determine whether the amount of the child support award in such order varies from the amount of child support that would be awarded at the time of the review pursuant to the guidelines for child support awards contained in article 13-101, *et seq.* If the amount of the child support award under the existing order differs by ten percent or more from the amount that would be awarded in accordance with the child support guidelines, the Bureau for Child Support enforcement shall file with the family court a motion for modification of the child support order. If the amount of the child support award under the existing order differs by less than ten percent from the amount that would be awarded in accordance with the child support guidelines, the Bureau for Child Support enforcement may, if it determines that such action is in the best interest of the child or otherwise appropriate, file with the family court a motion for modification of the child support order.

(2) Where the request for review of a child support award is received less than thirty-six months after the date of the entry of the order or from the completion of the previous administrative review, the Bureau for Child Support enforcement shall undertake a review of the case only where it is alleged that there has been a substantial change in circumstances. If the Bureau for Child Support enforcement determines that there has been a substantial change in circumstances and if it is in the best interests of the child, the bureau shall file with the family court a motion for modification of the child support order in accordance with the guidelines for child support awards contained in article 13-101, *et seq.*, of this chapter.

(b) The Bureau for Child Support enforcement shall notify both parents at least once every three years of their right to request a review of a child support order. The notice may be included in any order granting or modifying a child support award. The Bureau for Child Support enforcement shall give each parent at least thirty days' notice before commencing any review and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to move for modification or of a proposal that there should be no change.

(c) When the result of the review is a proposal to move for modification of the child support order, each parent shall be given thirty days' notice of the hearing on the motion, the notice to be directed to the last known address of each party by first-class mail. When the result of the review is a proposal that there be no change, any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a motion for modification setting forth in full the grounds therefor.

(d) For the purposes of this section, a "substantial change in circumstances" includes, but is not limited to, a changed financial condition, a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child or other financial conditions. "Changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation or a fifteen percent or more variance from the amount of the existing order and the amount of child support that would be awarded according to the child support guidelines.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-103. Duties of the bureau for support enforcement attorneys.

Subject to the control and supervision of the commissioner:

(a) The Bureau for Child Support enforcement attorney shall supervise and direct the secretarial, clerical and other employees in his or her office in the performance of their duties as such performance affects the delivery of legal services. The Bureau for Child Support enforcement attorney will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and matters of law, in accordance with applicable state and federal statutes, rules and regulations.

(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the Supreme Court of Appeals, the Bureau for Child Support enforcement attorney shall not permit a nonlawyer who is employed by the Department of Human Services in a supervisory position over the Bureau for Child Support enforcement attorney to direct or regulate the attorney's professional judgment in rendering legal services to recipients of services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the attorney's professional judgment.

(c) The Bureau for Child Support enforcement attorney shall make available to the public an informational pamphlet, designed in consultation with the commissioner. The informational pamphlet shall explain the procedures of the court and the Bureau for Child Support enforcement attorney; the duties of the Bureau for Child Support enforcement attorney; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the Bureau for Child Support enforcement attorney.

(d) The Bureau for Child Support enforcement shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when the child's caretaker is an applicant for or recipient of temporary assistance for needy

families, and when the caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: *Provided*, That if the Bureau for Child Support enforcement attorney is informed by the Secretary of the Department of Human Services or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the Bureau for Child Support enforcement attorney shall decline to so act. The Bureau for Child Support enforcement attorney, upon the request of the mother, alleged father or the caretaker of a child born out of wedlock, regardless of whether the mother, alleged father or the caretaker is an applicant or recipient of temporary assistance for needy families, shall undertake to establish the paternity of such child.

(e) The Bureau for Child Support enforcement attorney shall undertake to secure support for any individual who is receiving temporary assistance for needy families when such individual has assigned to the division of human services any rights to support from any other person such individual may have: *Provided*, That if the Bureau for Child Support enforcement attorney is informed by the Secretary of the Department of Human Services or his or her authorized employee that it has been determined that it is against the best interests of a child to secure support on the child's behalf, the Bureau for Child Support enforcement attorney shall decline to so act. The Bureau for Child Support enforcement attorney, upon the request of any individual, regardless of whether such individual is an applicant or recipient of temporary assistance for needy families, shall undertake to secure support for the individual. If circumstances require, the Bureau for Child Support enforcement attorney shall utilize the provisions of article 16-101, *et seq.*, of this code and any other reciprocal arrangements which may be adopted with other states for the establishment and enforcement of support obligations, and if such arrangements and other means have proven ineffective, the Bureau for Child Support enforcement attorney may utilize the federal courts to obtain and enforce court orders for support.

(f) The Bureau for Child Support enforcement attorney shall pursue the enforcement of support orders through the withholding from income of amounts payable as support:

(1) Without the necessity of an application from the obligee in the case of a support obligation owed to an obligee to whom services are already being provided under the provisions of this chapter; and

(2) On the basis of an application for services in the case of any other support obligation arising from a support order entered by a court of competent jurisdiction.

(g) The Bureau for Child Support enforcement attorney may decline to commence an action to obtain an order of support under the provisions of article 14-101, *et seq.*, if an action for divorce, annulment or separate maintenance is pending, or the filing of such action is imminent, and such action will determine the issue of support for the child: *Provided*, That such action shall be deemed to be imminent if it is proposed by the obligee to be commenced within the twenty-eight days next following a decision by the Bureau for Child Support enforcement attorney that an action should properly be brought to obtain an order for support.

(h) If the Bureau for Child Support enforcement office, through the Bureau for Child Support enforcement attorney, shall undertake paternity determination services, child support collection or support collection services upon the written request of an individual who is not an applicant or recipient of assistance from the division of human services, the office may impose an application fee for furnishing such services. Such application fee shall be in a reasonable amount, not to exceed \$25, as determined by the commissioner: *Provided*, That the commissioner may fix such amount at a higher or lower rate which is uniform for this state and all other states if the secretary of the federal department of health and human services determines that a uniform rate is appropriate for any fiscal year to reflect increases or decreases in administrative costs. Any cost in excess of the application fee so imposed may be collected from the obligor who owes the child or spousal support obligation involved.

ARTICLE 22. ADOPTION.**§48-22-104. Agency defined.**

"Agency" means a public or private entity, including the Department of Human Services, that is authorized by law to place children for adoption.

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.**§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.**

The Department of Human Services shall establish and maintain the mutual consent voluntary adoption registry, except that the department may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing post-legal adoption services, in which case the agency shall establish and maintain the registry that would otherwise be operated by the department.

The secretary of the Department of Human Services shall promulgate and adopt such rules as are necessary for implementing this article.

ARTICLE 26. DOMESTIC VIOLENCE ACT.**§48-26-206. Department defined.**

"Department" means the Department of Human Services.

§48-26-301. Family protection services board continued; terms.

(a) The family protection services board, is continued.

(b) Membership of the board is comprised of seven persons. The Governor, with the advice and consent of the Senate, shall appoint five members of the board who meet the following qualifications:

(1) One member must be a director of a licensed domestic violence program;

(2) One member must be a representative of the West Virginia Coalition Against Domestic Violence;

(3) One member must be a representative of a batterer intervention and prevention program licensed by the board;

(4) One member must be a representative of the West Virginia Supreme Court of Appeals who is familiar with monitored parenting and exchange program services; and

(5) One member must be a citizen who is a resident of this state and who is not employed by, under contract with or a volunteer for a program licensed by the board, and who is knowledgeable about services for victims and survivors of domestic violence;

(c) The secretary of the Department of Human Services, or his or her designee, and the chair of the Governor's Committee on Crime, Delinquency and Correction, or his or her designee shall serve as ex officio voting members.

(d) The terms of the five members appointed by the Governor are for three years, staggered in accordance with prior enactments of this act.

(e) No person who is employed by, under contract with or volunteers for an organization that is licensed to operate any program under the provisions of this article may serve on the board at the same time as another person who is employed by, under contract with or volunteers for that organization.

(f) If a member resigns or is unable to complete his or her term or ceases to be qualified, the Governor shall appoint within ninety days a person who meets the qualifications of this section to serve the remainder of the unexpired term.

§48-26-401. Powers and duties of board.

(a) The board shall:

(1) Propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and any applicable federal guidelines;

(2) Receive and consider applications for licensure of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs;

(3) Assess the need for domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, including licensure preapplication and application processes;

(4) Conduct licensure renewal reviews of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs, that will ensure the safety, well-being and health of the programs' participants and staff;

(5) For each fiscal year, expend from the Family Protection Fund a sum not to exceed fifteen percent for the costs of administering the provisions of this article, and direct the Department of Human Services to distribute one half of the remaining funds equally and the other half of the remaining funds in accordance with a formula determined by the board, to licensed domestic violence programs;

(6) Submit an annual report on the status of programs licensed under the provisions of this article to the Governor and the Joint Committee on Government and Finance;

(7) Conduct hearings as necessary under this article; and

(8) Collect data about licensed programs for use in the annual report of the board.

(b) The board may:

(1) Advise the Secretary of the Department of Human Services and the Chair of the Governor's Committee on Crime, Delinquency

and Correction on matters of concern relative to their responsibilities under this article;

(2) Delegate to the Secretary of the Department of Human Services such powers and duties of the board as the board considers appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(3) Advise administrators of state or federal funds of licensure violations and closures of programs; and

(4) Exercise all other powers necessary to implement the provisions of this article.

§48-26-402. Requirements, qualifications and terms of licensure; collaboration to assist programs.

(a) No domestic violence program, batterer intervention and prevention program or monitored parenting and exchange program may represent that it is licensed unless it is licensed by the board pursuant to the provisions of this article and the legislative rules promulgated pursuant to this article.

(b) The board shall establish preliminary application and full application forms for the initial licensing of domestic violence programs, batterer intervention and prevention programs and monitored parenting and exchange programs.

(1) To meet basic eligibility requirements an applicant for licensure must complete a preliminary application form to demonstrate local need for the proposed service, method of governance and accountability, administrative and programmatic design, and fiscal efficiency. The board shall respond in writing within sixty days of receipt of the preliminary application;

(2) If the board approves the preliminary application, the applicant may complete a full application form;

(3) The board shall determine whether all documentation set forth on the licensure checklist has been submitted, and may

request supplemental or clarifying information or documentation; and

(4) The board shall grant or deny a license within sixty days of the receipt of the completed full application form and all supplemental or clarifying information or documentation requested by the board.

(c) Licenses may be granted or renewed for periods not to exceed three years: *Provided*, That the board may conduct licensure reviews at any time during the licensure period, and may downgrade, suspend or revoke a license in accordance with the provisions of this article.

(d) The license granted by the board shall be prominently displayed by the licensees.

(e) The board may grant a provisional license for up to one hundred and eighty days, to a program that is not in compliance with non-life threatening safety, programmatic, facility or administrative standards. A provisional license may be extended for up to an additional one hundred and eighty days, if the board, in its sole discretion, determines that the program is making active progress toward compliance.

(f) The board may grant a conditional license for up to ninety days to a program that has violations of safety or accountability standards that may threaten the health, well-being or safety of its participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards. If a program does not correct the violations within the conditional license period, the board may institute closure proceedings.

(g) The Department of Human Services, the Division of Justice and Community Services, the Family Protection Services Board, the WV Coalition Against Domestic Violence, the West Virginia Supreme Court of Appeals and the Division of Corrections may, collectively or in any combination as appropriate to the program, collaborate to provide technical assistance to prevent and resolve

deficiencies in a program's ability to meet the standards to operate and maintain licensure.

(h) If the board obtains information that a person or persons has engaged in, is engaging in or is about to engage in an act that constitutes or will constitute a violation of the provisions of this article or the legislative rules promulgated pursuant to this article, it may issue a notice to the person or persons to cease and desist the act, or apply to the circuit court for an order enjoining the act. Upon a showing that the person has engaged, is engaging or is about to engage in such an act, the court may order an injunction, restraining order or other order as the court considers appropriate.

§48-26-501. Development of state public health plan for reducing domestic violence.

(a) The Bureau for Public Health in consultation with the family protection services board, shall:

(1) Assess the impact of domestic violence on public health; and

(2) Develop a state public health plan for reducing the incidence of domestic violence in this state.

(b) The state public health plan shall:

(1) Include, but not be limited to, public education, including the use of the various communication media to set forth the public health perspective on domestic violence;

(2) Be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, organizations representing the interests of shelters, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children; and

(3) Be completed on or before January 1, 2000.

(c) The Bureau for Public Health shall:

(1) Transmit a copy of the state public health plan to the Governor and the Legislature; and

(2) Review and update the state public health plan annually.

§48-26-502. Notice of victims' rights, remedies and available services; required information.

(a) The Bureau for Public Health shall make available to health care facilities and practitioners a written form notice of the rights of victims and the remedies and services available to victims of domestic violence.

(b) A health care practitioner whose patient has injuries or conditions consistent with domestic violence shall provide to the patient, and every health care facility shall make available to all patients, a written form notice of the rights of victims and the remedies and services available to victims of domestic violence.

§48-26-801. Continuing education for certain state employees.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the Department of Human Services shall provide or require continuing education concerning domestic violence for child protective services workers, adult protective services workers, social services workers, family support workers and workers in the Bureau for Child Support enforcement.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators, advocates for victims, organizations representing the interests of shelters and the family protection services board.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**§48-27-206. Law-enforcement agency defined.**

(a) "Law-enforcement agency" means and is limited to:

(1) The state police and its members;

(2) A county sheriff and his or her law-enforcement deputies;

(3) A police department in any municipality as defined in section two, article one, chapter eight of this code; and

(4) Any federal agency whose purpose includes enforcement, maintenance and gathering of information of both criminal and civil records relating to domestic violence under federal law.

(b) The term "law-enforcement agency" includes, but is not limited to, the Department of Human Services in those instances of child abuse reported to the department that are not otherwise reported to any other law-enforcement agency.

CHAPTER 49. CHILD WELFARE.**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.****§49-1-104. West Virginia Code replacement; no increase of funding obligations to be construed.**

The Department of Human Services and the Department of Military Affairs and Public Safety are not required to change any form or letter that contains a citation to this code that is changed or otherwise affected by the recodification.

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

(a) The child welfare service of the state shall be located within and administered by the Bureau for Social Services. The Division of Corrections and Rehabilitation of the Department of Homeland Security shall administer the secure predispositional juvenile

detention and juvenile correctional facilities of the state. Notwithstanding any other provision of this code to the contrary, the administrative authority of the Division of Corrections and Rehabilitation over any child or juvenile in this state extends only to those detained or committed to a secure detention facility or secure correctional facility operated and maintained by the division by an order of a court of competent jurisdiction during the period of actual detention or confinement in the facility.

(b) The Department of Human Services is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in extending and improving child welfare services, to comply with federal regulations, and to receive and expend federal funds for these services. The Division of Corrections and Rehabilitation of the Department of Homeland Security is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in operating, maintaining and improving juvenile correction facilities and centers for the predispositional detention of children, to comply with federal regulations, and to receive and expend federal funds for these services.

(c) The Division of Corrections and Rehabilitation of the Department of Homeland Security is authorized to operate and maintain centers for juveniles needing detention pending disposition by a court having juvenile jurisdiction or temporary care following that court action.

§49-1-202. Definitions related, but not limited, to adult, child, developmental disability, and transitioning adult status.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, adult, child, developmental disability, and transitioning adult status, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

"Adult" means a person who is at least eighteen years of age.

"Child" or "Juvenile" means any person under eighteen years of age or is a transitioning adult. Once a child or juvenile is transferred to a court with criminal jurisdiction pursuant to section seven hundred ten, article four of this chapter, he or she shall remain a child or juvenile for the purposes of the applicability of this chapter. Unless otherwise stated, for the purpose of child care services "child" means an individual who meets one of the following conditions:

(A) Is under thirteen years of age;

(B) Is thirteen to eighteen years of age and under court supervision; or

(C) Is thirteen to eighteen years of age and presenting a significant delay of at least twenty-five percent in one or more areas of development, or a six month delay in two or more areas as determined by an early intervention program, special education program or other multidisciplinary team.

"Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult.

"Status offender" means a juvenile who has been adjudicated as one:

(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the juvenile's behavior substantially endangers the health, safety or welfare of the juvenile or any other person;

(B) Who has left the care of his or her parents, guardian or custodian without the consent of that person or without good cause; or

(C) Who is habitually absent from school without good cause.

"Transitioning adult" means an individual with a transfer plan to move to an adult setting who meets one of the following conditions:

(A) Is eighteen years of age but under twenty-one years of age, was in the custody of the Department of Human Services upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday; or

(B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in the custody of the Department of Human Services upon reaching eighteen years of age and enters into a contract with the Department of Human Services to continue in an educational, training, or treatment program which was initiated prior to the eighteenth birthday.

***§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.**

When used in this chapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Child Advocacy Center (CAC)" means a community-based organization that is a member, in good standing, of the West Virginia Child Advocacy Network, Inc., as set forth in §49-3-101 of this code.

"Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social, and personal needs and the consideration of the child's rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Corrections and Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It includes the provision of child care services or residential services.

"Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

***NOTE:** This section was also amended by H. B. 5151 (Chapter 49), which passed subsequent to this Act.

"Child care services" means direct care and protection of children during a portion of a 24-hour day outside of the child's own home which provides experiences to children that foster their healthy development and education.

"Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years of age and living in unlicensed residences.

"Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 *et seq.* of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

"Community based" means a facility, program, or service located near the child's home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

"Community-based juvenile probation sanctions" means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as

part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

- (A) Electronic monitoring;
- (B) Drug and alcohol screening, testing, or monitoring;
- (C) Youth reporting centers;
- (D) Reporting and supervision requirements;
- (E) Community service; and
- (F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

"Community services" means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

"Evidence-based practices" means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

"Facility" means a place or residence, including personnel, structures, grounds, and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody.

"Family child care facility" means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider's residence or a separate building.

"Family child care home" means a facility which is used to provide nonresidential child care services for compensation in a

provider's residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

"Family resource network" means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization, and evaluation, and which has met the following criteria:

(i) Has agreed to a single governing entity;

(ii) Has agreed to engage in activities to improve service systems for children and families within the community;

(iii) Addresses a geographic area of a county or two or more contiguous counties;

(iv) Has, as the majority of the members of the governing body, nonproviders, which includes family representatives and other members who are not employees of publicly funded agencies, with family representatives as the majority of those members who are nonproviders;

(v) Has members of the governing body who are representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district; and

(vi) Adheres to principles consistent with the cabinet's mission as part of its philosophy.

(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

"Family support", for the purposes of §49-2-601 *et seq.* of this code, means goods and services needed by families to care for their

family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

"Family support program" means a coordinated system of family support services administered by the Department of Human Services through contracts with behavioral health agencies throughout the state.

"Fictive kin" means an adult of at least 21 years of age, who is not a relative of the child, as defined herein, but who has an established, substantial relationship with the child, including but not limited to, teachers, coaches, ministers, and parents, or family members of the child's friends.

"Foster family home" means a private residence which is used for the care on a residential basis of no more than six children who are unrelated, by blood, marriage, or adoption, to any adult member of the household.

"Foster parent" means a person with whom the department has placed a child and who has been certified by the department, a child placing agency, or another agent of the department to provide foster care.

"Health care and treatment" means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

(D) Ordinary and necessary medical and dental examination and treatment;

(E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and

(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

"Home-based family preservation services" means services dispensed by the Department of Human Services or by another person, association, or group who has contracted with that division to dispense services when those services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

(A) Intensive, short-term intervention of four to six weeks; and

(B) Home-based, longer-term after care following intensive intervention.

"Informal family child care" means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider's own home to at least one child who is not related to the caregiver.

"Kinship parent" means a person with whom the department has placed a child to provide a kinship placement.

"Kinship placement" means the placement of the child with a relative of the child, as defined herein, or a placement of a child with a fictive kin, as defined herein.

"Needs Assessment" means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.

"Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

"Nonviolent misdemeanor offense" means a misdemeanor offense that does not include any of the following:

(A) An act resulting in bodily injury or death;

(B) The use of firearm or other deadly weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

"Out-of-home placement" means a post-adjudication placement in a foster family home, kinship parent home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

"Out-of-school time" means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

"Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, kinship parent home, group home, or other facility or residence.

"Pre-adjudicatory community supervision" means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.

"Regional family support council" means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

"Relative family child care" means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given in the provider's home.

"Relative of the child" means an adult of at least 21 years of age who is related to the child, by blood or marriage, within at least three degrees.

"Residential services" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Corrections and Rehabilitation, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

"Risk and needs assessment" means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

"Scattered-site living arrangement" means a living arrangement where youth, 17 to 26 years of age, live in a setting that allows staff to be available as needed, depending on the youth's level of autonomy. Sites for such living arrangements shall be in community environments to allow the youth full access to services and resources in order to fully develop independent living skills.

"Secure facility" means any public or private residential facility which includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

"Staff secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility, and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

"Standardized screener" means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

"State family support council" means the council established by the Department of Human Services pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities specified in §49-2-101 *et seq.* of this code.

"Supervised group setting" means a setting where youth, 16 to 21 years of age, live with staff onsite or are available 24 hours per day and seven days per week. In this setting, staff provide face to face daily contact with youth.

"Time-limited reunification services" means individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster or in a kinship placement, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

"Technical violation" means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

"Truancy diversion specialist" means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

§49-1-208. Definitions related, but not limited, to state and local agencies.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, state and local agencies, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

"Department" or "state department" means the West Virginia Department of Human Services.

"Division of Juvenile Services" means the division within the West Virginia Department of Military Affairs and Public Safety.

"Law-enforcement officer" means a law-enforcement officer of the State Police, a municipality or county sheriff's department.

"Secretary" means the Secretary of the West Virginia Department of Human Services.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-106. Department responsibility for foster care homes.

It is the responsibility of the Department of Human Services to provide care for neglected children who are committed to its care for custody or guardianship. The department may provide this care for children in family homes meeting required standards of certification established and enforced by the Department of Human Services.

§49-2-110a Bureau of Social Service authority to hire and employ workers who are not social workers in geographical areas of critical shortage.

(a) The Legislature finds that there is a crisis in West Virginia in certain geographical regions of the state, that is caused by an absence of people employed by the Department of Human Services as child protective services workers, youth case workers, and support staff for these positions.

(b) Notwithstanding any other provisions of this code to the contrary, the Bureau of Social Services, pursuant to the provisions

of this section, may establish a pilot program to employ persons who do not hold a social worker's license and persons who are not on the social work register to work for the bureau as child protective services workers, youth case workers and support staff, in geographical areas of critical shortage of this state.

(c) For purposes of this pilot program and this section, "geographical areas of critical shortage" means the counties comprising the 14th judicial circuit and the 23rd judicial circuit as of the effective date of the amendments to the section enacted during the 2023 regular session of the Legislature.

(d) Workers hired by the bureau under this section to work in geographical areas of critical shortage may be employed by the bureau and work in said geographical areas as child protective services workers, youth service workers, case managers, clerical staff and in other related positions for the bureau. Wherever possible, workers hired pursuant to this section shall be supervised by a licensed social worker.

(e) The provisions of this section shall operate independently of, and in addition to, any other provisions of law or policy that allow persons to be employed in these jobs, and the provisions of this section do not eliminate any other provisions of law that permit persons to be employed in the jobs described in this section.

(f) In order for a person to be eligible for employment under this section, he or she shall:

(1) Be at least 18 years of age.

(2)(A) Have an associate's degree or higher in social work, human services, sociology, psychology, or social services from an accredited college, university, community and technical college, community college or junior college; or

(B) Be an honorably retired law enforcement officer or be an honorably retired parole officer or honorably retired federal or state probation officer.

(C) Meet any other requirements established by the bureau.

(3) Provide to the bureau three letters of recommendation from persons not related to the applicant.

(4) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the bureau, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program, may be considered;

(5) Satisfy the requirements of the West Virginia Clearance for Access Registry and Employment Screening Act, §16-49-1 *et seq.* of this code; and

(6) Satisfy the requirements provided in §30-1-24 of this code.

(g) The bureau shall provide training to any and all persons hired and employed hereunder, as the bureau deems appropriate.

(h) The provisions of this section authorizing the hiring of persons shall sunset, expire, and be of no force and effect on or after the 31st day of December 2026, but shall not serve to require the termination of persons hired pursuant to this section.

§49-2-111a. Performance based contracting for child placing agencies.

(a) For purposes of this section:

(1) “Child” means:

(A) A person of less than 18 years of age; or

(B) A person 18 to 21 years of age who is eligible to receive the extended foster care services.

(2) “Child-placing agency” means an agency licensed by the department to place a child in a foster care home.

(3) “Department” means the Department Human Services.

(4) “Evidence-based” means a program or practice that is cost-effective and includes at least two randomized or statistically

controlled evaluations that have demonstrated improved outcomes for its intended population.

(5) “Performance-based contracting” means structuring all aspects of the service contract around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(6) “Promising practice” means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(7) “Research-based” means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) No later than July 1, 2021, the department shall enter into performance-based contracts with child placing agencies.

(c) The department shall actively consult with other state agencies and other entities with expertise in performance-based contracting with child placing agencies to develop the requirements of the performance-based contract.

(d) The performance-based contract shall be developed and implemented in a manner that complies with applicable provisions of this code. Contracts for child placing agencies are exempt from §5A-3-1 of this code.

(e) The resulting contracts shall include, but are not limited to, the following:

(1) Adequate capacity to meet the anticipated service needs in the contracted service area of the child placing agency;

(2) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(3) Child placing agency data reporting, including data on performance and service outcomes, including, but not limited to:

- (A) Safety outcomes;
- (B) Permanency outcomes;
- (C) Well-being outcomes;
- (D) Incentives earned;
- (E) Placement of older children;
- (F) Placement of children with special needs; and
- (G) Recruitment and retention of foster parents; and

(4) A hold harmless period to determine a baseline for evaluation.

(f) Performance-based payment methodologies must be used in child placing agency contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the first year of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to the child placing agency only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the child placing agency will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the child placing agency shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(g) The department shall actively monitor the child placing agency's compliance with the terms of contracts executed under this section.

(h) The use of performance-based contracts under this section shall be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(i) The department shall pay child placing agencies contracted to provide adoption services to foster families a minimum of \$1,000 per child for each adoption finalized.

(j) The rate of payment to foster parents and child placing agencies shall be reviewed by the department, at a minimum of every two years, to determine whether the level of foster care payments facilitates or hinders the efficient placement of foster children with West Virginia families. The department shall remit payments to foster parents on the same week each month to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of the children in their custody.

(k) The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations.

(a) The Legislature finds that the state's current system of serving children and families in need of or at risk of needing social, emotional and behavioral health services is fragmented. The existing categorical structure of government programs and their funding streams discourages collaboration, resulting in duplication of efforts and a waste of limited resources. Children are usually involved in multiple child-serving systems, including child

welfare, juvenile justice and special education. More than ten percent of children presently in care are presently in out-of-state placements. Earlier efforts at reform have focused on quick fixes for individual components of the system at the expense of the whole. It is the purpose of this section to establish a mechanism to achieve systemic reform by which all of the state's child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system and make recommendations to their respective agencies and to the Legislature regarding funding and statutory, regulatory and policy changes. It is further the Legislature's intent to build upon these recommendations to establish an integrated system of care for at-risk youth and families that makes prudent and cost-effective use of limited state resources by drawing upon the experience of successful models and best practices in this and other jurisdictions, which focuses on delivering services in the least restrictive setting appropriate to the needs of the child, and which produces better outcomes for children, families and the state.

(b) There is created within the Department of Human Services the Commission to Study the Residential Placement of Children. The commission consists of the Secretary of the Department of Human Services, the Commissioner of the Bureau for Children and Families, the Commissioner for the Bureau for Behavioral Health and Health Facilities, the Commissioner for the Bureau for Medical Services, the State Superintendent of Schools, a representative of local educational agencies, the Director of the Office of Institutional Educational Programs, the Director of the Office of Special Education Programs and Assurance, the Director of the Division of Juvenile Services and the Executive Director of the Prosecuting Attorney's Institute. At the discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges and other court personnel, including the Administrator of the Supreme Court of Appeals and the Director of the Juvenile Probation Services Division, may serve on the commission. These statutory members may further designate additional persons in their respective offices who may attend the meetings of the commission if they are the administrative head of the office or division whose functions necessitate their inclusion in this process.

In its deliberations, the commission shall also consult and solicit input from families and service providers.

(c) The Secretary of the Department of Human Services shall serve as chair of the commission, which shall meet on a quarterly basis at the call of the chair.

(d) At a minimum, the commission shall study:

(1) The current practices of placing children out-of-home and into in-residential placements, with special emphasis on out-of-state placements;

(2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve the needs of children requiring residential placements;

(3) Strategies and methods to reduce the number of children who must be placed in out-of-state facilities and to return children from existing out-of-state placements, initially targeting older youth who have been adjudicated delinquent;

(4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

(5) The availability of and investment in community-based, less restrictive and less costly alternatives to residential placements;

(6) Ways in which up-to-date information about in-state placement availability may be made readily accessible to state agency and court personnel, including an interactive secure web site;

(7) Strategies and methods to promote and sustain cooperation and collaboration between the courts, state and local agencies, families and service providers, including the use of inter-agency memoranda of understanding, pooled funding arrangements and sharing of information and staff resources;

(8) The advisability of including no-refusal clauses in contracts with in-state providers for placement of children whose treatment needs match the level of licensure held by the provider;

(9) Identification of in-state service gaps and the feasibility of developing services to fill those gaps, including funding;

(10) Identification of fiscal, statutory and regulatory barriers to developing needed services in-state in a timely and responsive way;

(11) Ways to promote and protect the rights and participation of parents, foster parents and children involved in out-of-home care;

(12) Ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with this state's standards of licensure and rules of operation; and

(13) Any other ancillary issue relative to foster care placement.

(e) The commission shall report annually to the Legislative Oversight Commission on Health and Human Resources Accountability its conclusions and recommendations, including an implementation plan whereby:

(1) Out-of-state placements shall be reduced by at least ten percent per year and by at least fifty percent within three years;

(2) Child-serving agencies shall develop joint operating and funding proposals to serve the needs of children and families that cross their jurisdictional boundaries in a more seamless way;

(3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in order for agencies to work collaboratively while maximizing the availability of federal funds;

(4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

(5) System of care components and cooperative relationships shall be incrementally established at the local, state and regional levels, with links to existing resources, such as family resource networks and regional summits, wherever possible; and

(6) Recommendations for changes in fiscal, statutory and regulatory provisions are included for legislative action.

§49-2-301. Findings and intent; advisory council.

(a) The Legislature finds that:

(1) High quality early childhood development substantially improves the intellectual and social potential of children and reduces societal costs;

(2) A child care program quality rating and improvement system provides incentives and resources to improve the quality child care programs; and

(3) A child care program quality rating and improvement system provides information about the quality of child care programs to parents so they may make more informed decisions about the placement of their children.

(b) It is the intent of the Legislature to require the Secretary of the Department of Human Services promulgate a legislative rule and establish a plan for the phased implementation of a child care program quality rating and improvement system not inconsistent with the provisions of this article.

(c) The Secretary of the Department of Human Services shall create a Quality Rating and Improvement System Advisory Council to provide advice on the development of the rule and plan for the phased implementation of a child care program quality rating and improvement system and the ongoing program review and policies for quality improvement. The secretary shall facilitate meetings of the advisory council. The advisory council shall include representatives from the provider community, advocacy groups, the Legislature, providers of professional development services for the early childhood community, regulatory agencies

and others who may be impacted by the creation of a quality rating and improvement system.

(d) Nothing in this article requires an appropriation, or any specific level of appropriation, by the Legislature.

§49-2-302. Creation of statewide quality rating system; rule-making; minimum requirements.

(a) The Secretary of the Department of Human Services shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system. The quality rating and improvement system shall be applicable to licensed child care centers and facilities and registered family child care homes. If other types of child care settings, such as school-age child care programs become licensed after the implementation of a statewide quality rating and improvement system, the secretary may develop quality criteria and incentives that will allow the other types of child care settings to participate in the quality rating and improvement system. The rules shall include, but are not limited to, the following:

(1) A four-star rating system for registered family child care homes and a four-star rating system for all licensed programs, including family child care facilities and child care centers, to easily communicate to consumers four progressively higher levels of quality child care. One star indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding the highest standard. The system shall reflect the cumulative attainment of the standards at each level and all lesser levels. However, any program accredited by the National Association for the Education of Young Children or the National Association for Family Child Care, as applicable, shall automatically be awarded four-star status;

(2) Program standards for registered family child care homes and program standards for all licensed programs, including family child care facilities and child care centers, that are each divided into four levels of attributes that progressively improve the quality of

child care beginning with basic state registration and licensing requirements at level one, through achievement of a national accreditation by the appropriate organization at level four. Participation beyond the first level is voluntary. The program standards shall be categorized using the West Virginia State Training and Registry System Core Knowledge Areas or its equivalent;

(3) Accountability measures that provide for a fair, valid, accurate and reliable assessment of compliance with quality standards, including, but not limited to:

(A) Evaluations conducted by trained evaluators with appropriate early childhood education and training on the selected assessment tool and with a demonstrated inter-rater reliability of eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least annually to determine whether programs are rated correctly and continue to meet the appropriate standards. The evaluations and observations shall be conducted on at least a statistically valid percentage of center classrooms, with a minimum of one class per age group;

(B) The use of valid and reliable observation and assessment tools, such as environmental rating scales for early childhood, infant and toddler, school-age care and family child care as appropriate for the particular setting and age group;

(C) An annual self-assessment using the proper observation and assessment tool for programs rated at two stars; and

(D) Model program improvement planning shall be designed to help programs improve their evaluation results and level of program quality.

(b) The rules required pursuant to this section shall include policies relating to the review, reduction, suspension or disqualification of child care programs from the quality rating and improvement system.

(c) The rules shall provide for implementation of the statewide quality rating system effective July 1, 2011, subject to section three hundred four of this article.

§49-2-303. Statewide quality improvement system; financial plan; staffing requirements; public awareness campaign; management information system; financial assistance for child care programs; program staff; child care consumers.

Attached to the proposed rules required in section three hundred two of this article, the Secretary of the Department of Human Services shall submit a financial plan to support the implementation of a statewide quality rating and improvement system and help promote quality improvement. The financial plan shall be considered a part of the rule and shall include specific proposals for implementation of the provisions of this section as determined by the secretary. The plan shall address, but is not limited to, the following:

(1) State agency staffing requirements may include the following:

(A) Highly trained evaluators to monitor the assessment process and ensure inter-rater reliability of eighty-five percent or higher;

(B) Technical assistance staff responsible for career advising, accreditation support services, improvement planning, portfolio development and evaluations for improvement planning only. The goal for technical assistance staffing is to ensure that individualized technical assistance is available to participating programs;

(C) A person within the department to collaborate with other professional development providers to maximize funding for training, scholarships and professional development. The person filling this position also shall encourage community and technical colleges to provide courses through nontraditional means, such as online training, evening classes and off-campus training;

(D) Additional infant and toddler specialists to provide high level professional development for staff caring for infants and to provide on-site assistance with infant and toddler issues;

(E) At least one additional training specialist at each of the child care resource and referral agencies to support new training topics and to provide training for school-age child care programs. Training providers, such as the child care resource and referral agencies shall purchase new training programs on topics, such as business management, the Devereux Resiliency Training and Mind in the Making; and

(F) Additional staff necessary for program administration;

(2) Implementation of a broad public awareness campaign and communication strategies that may include the following:

(A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents; and

(B) Strategies, such as earned media campaigns, paid advertising campaigns, e-mail and internet-based outreach, face-to-face communication with key civic groups and grassroots organizing techniques; and

(3) Implementation of an internet-based management information system that meets the following requirements:

(A) The system shall allow for multiple agencies to access and input data;

(B) The system shall provide the data necessary to determine if the quality enhancements result in improved care and better outcomes for children;

(C) The system shall allow access by Department of Human Services subsidy and licensing staff, child care resource and referral agencies, the agencies that provide training and scholarships, evaluators and the child care programs;

(D) The system shall include different security levels in order to comply with the numerous confidentiality requirements;

(E) The system shall assist in informing practice; determining training needs; and tracking changes in availability of care, cost of care, changes in wages and education levels; and

(F) The system shall provide accountability for child care programs and recipients and assure funds are being used effectively;

(4) Financial assistance for child care programs needed to improve learning environments, attain high ratings and sustain long-term quality without passing additional costs on to families that may include, but are not limited to:

(A) Assistance to programs in assessment and individual program improvement planning and providing the necessary information, coaching and resources to assist programs to increase their level of quality;

(B) Subsidizing participating programs for providing child care services to children of low-income families in accordance with the following:

(i) Base payment rates shall be established at the seventy-fifth percentile of market rate; and

(ii) A system of tiered reimbursement shall be established which increases the payment rates by a certain amount above the base payment rates in accordance with the rating tier of the child care program;

(C) Two types of grants shall be awarded to child care programs in accordance with the following:

(i) An incentive grant shall be awarded based on the type of child care program and the level at which the child care program is rated with the types of child care programs having more children and child care programs rated at higher tiers being awarded a larger

grant than the types of child care programs having less children and child care programs rated at lower tiers; and

(ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable basis.

(5) Support for increased salaries and benefits for program staff to increase educational levels essential to improving the quality of care that may include, but are not limited to:

(A) Wage supports and benefits provided as an incentive to increase child care programs ratings and as an incentive to increase staff qualifications in accordance with the following:

(i) The cost of salary supplements shall be phased in over a five-year period;

(ii) The Secretary of the Department of Human Services shall establish a salary scale for each of the top three rating tiers that varies the salary support based on the education of the care giver and the rating tier of the program; and

(iii) Any center with at least a tier two rating that employs at least one staff person participating in the scholarship program required pursuant to paragraph (B) of this subdivision or employs degree staff may apply to the Secretary of the Department of Human Services for funding to provide health care benefits based on the Teacher Education and Compensation Helps model in which insurance costs are shared among the employees, the employer and the state; and

(B) The provision of scholarships and establishment of professional development plans for center staff that would promote increasing the credentials of center staff over a five-year period; and

(6) Financial assistance to the child care consumers whose income is at two hundred percent of the federal poverty level or under to help them afford the increased market price of child care resulting from increased quality.

§49-2-401. Continuation, transfer and renaming of trust fund; funding.

(a) The Children's Fund, created for the sole purpose of awarding grants, loans and loan guarantees for child abuse and neglect prevention activities by enactment of chapter twenty-seven, Acts of the Legislature, 1984, as last amended and reenacted by chapter one hundred fifty-nine, Acts of the Legislature, 1999, is hereby continued and renamed the West Virginia Children's Trust Fund. The fund shall be administered by the Commissioner of the Bureau for Children and Families. Gifts, bequests or donations for this purpose, in addition to appropriations to the fund, shall be deposited in the State Treasury in a special revenue account under the control of the Secretary of the Department of Human Services or his or her designee.

(b) Each state taxpayer may voluntarily contribute a portion of the taxpayer's state income tax refund to the Children's Trust Fund by designating the contribution on the state personal income tax return form. The bureau shall approve the wording of the designation on the income tax return form. The State Tax Commissioner shall determine by July 1, of each year the total amount designated pursuant to this subsection and shall report that amount to the State Treasurer, who shall credit that amount to the Children's Trust Fund.

(c) All interest accruing from investment of moneys in the Children's Trust Fund shall be credited to the fund. The Legislative Auditor shall conduct an audit of the fund at least every five fiscal years.

(d) Grants, loans and loan guarantees may be awarded from the Children's Trust Fund by the Commissioner of the Bureau for Children and Families for child abuse and neglect prevention activities.

§49-2-502. Powers of the secretary.

In the care and treatment of children with special health care needs the Secretary of the Department of Human Services shall, so far as funds are available for the following purposes:

(1) Locate children with special health care needs requiring medical, surgical or other corrective treatment and provide competent diagnosis to determine the treatment required.

(2) Supply to children with special health care needs treatment, including hospitalization and aftercare leading to correction and rehabilitation.

(3) Guide and supervise children with special health care needs to assure adequate care and treatment.

§49-2-503. Report of birth of special health care needs child.

Within thirty days after the birth of a child with a congenital deformity, the physician, midwife or other person attending the birth shall report to the Department of Human Services, on forms prescribed by them, the birth of the child.

The report shall be solely for the use of the Department of Human Services and shall not be open for public inspection.

§49-2-504. Assistance by other agencies.

So far as practicable, the services and facilities of the State Department of Education, The Division of Vocational Rehabilitation Services and Division of Corrections or their successor organizations shall be available to the Department of Human Services for the purposes of this article.

§49-2-604. Program administration; implementation; procedures; annual evaluation; coordination; plans; grievances; reports.

(a) The administering agency for the family support program is the Department of Human Services.

(b) The Department of Human Services shall initially implement the family support program through contracts with an

agency within four of the state's behavioral health regions, with the four regions to be determined by the Department of Human Services in consultation with the state family support council. These regional family support agencies of the family support program will be responsible for implementing this article and subsequent policies for the families of persons with developmental disabilities residing within their respective regions.

(c) The Department of Human Services, in conjunction with the state family support council, shall adopt policies and procedures regarding:

(1) Development of annual budgets;

(2) Program specifications;

(3) Criteria for awarding contracts for operation of regional family support programs and the role of regional family support councils;

(4) Annual evaluation of services provided by each regional family support agency, including consumer satisfaction;

(5) Coordination of the family support program and the use of its funds, throughout the state and within each region, with other publicly funded programs, including Medicaid;

(6) Performance of family needs assessments and development of family service plans;

(7) Methodology for allocating resources to families within the funds available; and

(8) Resolution of grievances filed by families pertaining to actions of the family support program.

§49-2-605. Regional and state family support councils; membership; meetings; reimbursement of expenses.

(a) Each regional family support agency shall establish a regional family support council comprised of at least seven members, of whom at least a majority shall be persons with

developmental disabilities or their parents or primary caregivers. Each regional family support council shall meet at least quarterly to advise the regional family support agency on matters related to local implementation of the family support program and to communicate information and recommendations regarding the family support program to the State Family Support Council.

(b) The Secretary of the Department of Human Services shall appoint a State Family Support Council comprised of at least twenty-two members, of whom at least a majority shall be persons with developmental disabilities or their parents or primary caregivers. A representative elected by each regional council shall serve on the state council. The state council shall also include a representative from each of the following agencies: The State Developmental Disabilities Council, the State Protection and Advocacy Agency, the Center for Excellence in Disabilities, the Office of Special Education, the Behavioral Health Care Providers Association and the Early Intervention Interagency Coordinating Council.

(c) The state council shall meet at least quarterly. The state council will participate in the development of program policies and procedures, annual contracts and perform other duties as are necessary for statewide implementation of the family support program.

(d) Members of the state and regional councils who are a member of the family or the primary caregiver of a developmentally disabled person shall be reimbursed for travel and lodging expenses incurred in attending official meetings of their councils. Child care expenses related to the developmentally disabled person shall also be reimbursed. Members of regional councils who are eligible for expense reimbursement shall be reimbursed by their respective regional family support agencies.

§49-2-701. Caregiver consent for minor's health care; treatment.

(a) Except for minor children placed under the custody of the Department of Human Services pursuant to proceedings established by this chapter, a caregiver who possesses and presents a notarized affidavit pursuant to section seven hundred three of this article may consent on behalf of a minor to health care and treatment.

(b) Examination and treatment shall be prescribed by or under the supervision of a physician, advanced practice nurse, dentist or mental health professional licensed to practice in the state.

§49-2-708. Rule-making authority.

(a) The Secretary of the Department of Human Services is authorized to propose rules for legislative approval necessary to implement this article in accordance with §29A-3-1 *et seq.* of this code.

(b) The rules:

(1) Shall create a three year certification period for a foster home, unless a substantial change occurs. A home safety assessment is performed at least annually. The department has sole authority to determine if a substantial change has occurred;

(2) Shall require that a criminal background check be conducted at the time of the recertification;

(3) May not prevent the placement or cause the removal of a foster child for cosmetic damage to a residence. "Cosmetic damages" means damage that does not affect the safety or wellbeing of a child;

(4) Shall permit the use of dedicated sleeping spaces as appropriate for the child's needs and age, and similar to the sleeping spaces for other household members; and

(5) Shall review and update the legislative rules while considering normalcy and the reasonable and prudent parent standard.

(c) Notwithstanding the time frames in §29A-3-1 *et seq.*, of this code the department shall revise the foster care legislative rules and shall submit for review and approval to the Rule-Making Review Committee by October 31, 2019.

§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.

(a) The department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective services office shall investigate all reports of child abuse or neglect. Under no circumstances may investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective services office shall be organized to maximize the continuity of responsibility, care, and service of individual workers for individual children and families. Under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

(c) Each local child protective services office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the names of the children, the family, and any person substantiated as being an abuser or neglecter by investigation of the Department of Human Services, with use of cross-filing of the person's name limited to the internal use of the department: *Provided*, That local child protective services offices shall disclose the names of alleged abusers pursuant to §49-2-802(c)(4) of this code;

(2) Provide or arrange for emergency children's services to be available at all times;

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within 14 days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary, for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the office determines that a parent or guardian is in the military, the department shall notify a Department of Defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian;

(5) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within 72 hours there shall be a face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the court; and

(6) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family court may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family court within the time frames set forth by the circuit court or family court.

(d) In those cases in which the local child protective services office determines that the best interests of the child require court action, the local child protective services office shall initiate the appropriate legal proceeding.

(e) The local child protective services office shall be responsible for providing, directing, or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.

(f) To carry out the purposes of this article, all departments, boards, bureaus, and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective services plan shall, upon request, provide to the local child protective services office any assistance and information as will enable it to fulfill its responsibilities.

(g)(1) In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the Secretary of the Department of Human Services may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business, or organization for the production of information leading to determining the location of the child.

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of:

(A) The circuit court with jurisdiction over the served party if the person served is a resident; or

(B) The circuit court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that:

(A) The investigation is one the Division of Child Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose;

(B) The inquiry is relevant to that purpose;

(C) The inquiry is not too broad or indefinite;

(D) The information sought is not already in the possession of the Division of Child Protective Services; and

(E) Any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

(h) No child protective services caseworker may be held personally liable for any professional decision or action taken pursuant to that decision in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon. However, nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct, or intentional misconduct.

§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

(a) Any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more

than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: *Provided*, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect.

(b) County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirements contained in this section and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement.

(c) Nothing in this article is intended to prevent individuals from reporting suspected abuse or neglect on their own behalf. In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if that person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

(d) The provisions of this section are not applicable to persons under the age of 18.

§49-2-804. Notification of disposition of reports.

The Department of Human Services shall continue to develop, update and implement a procedure to notify any person mandated

to report suspected child abuse and neglect pursuant to section eight hundred three of this article, of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.

§49-2-813. Statistical index; reports.

The Department of Human Services shall maintain a statewide child abuse and neglect statistical index of all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Human Services. Nothing in the statistical data index maintained by the Department of Human Services may contain information of a specific nature that would identify individual cases or persons. Notwithstanding section two hundred one, article four of this chapter, the Department of Human Services shall provide copies of the statistical data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

§49-2-814. Task Force on Prevention of Sexual Abuse of Children.

(a) This section may be referred to as "Erin Merry'n's Law".

(b) The Task Force on Prevention of Sexual Abuse of Children is established. The task force consists of the following members:

(1) The Chair of the West Virginia Senate Committee on Health and Human Resources, or his or her designee;

(2) The Chair of the House of Delegates Committee on Health and Human Resources, or his or her designee;

(3) The Chair of the West Virginia Senate Committee on Education, or his or her designee;

(4) The Chair of the House of Delegates Committee on Education, or his or her designee;

(5) One citizen member appointed by the President of the Senate;

(6) One citizen member appointed by the Speaker of the House of Delegates;

(7) One citizen member, who is a survivor of child sexual abuse, appointed by the Governor;

(8) The President of the State Board of Education, or his or her designee;

(9) The State Superintendent of Schools, or his or her designee;

(10) The Secretary of the Department of Human Services, or his or her designee;

(11) The Director of the Prosecuting Attorney's Institute, or his or her designee;

(12) One representative of each statewide professional teachers' organization, each selected by the leader of his or her respective organization;

(13) One representative of the statewide school service personnel organization, selected by the leader of the organization;

(14) One representative of the statewide school principals' organization, appointed by the leader of the organization;

(15) One representative of the statewide professional social workers' organization, appointed by the leader of the organization;

(16) One representative of a teacher preparation program of a regionally accredited institution of higher education in the state, appointed by the Chancellor of the Higher Education Policy Commission;

(17) The Chief Executive Officer of the Center for Professional Development, or his or her designee;

(18) The Director of Prevent Child Abuse West Virginia, or his or her designee;

(19) The Director of the West Virginia Child Advocacy Network, or his or her designee;

(20) The Director of the West Virginia Coalition Against Domestic Violence, or his or her designee;

(21) The Director of the West Virginia Foundation for Rape Information and Services, or his or her designee;

(22) The Administrative Director of the West Virginia Supreme Court of Appeals, or his or her designee;

(23) The Executive Director of the West Virginia Sheriffs' Association, or his or her designee;

(24) One representative of an organization representing law enforcement, appointed by the Superintendent of the West Virginia State Police; and

(25) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

(c) To the extent practicable, members of the task force shall be individuals actively involved in the fields of child abuse and neglect prevention and child welfare.

(d) At the joint call of the House of Delegates and Senate Education Committee Chairs, the task force shall convene its first meeting and by majority vote of members present elect presiding officers. Subsequent meetings shall be at the call of the presiding officer.

(e) The task force shall make recommendations for decreasing incidence of sexual abuse of children in West Virginia. In making those recommendations, the task force shall:

(1) Gather information regarding sexual abuse of children throughout the state;

(2) Receive related reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state education policy that would prevent sexual abuse of children;

(4) Create goals for other areas of state policy that would prevent sexual abuse of children; and

(5) Submit a report with its recommendations to the Governor and the Legislature.

(f) The recommendations may include proposals for specific statutory changes and methods to foster cooperation among state agencies and between the state and local governments. The task force shall consult with employees of the Bureau for Children and Family Services, the Division of Justice and Community Services, the West Virginia State Police, the State Board of Education, and any other state agency or department as necessary to accomplish its responsibilities under this section.

(g) Task force members serve without compensation and do not receive expense reimbursement.

§49-2-901. Policy; cooperation.

(a) It is the policy of the state to:

(1) Provide a coordinated continuum of care for its children who have been charged with an offense which would be a crime if committed by an adult, whether they are taken into custody and securely detained or released pending adjudication by the court; and

(2) Ensure the safe and efficient custody of a securely detained child through the entire juvenile justice process, and this can best be accomplished by the state by providing for cooperation and coordination between the agencies of government which are charged with responsibilities for the children of the state.

(b) When any juvenile is ordered by the court to be transferred from the custody of one of these agencies into the custody of the other, the Department of Human Services and the Division of Juvenile Services shall cooperate with each other to the maximum extent necessary in order to ease the child's transition and to reduce unnecessary cost, duplication and delay.

§49-2-903. Powers and duties; comprehensive strategy; cooperation.

The Division of Juvenile Services has the following duties as to juveniles in detention facilities or juvenile corrections facilities:

(1) Cooperating with the United States Department of Justice in operating, maintaining and improving juvenile correction facilities and predispositional detention centers, complying with regulations thereof, and receiving and expending federal funds for the services;

(2) Providing care for children needing secure detention pending disposition by a court having juvenile jurisdiction or temporary care following a court action;

(3) Assigning the necessary personnel and providing adequate space for the support and operation of any facility providing for the secure detention of children committed to the care of the Division of Juvenile Services;

(4) Proposing rules which outline policies and procedures governing the operation of correctional, detention and other facilities in its division wherein juveniles may be securely housed;

(5) Assigning the necessary personnel and providing adequate space for the support and operation of its facilities;

(6) Developing a comprehensive plan to maintain and improve a unified state system of regional predispositional detention centers for juveniles;

(7) Working in cooperation with the Department of Human Services in establishing, maintaining, and continuously refining

and developing a balanced and comprehensive state program for children who have been adjudicated delinquent;

(8) In cooperation with the Department of Human Services establishing programs and services within available funds, designed to:

(A) Prevent juvenile delinquency;

(B) To divert juveniles from the juvenile justice system:

(C) To provide community-based alternatives to juvenile detention and correctional facilities; and

(D) To encourage a diversity of alternatives within the juvenile justice system.

Working in collaboration with the Department of Human Services, the Division of Juvenile Services shall employ a comprehensive strategy for the social and rehabilitative programming and treatment of juveniles, consistent with the principles adopted by the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs of the United States Department of Justice.

§49-2-906. Medical and other treatment of juveniles in custody of the division; consent; service providers; medical care; pregnant inmates; claims processing and administration by the department; authorization of cooperative agreements.

(a) Notwithstanding any other provision of law to the contrary, the director, or his or her designee, is hereby authorized to consent to the medical or other treatment of any juvenile in the legal or physical custody of the director or the division.

(b) In providing or arranging for the necessary medical and other care and treatment of juveniles committed to the division's custody, the director shall use service providers who provide the same or similar services to juveniles under existing contracts with the Department of Human Services. In order to obtain the most advantageous reimbursement rates, to capitalize on an economy of

scale and to avoid duplicative systems and procedures, the department shall administer and process all claims for medical or other treatment of juveniles committed to the division's custody.

(c) In providing or arranging for the necessary medical and other care and treatment of juveniles committed to the division's custody, the director shall assure that pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy. However, if the inmate, based upon her classification, discipline history or other factors deemed relevant by the director poses a threat of escape, or to the safety of herself, the public, staff, or the unborn child, the inmate may be restrained in a manner reasonably necessary. Additionally, that prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff or the fetus, the director or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

(d) For purposes of implementing the mandates of this section, the director is hereby authorized and directed to enter into any necessary agreements with the Department of Human Services. An agreement will include, at a minimum, for the direct and incidental costs associated with that care and treatment to be paid by the Division of Juvenile Services.

§49-2-913. Juvenile Justice Reform Oversight Committee.

(a) The Juvenile Justice Reform Oversight Committee is hereby created to oversee the implementation of reform measures intended to improve the state's juvenile justice system.

(b) The committee shall be comprised of seventeen members, including the following individuals:

(1) The Governor, or his or her designee, who shall preside as chair of the committee;

(2) Two members from the House of Delegates, appointed by the Speaker of the House of Delegates, who shall serve as nonvoting, ex officio members;

(3) Two members from the Senate, appointed by the President of the Senate, who shall serve as nonvoting, ex officio members;

(4) The Secretary of the Department of Human Services, or his or her designee;

(5) The Director of the Division of Juvenile Services, or his or her designee;

(6) The Superintendent of the State Board of Education, or his or her designee;

(7) The Administrative Director of the Supreme Court of Appeals, or his or her designee, who shall serve as nonvoting, ex officio member;

(8) The Director of the Division of Probation Services, or his or her designee;

(9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of Appeals, who shall serve as nonvoting, ex officio members;

(10) One community member juvenile justice stakeholder, appointed by the Governor;

(11) One juvenile crime victim advocate, appointed by the Governor;

(12) One member from the law-enforcement agency, appointed by the Governor;

(13) One member from a county prosecuting attorney's office, appointed by the Governor; and

(14) The Director of the Juvenile Justice Commission.

(c) The committee shall perform the following duties:

(1) Guide and evaluate the implementation of the provisions adopted in the year 2015 relating to juvenile justice reform;

(2) Obtain and review the juvenile recidivism and program outcome data collected pursuant to section one hundred six, article five of this chapter;

(3) Calculate any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements by the Division of Juvenile Services or the Department of Human Services as reported under section one hundred six, article five of this chapter; and

(4) Institute a uniform process for developing and reviewing performance measurement and outcome measures through data analysis. The uniform process shall include:

(A) The performance and outcome measures for the court, the Department of Human Services and the Division of Juvenile Services; and

(B) The deadlines and format for the submission of the performance and outcome measures; and

(5) Ensure system accountability and monitor the fidelity of implementation efforts or programs;

(6) Study any additional topics relating to the continued improvement of the juvenile justice system; and

(7) Issue an annual report to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals of West Virginia on or before November 30th of each year, starting in 2016, which shall include:

(A) An assessment of the progress made in implementation of juvenile justice reform efforts;

(B) A summary of the committee's efforts in fulfilling its duties as set forth in this section; and

(C) An analysis of the recidivism data obtained by the committee under this section;

(D) A summary of the averted costs calculated by the committee under this section and a recommendation for any reinvestment of the averted costs to fund services or programs to expand West Virginia's continuum of alternatives for youth who would otherwise be placed in out-of-home placement;

(E) Recommendations for continued improvements to the juvenile justice system.

(d) The Division of Justice and Community Services shall provide staff support for the committee. The committee may request and receive copies of all data, reports, performance measures and other evaluative material regarding juvenile justice submitted from any agency, branch of government or political subdivision to carry out its duties.

(e) The committee shall meet within ninety days after appointment and shall thereafter meet at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

(f) After initial appointment, members appointed to the committee by the Governor, the President of the Senate, the Speaker of the House of Delegates or the Chief Justice of the Supreme Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of two years from his or her appointment and shall be eligible for reappointment to that position. All members appointed to the committee shall serve until his or her successor has been duly appointed.

(g) The committee shall sunset on December 31, 2020, unless reauthorized by the Legislature.

§49-2-1001. Purpose; intent.

It is the intent of the Legislature to provide for the creation of all reasonable means and methods that can be established by a humane and enlightened state, solicitous of the welfare of its children, for the prevention of delinquency and for the care and rehabilitation of juvenile delinquents and status offenders. It is further the intent of the Legislature that this state, through the Department of Human Services and the Division of Juvenile

Services, establish, maintain, and continuously refine and develop, a balanced and comprehensive state program for juveniles who are potentially delinquent or are status offenders or juvenile delinquents in the care or custody of the department.

§49-2-1002. Responsibilities of the Department of Human Services and Division of Juvenile Services of the Department of Military Affairs and Public Safety; programs and services; rehabilitation; cooperative agreements.

(a) The Department of Human Services and the Division of Juvenile Services of the Department of Military Affairs and Public Safety shall establish programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the child welfare and juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, 24-hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic, treatment or rehabilitative service;

(2) Community-based programs and services to work with parents and other family members to maintain and strengthen the family unit so that the juvenile may be retained in his or her home;

(3) Youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel or provide work and recreational opportunities for status offenders, juvenile delinquents and other youth to help prevent delinquency;

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth affected by the juvenile justice system;

(5) Educational programs or supportive services designed to encourage status offenders, juvenile delinquents and other youth to remain in elementary and secondary schools or in alternative learning situations;

(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth-initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(8) A statewide program designed to reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the state juvenile population; to increase the use of nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and to discourage the use of secure incarceration and detention; and

(9) Transitional programs designed to assist juveniles who are in the custody of the state upon reaching the age of eighteen years.

(b) By January 1, 2017, the department and the Division of Juvenile Services shall allocate at least fifty percent of all community services funding, as defined in section two hundred six, article one of this chapter, either provided directly or by contracted service providers, for the implementation of evidence-based practices, as defined in section two hundred six, article one of this chapter.

(c) (1) The Department of Human Services shall establish an individualized program of rehabilitation for each status offender referred to the department and to each alleged juvenile delinquent referred to the department after being allowed a pre-adjudicatory community supervision period by the juvenile court, and for each adjudicated juvenile delinquent who, after adjudication, is referred

to the department for investigation or treatment or whose custody is vested in the department.

(2) An individualized program of rehabilitation shall take into account the programs and services to be provided by other public or private agencies or personnel which are available in the community to deal with the circumstances of the particular juvenile.

(3) For alleged juvenile delinquents and status offenders, an individualized program of rehabilitation shall be furnished to the juvenile court and made available to counsel for the juvenile; it may be modified from time to time at the direction of the department or by order of the juvenile court.

(4) The department may develop an individualized program of rehabilitation for any juvenile referred for noncustodial counseling under section seven hundred two-a, article four of this chapter or for any juvenile upon the request of a public or private agency.

(d) (1) The individualized program of rehabilitation required by the provisions of subsection (c) of this section shall, for any juvenile in out-of-home placement, include a plan to return the juvenile to his or her home setting and transition the juvenile into community services to continue his or her rehabilitation.

(2) Planning for the transition shall begin upon the juvenile's entry into the residential facility. The transition process shall begin thirty days after admission to the residential facility and conclude no later than three months after admission.

(3) The Department of Human Services staff shall, during its monthly site visits at contracted residential facilities, ensure that the individualized programs of rehabilitation include a plan for transition in accordance with this subsection.

(4) If further time in residential placement is necessary and the most effective method of attaining the rehabilitation goals identified by the rehabilitation individualized plan created under subsection (c) of this section, then the department shall provide information to the multidisciplinary team to substantiate that

further time in a residential facility is necessary. The court, in consultation with the multidisciplinary team, may order an extension of time in residential placement prior to the juvenile's transition to the community if the court finds by clear and convincing evidence that an extension is in the best interest of the child. If the court finds that the evidence does not support an extension, the court shall order that the transition to community services proceed.

(e) The Department of Human Services and the Division of Juvenile Services are directed to enter into cooperative arrangements and agreements with each other and with private agencies or with agencies of the state and its political subdivisions to fulfill their respective duties under this article and chapter.

§49-2-1003. Rehabilitative facilities for status offenders; requirements; educational instruction.

(a) The Department of Human Services shall establish and maintain one or more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. Each facility will be a nonsecure facility having as its purpose the rehabilitation of status offenders. The facility will have a bed capacity for not more than twenty juveniles and shall minimize the institutional atmosphere and prepare the juvenile for reintegration into the community.

(b) Rehabilitative programs and services shall be provided by or through each facility and may include, but not be limited to, medical, educational, vocational, social and psychological guidance, training, counseling, substance abuse treatment and other rehabilitative services. The Department of Human Services shall provide to each status offender committed to the facility a program of treatment and services consistent with the individualized program of rehabilitation developed for the juvenile. In the case of any other juvenile residing at the facility, the department shall provide those programs and services as may be proper in the circumstances including, but not limited to, any programs or services directed to be provided by the court.

(c) The board of education of the county in which the facility is located shall provide instruction for juveniles residing at the facility. Residents who can be permitted to do so shall attend local schools and instruction shall otherwise take place at the facility.

(d) Facilities established pursuant to this section shall be structured as community-based facilities.

(e) The Department of Human Services may enter into cooperative arrangements and agreements with private agencies or with agencies of the state and its political subdivisions to fulfill its duties under this section: *Provided*, That after January 1, 2016, the department shall not enter into an agreement with the Division of Juvenile Services to house juvenile status offenders.

§49-2-1004. The Juvenile Services Reimbursement Offender Fund; use; expenditures.

There is created within the State Treasury a special revenue account designated "The Juvenile Services Reimbursement Offender Fund" within and for the benefit of the Division of Juvenile Services for expenses incurred in servicing juvenile status offenders in need of stabilization and specialized supervision. Moneys shall be paid into the account by the Department of Human Services, based upon an established per diem rate, or other funding sources. The Department of Human Services and the Division of Juvenile Services shall jointly establish the per diem rate to be paid into the fund by the Department of Human Services for each juvenile status offender in need of stabilization and specialized supervision by the Division of Juvenile Services pursuant to this article and by cooperative agreement. The Director of Juvenile Services is authorized to make expenditures from the fund in accordance with article three, chapter twelve of this code to offset expenses incurred by the Division of Juvenile Services in housing, treatment and caring for juvenile offenders.

§49-2-1005. Legal custody; law-enforcement agencies.

The Department of Human Services may require any juvenile committed to its legal custody to remain at and to return to the

residence to which the juvenile is assigned by the department or by the juvenile court. In aid of that authority, and upon request of a designated employee of the department, any police officer, sheriff, deputy sheriff, or juvenile court probation officer is authorized to take the juvenile into custody and return the juvenile to his or her place of residence or into the custody of a designated employee of the department.

§49-2-1006. Reporting requirements; cataloguing of services.

(a) The Department of Human Services and the Division of Juvenile Services shall annually review its programs and services and submit a report by December 31, of each year to the Governor, the Legislature and the Supreme Court of Appeals. This report shall analyze and evaluate the effectiveness of the programs and services being carried out by the Department of Human Services or the Division of Juvenile Services. That report shall include, but is not limited to:

(1) An analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report;

(2) A description of programs and services which should be implemented to further the purposes of this article;

(3) Relevant information concerning the number of juveniles comprising the population of any rehabilitative facility during the period covered by the report;

(4) The length of residence, the nature of the problems of each juvenile, the juvenile's response to programs and services; and

(5) Any other information as will enable a user of the report to ascertain the effectiveness of the facility as a rehabilitative facility.

(b) The Department of Human Services and the Division of Juvenile Services shall prepare a descriptive catalogue of its juvenile programs and services available in local communities throughout this state and shall distribute copies of the same to every juvenile court in the state and, at the direction of the juvenile court,

the catalogue shall be distributed to attorneys practicing before the court. The catalogue shall:

(1) Be made available to members of the general public upon request:

(2) Contain sufficient information as to particular programs and services so as to enable a user of the catalogue to make inquiries and referrals; and

(3) Be constructed so as to meaningfully identify and describe programs and services.

(c) The requirements of this section are not satisfied by a simple listing of specific agencies or the individuals in charge of programs at a given time. The catalogue shall be updated and republished or supplemented from time to time as may be required to maintain its usefulness as a resource manual.

ARTICLE 4. COURT ACTIONS.

§49-4-104. General provisions relating to court orders regarding custody; rules.

(a) The Supreme Court of Appeals, in consultation with the Department of Human Services and the Division of Juvenile Services in order to eliminate unnecessary state funding of out-of-home placements where federal funding is available, shall develop and disseminate form court orders to effectuate chapter forty-nine of this code which authorize disclosure and transfer of juvenile records between agencies while requiring maintenance of confidentiality, Child Welfare Services, 42 U.S.C. §620, *et seq.*, and 42 U.S.C. §670, *et seq.*, relating to the promulgation of uniform court orders for placement of minor children and the rules promulgated thereunder, for use in the courts of the state.

(b) Judges and magistrates, upon being supplied the form orders required by subsection (a) of this section, shall act to ensure the proper form order is entered in the case so as to allow federal funding of eligible out-of-home placements.

§49-4-108. Payment of services.

(a) At any time during any proceedings brought pursuant to this chapter, the court may upon its own motion, or upon a motion of any party, order the Department of Human Services to pay the Medicaid rates for professional services rendered by a health care professional to a child or other party to the proceedings. Professional services include, but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and preparation of expert testimony. A health care professional shall be paid by the Department of Human Services upon completion of services and submission of a final report or other information and documentation as required by the policies implemented by the Department of Human Services: *Provided*, That if the service is covered by Medicaid and the service is not provided within 30 days, the court may order the service to be provided by a provider at a rate higher than the Medicaid rate. The department may object and request to be heard, after which the court shall issue findings of fact and conclusions of law supporting its decision.

(b) At any time during any proceeding brought pursuant to this chapter, the court may upon its own motion, or upon a motion of any party, order the Department of Human Services to pay for socially necessary services rendered by an entity who has agreed to comply with §9-2-6(21) of this code. The Department of Human Services shall set the reimbursement rates for the socially necessary services: *Provided*, That if services are not provided within 30 days, the court may order a service to be provided by a provider at a rate higher than the department established rate. The department may object and request to be heard, after which the court shall issue findings of fact and conclusions of law supporting its decision.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

(a) From funds appropriated to the Department of Human Services, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An

adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department. A legal guardianship subsidy may not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances because one or more of the following conditions inhibit their adoption or legal guardianship placement:

- (1) They have a physical or mental disability;
- (2) They are emotionally disturbed;
- (3) They are older children;
- (4) They are a part of a sibling group; or
- (5) They are a member of a racial or ethnic minority.

(b)(1) The department shall provide assistance in the form of subsidies or services to parents who are found and approved for adoption or legal guardianship of a child certified as eligible for subsidy by the department, but before the final decree of adoption or order of legal guardianship is entered, there shall be a written agreement between the family entering into the subsidized adoption or legal guardianship and the department.

(2) Adoption or legal guardianship subsidies in individual cases may commence with the adoption or legal guardianship placement and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for services, money payments, for a limited period, or for a long term, or for any combination of the foregoing.

(3) The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The agreement may recognize and provide for direct payment by the department of attorney's fees to an attorney representing the adoptive parent or legal guardian. Any such payment for attorney's fees shall be made directly to the attorney representing the adoptive parent or legal guardian.

(4) The amount of the subsidy may in no case exceed that which would be allowable for the child under foster family care or, in the case of a service, the reasonable fee for the service rendered.

(5) The department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement, and who the department determines cannot be placed without medical assistance.

(c) The department shall certify the child as eligible for a subsidy to obtain adoption or a legal guardianship if it is in the best interest of the child.

(d) All records regarding subsidized adoptions or legal guardianships are to be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or person receiving funds for the child.

(e) A payment may not be made to adoptive parents or legal guardians of child:

(1) Who has attained 18 years of age, unless the department determines that the child has a special need which warrants the continuation of assistance or the child is continuing his or her education or actively engaging in employment;

(2) Who has obtained 21 years of age;

(3) Who has not attained 18 years of age, if the department determines that the adoptive parent or legal guardian is no longer supporting the child by performing actions to maintain a familial bond with the child.

(f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this section shall keep the department informed of circumstances which would, pursuant to §49-4-112(e) of this code, make them ineligible for the payment.

§49-4-114. Consent by agency or department to adoption of child; statement of relinquishment by parent; counseling services; petition to terminate parental rights; notice; hearing; court orders.

(a)(1) Whenever a child welfare agency licensed to place children for adoption or the Department of Human Services has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child, pursuant to article twenty-two, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or relinquishment is required, under section three hundred one, article twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three hundred three, article twenty-two, chapter forty-eight, and all other provisions of that article providing for relinquishment for adoption shall govern the proceedings herein.

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents. A circuit judge may determine the placement of a child for adoption by a grandparent or grandparents is in the best interest of the child without the grandparent or grandparents completing or passing a home study evaluation.

(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, preplacement and post-placement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to article twenty-two, chapter forty-eight of this code.

(b)(1) Whenever the mother has executed a relinquishment, pursuant to this section, and the legal, determined, putative, outsider father, or unknown father, as those terms are defined pursuant to part one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be established in accordance with section three hundred six, article twenty-two, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative, outsider father, or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights, and the rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise those rights, except that if the child is more than six months old at the time the notice would be required and the father has not asserted or exercised his or her parental rights and he or she knew the whereabouts of the child, then the father shall be presumed to have had reasonable opportunity to assert or exercise any rights.

(c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated, the court shall set a hearing on the petition. A copy of the petition and notice of the date, time, and place of the hearing on the petition shall be personally served on

any respondent at least twenty days prior to the date set for the hearing.

(2) The notice shall inform the person that his or her parental rights, if any, may be terminated in the proceeding and that the person may appear and defend any rights within twenty days of the service. In the case of a person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (A) By personal service; (B) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (C) by publication. If personal service is not acquired, then if the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as herein provided. Service achieved by mail shall be complete upon mailing and is sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain the person's whereabouts, then the court shall order service of the notice by publication as a Class II publication in compliance with article three, chapter fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside. In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, a guardian ad litem.

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person is allowed thirty days from the date of the first publication or mailing

of the service on a personal representative or guardian ad litem in which to appear and defend the parental rights.

(d) A petition under this section may be instituted in the county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his or her parental rights and shall award the legal and physical custody and control of the child to the petitioner.

§49-4-202. Notification of possession of relinquished child; department responsibilities.

(a) (1) Not later than the close of the first business day after the date on which a hospital or health care facility takes possession of a child pursuant to §49-4-201 of this code, the hospital or health care facility shall notify the Child Protective Services Division that it has taken possession of the child and shall provide the division any information provided by the parent delivering the child. The hospital or health care facility shall refer any inquiries about the child to the Child Protective Services Division.

(2) Upon taking possession of a child pursuant to §49-4-201 of this code, a fire department shall:

(A) Deliver the child to the nearest hospital or health care facility as soon as possible, but transport may begin no later than 30 minutes upon taking possession of a child; and

(B) Notify the Child Protective Services Division within two hours of taking possession of a child:

(i) That it has delivered the child and identify the hospital or health care facility to which it delivered the child; and

(ii) Provide the division any information provided by the parent delivering the child.

(3) The fire department shall refer any inquiries about the child to the Child Protective Services Division.

(b) The Department of Human Services shall assume the care, control, and custody of the child as of the time of delivery of the child to the hospital, health care facility, or fire department, and may contract with a private child care agency for the care and placement of the child after the child leaves the hospital, health care facility, or fire department.

§49-4-203. Filing petition after accepting possession of relinquished child.

A child of whom the Department of Human Services assumes care, control and custody under this article is a relinquished child and to be treated in all respects as a child taken into custody pursuant to §49-4-303. Upon taking custody of a child under this article, the department, with the cooperation of the county prosecuting attorney, shall cause a petition to be presented pursuant to §49-4-602. The department and county prosecuting attorney may not identify in the petition the parent(s) who utilized this article to relinquish his or her child. Thereafter, the department shall proceed in compliance with part six, of this article.

§49-4-401. Purpose; system to be a complement to existing programs.

(a) This article:

(1) Provides a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing certain status offense and delinquency proceedings;

(2) Establishes, as a complement to other programs of the Department of Human Services, a multidisciplinary screening, advisory and planning system to assist courts in facilitating permanency planning, following the initiation of judicial proceedings, to recommend alternatives and to coordinate evaluations and in-community services; and

(3) Ensures that children are safe from abuse and neglect and to coordinate investigation of alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety, as determined appropriate by the prosecuting attorney.

(b) Nothing in this article precludes any multidisciplinary team from considering any case upon the consent of the members of the team.

§49-4-402. Multidisciplinary investigative teams; establishment; membership; procedures; coordination among agencies; confidentiality.

(a) The prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county. The multidisciplinary team shall be headed and directed by the prosecuting attorney, or his or her designee, and includes as permanent members:

(1) The prosecuting attorney, or his or her designee;

(2) A local child protective services caseworker from the Department of Human Services;

(3) A local law-enforcement officer employed by a law-enforcement agency in the county;

(4) A child advocacy center representative, where available;

(5) A health care provider with pediatric and child abuse expertise, where available;

(6) A mental health professional with pediatric and child abuse expertise, where available;

(7) An educator; and

(8) A representative from a licensed domestic violence program serving the county.

The Department of Human Services and any local law-enforcement agency or agencies selected by the prosecuting

attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor's request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may contribute to the team's efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

(d) State, county and local agencies shall provide the multidisciplinary investigative team with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing the agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with this article remains confidential. For purposes of this section, the term "confidential" shall be construed in accordance with article five of this chapter.

§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.

(a)(1) A multidisciplinary treatment planning process for cases initiated pursuant to part six and part seven of article four of this chapter shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. In each circuit, the department shall coordinate with the prosecutor's office, the public defender's office or other counsel representing juveniles to designate, with the approval of the court, at least one day per month on which multidisciplinary team meetings for that circuit shall be held: *Provided*, That multidisciplinary team meetings may be held on days other than the designated day or days when necessary. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to its custody, including those cases in which the juvenile has been committed for examination and diagnosis.

(2) This section does not require a multidisciplinary team meeting to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.

(b) The case manager in the Department of Human Services for the child, family or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a treatment team in each case when it is required pursuant to this article.

(1) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child,

that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(2) Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing. This subsection does not prevent the respective agencies from designating a person other than the case manager as a facilitator for treatment team meetings. Written notice shall be provided to all team members of the availability to participate by videoconferencing.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) The multidisciplinary treatment team shall be afforded access to information in the possession of the Department of Human Services, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate in the sharing of information as may be provided in article five of this chapter or any other relevant provision of law. Any multidisciplinary team member who acquires confidential information may not disclose the information except as permitted by the provisions of this code or court rules.

§49-4-408. Unified child and family case plans; treatment teams; programs; agency requirements.

(a) The Department of Human Services shall develop a unified child and family case plan for every family wherein a person has been referred to the department after being allowed an improvement period or where the child is placed in foster care. The case plan must be filed within sixty days of the child coming into foster care or within thirty days of the inception of the improvement period, whichever occurs first. The department may also prepare a case plan for any person who voluntarily seeks child abuse and neglect services from the department, or who is referred

to the department by another public agency or private organization. The case plan provisions shall comply with federal law and the rules of procedure for child abuse and neglect proceedings.

(b) The department shall convene a multidisciplinary treatment team, which shall develop the case plan. Parents, guardians or custodians shall participate fully in the development of the case plan, and the child shall also fully participate if sufficiently mature and the child's participation is otherwise appropriate. The case plan may be modified from time to time to allow for flexibility in goal development, and in each case the modifications shall be submitted to the court in writing. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time as reasonable efforts are being made to prevent removal or to make it possible for a child to return safely home. The court shall examine the proposed case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.

(c) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:

(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification and treatment of child abuse and neglect cases, to

provide a broad range of services related to child abuse and neglect, including direct support as well as providing advice and consultation to individuals, agencies and organizations which request the services;

(3) For furnishing services of multidisciplinary teams and community teams, trained in the prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where the services are not available;

(4) For other innovative programs and projects that show promise of successfully identifying, preventing or remedying the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self help, and for prevention and treatment of drug-related child abuse and neglect; and

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the federal Secretary of the Department of Health and Human Services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(d) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal Department of Health and Human Services or its secretary, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

§49-4-501. Prosecuting attorney representation of the Department of Human Services; conflict resolution.

(a) The prosecuting attorney shall render to the Department of Human Services, without additional compensation, the legal services as the department may require. This section shall not be

construed to prohibit the department from developing plans for cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state and its citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

(b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to file an abuse or neglect petition, including the duties and responsibilities owed to its client the Department of Human Services, in his or her fulfillment of the provisions of this article.

(c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the Department of Human Services, and a dispute arises between the prosecuting attorney and the department's representative because an action proposed by the other is believed to place the child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department's representative may contact the secretary of the department and the executive director of the West Virginia Prosecuting Attorneys Institute for prompt mediation and resolution. The secretary may designate either his or her general counsel or the director of social services to act as his or her designee and the executive director may designate an objective prosecuting attorney as his or her designee.

§49-4-704. Institution of proceedings by petition; notice to juvenile and parents; preliminary hearings; subpoena.

(a)(1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be filed by a person who has knowledge of or information concerning the facts alleged. The petition shall be verified by the petitioner, shall set forth the name and address of the juvenile's parents, guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county where the alleged status offense or act of delinquency occurred. However, a proceeding under this chapter may be removed, for good cause shown, in accordance with section one, article nine, chapter fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon which the petition is based, including the approximate time and place of the alleged conduct; a statement

of the right to have counsel appointed and consult with counsel at every stage of the proceedings; and the relief sought.

(2) Upon the filing of the petition, the court shall set a time and place for a preliminary hearing and may appoint counsel. A copy of the petition and summons may be served upon the respondent juvenile by first class mail or personal service of process. If a juvenile does not appear in response to a summons served by mail, no further proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.

(b) The parents, guardians or custodians shall be named in the petition as respondents and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless the respondent cannot be found after diligent search. If a respondent cannot be found after diligent search, the court may proceed without further requirement of notice. However, the court may order service by first class mail to the last known address of the respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or answer.

(c) The court or referee may order the issuance of a subpoena against the person having custody and control of the juvenile ordering him or her to bring the juvenile before the court.

(d) When any case of a juvenile charged with the commission of a crime is certified or transferred to the circuit court, the court shall forthwith cause the juvenile and his or her parents, guardians or custodians to be served with a petition as provided in subsections (a) and (b) of this section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within ninety-six hours of the time custody began and if the petition is not served within that time, the juvenile shall be released forthwith.

(e) The clerk of the court shall notify, within two judicial days, the local office of the Department of Human Services of all proceedings under this article, which is responsible for convening and directing the multidisciplinary treatment planning process in accordance with section four hundred six of this article. In status offense or delinquency cases where a case manager has not been assigned, the juvenile probation officer is responsible for notifying the local office of the Department of Human Services which will assign a case manager who will initiate assessment and be responsible for convening and directing the multidisciplinary treatment planning process.

(f) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to §48-27-403 of this code in which the petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian or custodian or other person with whom the juvenile resides and that results in the issuance of an emergency protective order naming a juvenile as the respondent, shall be treated as a petition authorized by this section, alleging the juvenile is a juvenile delinquent. However, the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within twenty-four hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with subsection (a) of this section within two judicial days.

§49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention centers; medical aid.

(a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court or a magistrate may issue an order directing that a juvenile be taken into custody before adjudication only upon a showing of probable cause to believe that one of the following conditions exists: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the juvenile demand custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary to assure his or her presence

before the court. A detention hearing pursuant to section seven hundred six of this article shall be held by the judge or magistrate authorized to conduct the hearings without unnecessary delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official only if one of the following conditions exists:

(1) Grounds exist for the arrest of an adult in identical circumstances;

(2) Emergency conditions exist which, in the judgment of the officer, pose imminent danger to the health, safety and welfare of the juvenile;

(3) The official has reasonable grounds to believe that the juvenile has left the care of his or her parents, guardian or custodian without the consent of the person and the health, safety and welfare of the juvenile is endangered;

(4) The juvenile is a fugitive from a lawful custody or commitment order of a juvenile court;

(5) The official has reasonable grounds to believe the juvenile to have been driving a motor vehicle with any amount of alcohol in his or her blood; or

(6) The juvenile is the named respondent in an emergency domestic violence protective order issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code and the individual filing the petition for the emergency protective order is the juvenile's parent, guardian or custodian or other person with whom the juvenile resides.

(c) Upon taking a juvenile into custody, with or without a court order, the official shall:

(1) Immediately notify the juvenile's parent, guardian, custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered. Each day the juvenile is detained, a written record must be made of all attempts to locate a responsible adult; or

(C) The juvenile has been taken into custody for an alleged act of delinquency for which secure detention is permissible.

(3) If the juvenile is an alleged status offender or has been taken into custody pursuant to subdivision (6), subsection (b) of this section, immediately notify the Department of Human Services and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a judge of the circuit court for a detention hearing pursuant to section seven hundred six of this article. If a circuit court judge is not available in the county, the official shall take the juvenile without unnecessary delay before any magistrate available in the county for the sole purpose of conducting the detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or director shall immediately notify the sheriff or director shall immediately provide to every juvenile who is delivered into his or her custody a written statement explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including appointed counsel if he or she cannot afford counsel, and his or her privilege against self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center director's custody, that official

shall release the juvenile to his or her parent, guardian or custodian by the end of the next day unless the juvenile has been placed in detention after a hearing conducted pursuant to section seven hundred six of this article.

(e) The law-enforcement agency that takes a juvenile into custody or places a juvenile under arrest is responsible for the juvenile's initial transportation to a juvenile detention center or other Division of Juvenile Services' residential facility.

(f) Notwithstanding any other provision of this code, a juvenile detention center, or other Division of Juvenile Services' residential facility, is not required to accept a juvenile if the juvenile appears to be in need of medical attention of a degree necessitating treatment by a physician. If a juvenile is refused pursuant to this subsection, the juvenile detention center, or other Division of Juvenile Services' residential facility, may not subsequently accept the juvenile for detention until the arresting or transporting officer provides the juvenile detention center, or other Division of Juvenile Services' residential facility, with a written clearance from a licensed physician reflecting that the juvenile has been examined and, if necessary, treated and which states that in the physician's medical opinion the juvenile can be safely confined in the juvenile detention center or other Division of Juvenile Services' residential facility.

§49-4-706. Detention hearing; rights of juvenile; notification; counsel; hearings.

(a) The circuit court judge or magistrate shall inform the juvenile of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation may be made without the presence of a parent or counsel. If the juvenile or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable. The circuit court judge or magistrate shall hear testimony concerning the circumstances for taking the juvenile into custody and the possible need for detention. The sole mandatory issue at the detention hearing is whether the juvenile should be detained pending further court proceedings. The court shall, if the

health, safety and welfare of the juvenile will not be endangered thereby, release the juvenile on recognizance to his or her parents, custodians or an appropriate agency; however, if warranted, the court may require bail, except that bail may be denied in any case where bail could be denied if the accused were an adult. The court shall:

(1) Immediately notify the juvenile's parent, guardian or custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered. However, each day the juvenile is detained, a written record must be made of all attempts to locate a responsible adult; or

(C) The juvenile is charged with an act of delinquency for which secure detention is permissible; and

(3) If the juvenile is an alleged status offender, immediately notify the Department of Human Services, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the court may order the juvenile detained, but only in a nonsecure or staff-secure facility. Any juvenile detained pursuant to this subdivision shall be placed in the legal custody of the Department of Human Services pending further proceedings by the court.

(b) The circuit court judge or magistrate may, in conjunction with the detention hearing, conduct a preliminary hearing pursuant to section seven hundred and four of this article if all the parties are prepared to proceed and the juvenile has counsel during the hearing.

§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand silent, in which event the court shall enter a general denial of all allegations in the petition.

(1) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (A) The respondent fully understands all of his or her rights under this article; (B) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (C) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

(2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to §49-4-704 of this code. The court shall receive and consider the results of the needs assessment, as defined in §49-1-206 of this code, prior to or at the disposition.

(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing evidence, the court shall consider the results of the needs assessment, as defined in §49-1-206 of this code, prior to or at the disposition and refer the juvenile to the Department of Human Services for services, pursuant to §49-4-712 of this code, and order the department to report back to the court with regard to the juvenile's progress at least every 90 days or until the court, upon motion or sua sponte, orders further disposition under §49-4-712 of this code or dismisses the case from its docket: *Provided*, That in a judicial circuit operating a truancy program, a circuit judge

may, in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his or her probation office: *Provided, however*, That a circuit judge may also refer a truant juvenile to a truancy diversion specialist.

(5) If the allegations in a petition are not sustained by evidence as provided in §49-4-711(c) and §49-4-711(d) of this code, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court. The record shall include the treatment and rehabilitation plan the court has adopted after recommendation by the multidisciplinary team as provided for in §49-4-406 of this code.

§49-4-726. Study of juvenile competency issues; requiring and requesting report and proposed legislation; submission to Legislature.

(a) The Secretary of the Department of Human Services and the Secretary of the Department of Military Affairs and Public Safety are directed, and the Juvenile Justice Commission of the Supreme Court of Appeals is requested to undertake a collaborative investigation and evaluation of issues regarding juvenile competency. They shall:

(1) Develop appropriate procedures for determining what actions should be taken when a juvenile is determined to lack substantial capacity to understand the proceedings against him or her brought under §49-4-704 of this code;

(2) Recommend appropriate processes for juveniles to receive restorative services when found to be incompetent; and

(3) Recommend appropriate disposition alternatives for juveniles found to be incompetent and not restorable, including a recommendation as to the location and operation of an appropriate

facility to house juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement.

(b) The secretaries shall issue a joint report of their findings and recommendations, together with draft legislation necessary to effectuate the recommendations, on or before July 31, 2020, to the President of the Senate and the Speaker of the House of Delegates.

(c) The report shall:

(1) Include models from other states considered to be best practices;

(2) Include an estimate of the number of juveniles that may be affected by this procedure and data of trends by other states;

(3) Include an estimate of the cost of providing restorative services and a recommendation of which agency should pay for the services; and

(4) Ensure that any recommended legislation provides that all services be provided in the least restrictive placement for the juvenile and recommend a facility for the housing and treatment of juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement which can appropriately provide the juvenile with necessary services.

(d) It is the intent of the Legislature in enacting this section to acknowledge the importance of ensuring the constitutionality of juvenile proceedings under §49-4-704 of this code.

§49-4-801. Support of a child removed from home pursuant to this chapter; order requirements.

(a) It is the intent of the Legislature that to the extent practicable, this article should encourage and require a child's parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) This article shall be construed to be consistent with articles one, eleven, twelve, thirteen, fourteen, fifteen, sixteen, eighteen, nineteen and twenty four of chapter forty-eight of this code, and

those articles apply to actions pursuant to this chapter unless expressly stated otherwise.

(c) When a child is removed from his or her home pursuant to this chapter, the court shall issue a support order payable by the child's mother. If the child's legal father has been determined, the court shall issue a child support order payable by the legal father. If no legal father has been determined, the court shall issue an order establishing paternity prior to or simultaneously with establishing a support order payable by the child's legal father. Copies of the orders shall be provided to the Bureau of Child Support Enforcement.

(d) The order establishing a child support obligation must use the Guidelines for Child Support Awards that are set forth in article thirteen, chapter forty-eight of this code.

(e) In addition to the reasons for deviation listed in section seven hundred two, article thirteen, chapter forty-eight of this code, deviation from the child support guidelines is appropriate when the court finds that:

(1) It may assist the parent in successful completion of an improvement period;

(2) It may be in the best interest of the minor child to issue a zero child support order; and/or

(3) The parent temporarily or permanently has no gross income as defined §48-1-228 of this code.

§49-4-803. Enforcement of support orders.

(a) Support orders may be enforced through any manner provided in chapters thirty-eight and forty-eight of this code.

(b) An action for contempt for nonpayment of support may be brought by the Bureau for Children and Families or Bureau for Child Support Enforcement; the child's physical custodian; the child's guardian ad litem; or the prosecuting attorney.

ARTICLE 5. RECORD KEEPING AND DATABASE.**§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.**

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Corrections and Rehabilitation, the Department of Human Services, a child agency or facility, or court or law-enforcement agency, are confidential and may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

(C) The attorney of the child or parent; and

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; and

(4) Pursuant to an order of a court of record: *Provided*, That the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available upon request to:

(1) Federal, state, or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court, or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court, or family court; and

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Human Services and provided to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: *Provided*, That information released by the Department of Human Services pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near fatality" means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the

records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this code.

(f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300, or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody, and treatment of the juvenile;

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this subsection; and

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or

restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section may not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of which is exclusively subject to §62-6B-6 of this code.

(j) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections (k), (l), and (m) of this section.

(k) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

(l) If production of confidential records or information is disclosed to a grievant, his or her counsel or representative, pursuant to subsection (k) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (k) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the

grievance procedure, returned to the Division of Corrections and Rehabilitation.

(m) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, and the order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

(n) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq.* of this code.

(o) A child placing agency or a residential child care and treatment facility may disclose otherwise confidential information to other child placing agencies or residential child care and treatment facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

(p) The department shall provide electronic access to information required to perform an adoption to child placing agencies as necessary to complete the adoption.

(q) A child placing agency completing adoption as a contractor on behalf of the department shall have access to secure records from vital statistics and other pertinent record holders.

§49-5-106. Data collection.

(a) The Division of Juvenile Services, the department and the Supreme Court of Appeals shall establish procedures to jointly collect and compile data necessary to calculate juvenile recidivism and the outcome of programs.

(b) For each juvenile who enters into a diversion agreement, is placed on an improvement period, is placed on probation or is placed in an out-of-home placement as defined by section two

hundred six, article one of this chapter, the data and procedures developed in subsection (a) shall include:

(1) New offense referrals to juvenile court or criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

(2) Adjudications for a delinquent or status offense by a juvenile or a conviction by a criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

(3) Commitments to the Division of Juvenile Services, the department, excluding out-of-home placements made for child welfare or abuse and neglect purposes, or incarceration with the Division of Corrections within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody; and

(4) The number of out-of-home placements ordered where the judge found by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public.

(c) For youth placed in programs operated or funded by the Division of Juvenile Services, the department or the Supreme Court of Appeals, including youth reporting centers, juvenile drug courts, restorative justice programs and teen courts, the division, department and Supreme Court shall develop procedures using, at a minimum, the measures in subsection (b) of this section to track and record outcomes of each program, and to demonstrate that the program reduces the likelihood of reoffending for the youth referred to the program.

(d) For youth referred to truancy diversion specialists or other truancy diversion programs operated or funded by the Supreme Court of Appeals, the Division of Juvenile Services, the Department of Human Services, the Department of Education or other political subdivisions, that branch of government or agency shall develop procedures to track and record outcomes of each

program, and to evaluate the effectiveness in reducing unexcused absences for the youth referred to the program. At a minimum, this outcome data shall include:

(1) The number of youth successfully completing the truancy diversion program;

(2) The number of youth who are referred to the court system after failing to complete a truancy diversion program; and

(3) The number of youth who, after successfully completing a truancy diversion program, accumulate five or more unexcused absences in the current or subsequent school year.

(e) The Supreme Court of Appeals, the Division of Juvenile Services, the Department of Human Services and the Department of Education shall also establish procedures to jointly collect and compile data relating to disproportionate minority contact, which is defined as the proportion of minority youth who come into contact with the juvenile justice system in relation to the proportion of minority youth in the general population, and the compilation shall include data indicating the prevalence of such disproportionality in each county. Data shall include, at a minimum, the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated and disposed.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-103. Information to clearinghouse; definitions.

(a) The Department of Human Services and every law-enforcement agency in West Virginia shall provide to the clearinghouse or another investigating law-enforcement agency any information that would assist in locating or identifying a missing child.

(b) For purposes of this article:

(1) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk

of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Human Services.

(2) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

§49-6-105. Missing child report forms; where filed.

(a) The clearinghouse shall distribute missing child and missing and endangered child report forms to law-enforcement agencies in the state and to the Department of Human Services.

(b) A missing child or missing and endangered child report may be made to a law-enforcement agency in person or by telephone, or other indirect method of communication, and the person taking the report may enter the information on the form for the reporter. A missing child or missing and endangered child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the report form shall be maintained by the clearinghouse.

***§49-6-110. Confidentiality of records; rulemaking; requirements.**

(a) The State Police shall promulgate rules according §29A-3-1 *et seq.* of this code to provide for the classification of information and records as confidential that:

***NOTE:** This section was also amended by S. B. 768 (Chapter 159), which passed subsequent to this Act.

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a missing child, a missing and endangered child, or an unidentified body, if the State Police, in consultation with the law-enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to missing children or missing and endangered children and unidentified bodies and the State Police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the State Police determines might interfere with an investigation or otherwise harm a child or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the missing child or missing and endangered child: *Provided*, That confidential information, which is not believed to jeopardize an investigation, must be shared with the custodian when the legal custodian is the Department of Human Services.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of 11 members who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible,

providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway, or exploitation of children or locating missing or missing and endangered children;

(2) The Secretary of the Department of Human Services or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the Division of Administrative Services or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with

preventing the abduction, runaway, or exploitation of children or locating missing children or missing and endangered children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall meet semiannually at the call of the chair. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to §6-9A-1 *et seq.* of this code.

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(f) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(g) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(h) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and the Legislature on or before December 15 of each year.

§49-6-116. Establish a missing foster child locator unit program.

(a) The Secretary of the West Virginia Department of Human Services shall establish a Missing Foster Child Locator Unit within the department with a minimum staffing of a northern-based

caseworker, a southern-based caseworker, and an identified worker located in the Centralized Intake Unit.

(b) The duties of the Missing Foster Child Locator Unit shall include, but are not limited to, the following:

(1) Receiving reports of missing foster children;

(2) Assisting law enforcement in locating missing foster children who have been reported missing; and

(3) Interviewing missing foster children and completing trafficking screening once the child is located.

(c) For this section, "missing foster child" means missing child or missing and endangered child, as defined in §49-6-103 of this code, who is a foster child at the time he or she was reported missing.

(d) Beginning in July 1, 2021, and each year thereafter, the Secretary of the Department of Human Services shall provide a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

(e) The secretary shall implement and administer this program at least until December 31, 2022. The secretary may administer this program after such date.

ARTICLE 7. INTERSTATE COOPERATION.

§49-7-102. Definitions; implementation.

(a) Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, section one hundred one, article two of this chapter may be invoked.

(b) The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Human Services

and the agency shall receive and act with reference to notices required by Article III.

(c) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the Department of Human Services.

(d) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. An agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof is not binding unless it has the approval in writing of the Auditor in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(e) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections one hundred eight and one hundred eleven, article two of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

(f) Section one hundred nine, article two of this chapter does not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

(g) Any court having jurisdiction to place delinquent children may place a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

(h) As used in Article VII of the interstate compact on the placement of children, the term "executive head" means the

Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of that Article VII.

§49-7-201. Interstate adoption assistance compact; findings and purpose.

(a) The Legislature finds that:

(1) Finding adoptive families for children, for whom state assistance is desirable pursuant to section one hundred twelve, article four, of this chapter and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

(b) The purposes of sections two hundred one through two hundred four of this article are to:

(1) Authorize the Department of Human Services to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Human Services; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments.

§49-7-202. Interstate adoption assistance compacts authorized; definitions.

(a) The Department of Human Services is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections two hundred one through two hundred four of this article. When so entered into, and for so long as it shall remain in force, the compact shall have the force and effect of law.

(b) For the purposes of sections two hundred one through two hundred four of this article, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of or administered by the United States.

(c) For the purposes of sections two hundred one through two hundred four of this article, the term "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(d) For the purposes of sections two hundred one through two hundred four of this article, the term "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

§49-7-204. Medical assistance for children with special needs; rule-making; penalties.

(a) A child with special needs resident in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing in the Department of Human Services of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department of Human Services the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) The Department of Human Services shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of the holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(c) The Department of Human Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department of

Human Services for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there may be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Human Services shall propose rules in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate the requirements and purposes of this section. The additional coverages and benefit amounts provided pursuant to this section shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(d) Any person who submits a claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim of statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or incarcerated in a correctional facility not more than two years, or both fined and incarcerated.

(e) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

§49-8-1. Legislative findings; statement of legislative purpose.

(a) In certain circumstances where a parent, or legal custodian of a child is temporarily unable to care for the child due to a crisis or other circumstances, a less intrusive the Legislature finds that

alternative to guardianship or the Department of Human Services taking custody of the child should be available. In such circumstances, a parent, or legal custodian may benefit from the assistance of charitable organizations in their community that assist families by providing safe, temporary care for children and support for families during difficult times.

(b) Accordingly, the Legislature finds that a parent, or legal guardian shall have the right to provide for the temporary care of their child with the assistance of qualified charitable organizations as outlined in this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-21. Budget of the family court.

The budget for the payment of the salaries and benefits of the family court judges and clerical and secretarial assistants shall be included in the appropriation for the Supreme Court of Appeals. The family court administration fund, heretofore created as the family law master administration fund, is continued as a special account in the state Treasury. The fund shall operate as a special fund administered by the State Auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of family courts. All agencies or entities receiving federal matching funds for the services of family court judges and their staff, including, but not limited to, the commissioner of the Bureau for Child Support enforcement and the Secretary of the Department of Human Services, shall enter into an agreement with the administrative office of the Supreme Court of Appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family court judges and the program staff shall be paid into the family court administration fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.

CHAPTER 53. EXTRAORDINARY REMEDIES.**ARTICLE 8. PERSONAL SAFETY ORDERS.****§53-8-17. Sealing of records.**

(a) *Definitions.* —

(1) In this section the following words have the meanings indicated.

(2) "Court record" means an official record of a court about a proceeding that the clerk of a court or other court personnel keeps. "Court record" includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order and a judgment.

(3) "Seal" means to remove information from public inspection in accordance with this section.

(4) "Sealing" means:

(A) With respect to a record kept in a courthouse, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access;

(B) With respect to electronic information about a proceeding on the website maintained by the magistrate court, circuit court or the Supreme Court of Appeals, removing the information from the public website; and

(C) With respect to a record maintained by any law-enforcement agency, by removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access.

(b) *Written request.* — Either party to a petition filed pursuant to this article may file a written request with the clerk to seal all court records relating to the proceeding.

(c) *Timing.* — A request for sealing under this section may not be filed within two years after the entry of a final order, or the denial or dismissal of the petition.

(d) *Notice, hearing and findings.* —

(1) On the filing of a request for sealing under this section, the court shall schedule a hearing on the request.

(2) The court shall give notice of the hearing to the parties.

(3) After the hearing, the court shall order the sealing of all court records relating to the proceeding if the court finds:

(A) Good cause to grant the request. In determining whether there is good cause to grant the request to seal court records, the court shall balance the privacy and potential danger of adverse consequences to the parties against the potential risk of future harm and danger to the petitioner and the community; and

(B) That none of the following are pending at the time of the hearing:

(I) A temporary personal safety order or protective order issued against the respondent in a proceeding between the petitioner and the respondent; or

(ii) A criminal charge against the respondent arising from an alleged act described in subsection (a) section four of this article in which the petitioner is the victim.

(e) *Access to a sealed record.* —

(1) This section does not preclude the following persons from accessing a sealed record for a legitimate reason:

(A) A law-enforcement officer;

(B) An attorney who represents or has represented the petitioner or the respondent in a proceeding;

(C) A prosecuting attorney; or

(D) An employee of the Department of Human Services and the Department of Health.

(2) (A) A person not listed in subdivision (1) of this subsection may subpoena or file a motion for access to a record sealed under this section.

(B) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the sealed record under the terms and conditions that the court determines.

(C) In ruling on a motion under this subdivision, the court shall balance the person's need for access to the record with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.

(f) *Compliance with order.* — Within sixty days after entry of an order under subdivision (3), subsection (d) of this section, each custodian of court records that are subject to the order of sealing shall advise in writing the court and the parties of compliance with the order.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.

(a) In any action brought under this article for injury to or death of a patient as a result of health care services or assistance rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility designated by the Office of Emergency Medical Services as a trauma center, including health care services or assistance rendered in good faith by a licensed emergency medical services authority or agency, certified emergency medical service personnel or an employee of a licensed emergency medical services authority or agency, the total amount

of civil damages recoverable may not exceed \$500,000, for each occurrence, exclusive of interest computed from the date of judgment, and regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(b) On January 1, 2016, and in each year thereafter, the limitation on the total amount of civil damages contained in subsection (a) of this section shall increase to account for inflation as determined by the Consumer Price Index published by the United States Department of Labor: *Provided*, That increases on the limitation of damages shall not exceed one hundred fifty percent of the amounts specified in said subsection.

(c) Beginning July 1, 2016, a plaintiff who, as a result of an injury suffered prior to or after said date, suffers or has suffered economic damages, as determined by the trier of fact or the agreement of the parties, in excess of the limitation of liability in section (a) of this section and for whom recovery from the Patient Injury Compensation Fund is precluded pursuant to section one, article twelve-d, chapter twenty-nine of this code may recover additional economic damages of up to \$1 million. This amount is not subject to the adjustment for inflation set forth in subsection (b) of this section.

(d) The limitation of liability in subsection (a) of this section also applies to any act or omission of a health care provider in rendering continued care or assistance in the event that surgery is required as a result of the emergency condition within a reasonable time after the patient's condition is stabilized.

(e) The limitation on liability provided under subsection (a) of this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient's condition is stabilized and the patient is capable of receiving medical treatment as a nonemergency patient; or

(2) Is unrelated to the original emergency condition.

(f) In the event that: (1) A physician provides follow-up care to a patient to whom the physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical condition arises during the course of the follow-up care that is directly related to the original emergency condition for which care or assistance was rendered pursuant to said subsection, there is rebuttable presumption that the medical condition was the result of the original emergency condition and that the limitation on liability provided by said subsection applies with respect to that medical condition.

(g) There is a rebuttable presumption that a medical condition which arises in the course of follow-up care provided by the designated trauma center health care provider who rendered good faith care or assistance for the original emergency condition is directly related to the original emergency condition where the follow-up care is provided within a reasonable time after the patient's admission to the designated trauma center.

(h) The limitation on liability provided under subsection (a) of this section does not apply where health care or assistance for the emergency condition is rendered:

(1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

(2) In clear violation of established written protocols for triage and emergency health care procedures developed by the Office of Emergency Medical Services in accordance with subsection (e) of this section. In the event that the Office of Emergency Medical Services has not developed a written triage or emergency medical protocol by the effective date of this section, the limitation on liability provided under subsection (a) of this section does not apply where health care or assistance is rendered under this section in violation of nationally recognized standards for triage and emergency health care procedures.

(i) The Office of Emergency Medical Services shall, prior to the effective date of this section, develop a written protocol specifying recognized and accepted standards for triage and

emergency health care procedures for treatment of emergency conditions necessitating admission of the patient to a designated trauma center.

(j) In its discretion, the Office of Emergency Medical Services may grant provisional trauma center status for a period of up to one year to a health care facility applying for designated trauma center status. A facility given provisional trauma center status is eligible for the limitation on liability provided in subsection (i) of this section. If, at the end of the provisional period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility is no longer eligible for the limitation on liability provided in subsection (a) of this section.

(k) The Commissioner of the Bureau for Public Health may grant an applicant for designated trauma center status a one-time only extension of provisional trauma center status, upon submission by the facility of a written request for extension, accompanied by a detailed explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the end of the six-month period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility no longer has the protection of the limitation on liability provided in subsection (a) of this section.

(l) If the Office of Emergency Medical Services determines that a health care facility no longer meets the requirements for a designated trauma center, it shall revoke the designation, at which time the limitation on liability established by subsection (a) of this section ceases to apply to that health care facility for services or treatment rendered thereafter.

(m) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this section, governing the criteria for designation of a facility as a trauma center or provisional trauma center and implementation of a statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the Department of Health to file, on or before July 1, 2003, emergency rules specifying the criteria for designation of a facility as a trauma

center or provisional trauma center in accordance with nationally accepted and recognized standards and governing the implementation of a statewide trauma/emergency care system. The rules governing the statewide trauma/emergency care system shall include, but not be limited to:

(1) System design, organizational structure and operation, including integration with the existing emergency medical services system;

(2) Regulation of facility designation, categorization and credentialing, including the establishment and collection of reasonable fees for designation; and

(3) System accountability, including medical review and audit to assure system quality. Any medical review committees established to assure system quality shall include all levels of care, including emergency medical service providers, and both the review committees and the providers shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

ARTICLE 19. COVID-19 JOBS PROTECTION ACT.

§55-19-3. Definitions.

For the purposes of this article:

(1) "Arising from COVID-19" means any act from which loss, damage, physical injury, or death is caused by a natural, direct, and uninterrupted consequence of the actual, alleged, or possible exposure to, or contraction of, COVID-19, including services, treatment, or other actions in response to COVID-19, and without which such loss, damage, physical injury, or death would not have occurred, including, but not limited to:

(A) Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;

(B) Testing;

(C) Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information;

(D) Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;

(E) Closing or partially closing to prevent or minimize the spread of COVID-19;

(F) Delaying or modifying the schedule or performance of any medical procedure;

(G) Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;

(H) Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; or

(I) Actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

(2) "COVID-19" and "coronavirus" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions associated with the disease.

(3) "COVID-19 Care" means services provided by a health care facility or health care provider, regardless of location and whether or not those services were provided in-person or through telehealth or telemedicine, that relate to the testing for, diagnosis, prevention, or treatment of COVID-19, or the assessment, treatment, or care of an individual with a confirmed or suspected case of COVID-19.

(4) "COVID-19 emergency" means the State of Emergency declared by the Governor of the State of West Virginia by

proclamation on March 16, 2020, and any subsequent orders or amendments thereto.

(5) "Essential business" means a person or entity that is:

(A) An essential business or operation as specified by Executive Order No. 9-20 on March 23, 2020, and any subsequent orders or amendments thereto; or

(B) Within an essential critical infrastructure sector as defined by the United States Department of Homeland Security.

(6) "First responder" means a person who performs one or more "emergency services" as that term is defined in §15-5-2 of this code. "First responder" also includes any other person authorized by executive order who will be deployed in response to the COVID-19 pandemic.

(7) "Health care" means any act, service, or treatment as defined by §55-7B-2 of this code.

(8) "Health care facility" means a facility as defined by §55-7B-2 of this code and any other facility authorized to provide health care or vaccinations in response to the COVID-19 emergency, including, but not limited to, a personal attendant agency.

(9) "Health care provider" means a person, partnership, corporation, professional limited liability company, health care facility, entity, or institution as defined by §55-7B-2 of this code, whether paid or unpaid, including persons engaged in telemedicine or telehealth; and any person authorized to provide health care in response to the COVID-19 emergency, including, but not limited to personal attendants and the employer, employees or agents of a health care provider who provide, arrange for, and assist with the delivery of health care, including those whose licensing requirements were modified through executive order.

(10) "Impacted care" means care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider that impacted the health care facility or health care provider's response to, or as a result of, COVID-19 or the

COVID-19 emergency: *Provided*, That this provision does not prohibit claims that may otherwise be brought pursuant to §55-7B-1 *et seq.* of this code so long as such claims for loss, damage, physical injury, or death are unrelated to COVID-19 or the COVID-19 emergency and the care provided. If the issue of impacted care is raised by a defendant under §55-19-4 of this code, the circuit court shall, upon motion by the defendant, stay the proceedings, including any discovery proceedings, and, as soon as practicable, hold a hearing to determine whether the care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider was related to COVID-19 or the COVID-19 emergency. If the circuit court determines that the care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider was related to COVID-19 or the COVID-19 emergency and the care provided, then the cause of action shall be dismissed under §55-19-4 of this code.

(11) "Person" means an individual, partnership, corporation, association, state, county, or local governmental entity, or other entity, including, but not limited to, a school, a college or university, an institution of higher education, religious organization, or nonprofit charitable organization. "Person" includes an employee, agent, or independent contractor of the person, regardless of whether the individual is a paid or an unpaid volunteer.

(12) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, or other equipment designed to protect the wearer or other persons from the spread of infection or illness.

(13) "Physical injury" means actual bodily harm, sickness, or disease.

(14) "Public health guidance" means written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention, Occupational Safety & Health Administration of the United States Department of Labor, Office of the Governor, West

Virginia Department of Health, or any other state, federal, county, or local government agency.

(15) "Qualified product" means personal protective equipment used to protect the wearer from COVID-19 or prevent the spread of COVID-19; medical devices, equipment, and supplies used to treat COVID-19 including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of the product's normal use to treat COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19 including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19; and components of qualified products.

(16) "Volunteer" means any person or entity that makes a facility, product, or service available to support a state, county, or local response to COVID-19.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

(a)(1) The information required by this article to be kept by the Board of Pharmacy is confidential and not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for

use in post-mortem examinations, duly authorized agents of the Office of Health Facility Licensure and Certification for use in certification, licensure, and regulation of health facilities, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III, IV, and V controlled substances, prescribing practitioners and pharmacists, a dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers, and residents enrolled in a degree program at the school where he or she serves as dean, a physician reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses, or physician assistants in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information, and persons with an enforceable court order or regulatory agency administrative subpoena. All law-enforcement personnel who have access to the Controlled Substances Monitoring Program Database shall be granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the Board of Pharmacy. All information released by the Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe or dispense controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient: *Provided*, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in §60A-9-5(b) of this code is authorized to query the database to comply with §60A-9-5(b) of this code.

(2) Subject to the provisions of §60A-9-5(a)(1) of this code, the Board of Pharmacy shall also review the West Virginia Controlled Substances Monitoring Program Database and issue reports that

identify abnormal or unusual practices of patients and practitioners with prescriptive authority who exceed parameters as determined by the advisory committee established in this section. The Board of Pharmacy shall communicate with practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the advisory committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly, or statistical purposes, and may be shared with the West Virginia Department of Health for those purposes, as long as the identities of persons or entities and any personally identifiable information, including protected health information, contained therein shall be redacted, scrubbed, or otherwise irreversibly destroyed in a manner that will preserve the confidential nature of the information. No individual or entity required to report under §60A-9-4 of this code may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article.

(3) The Board of Pharmacy shall establish an advisory committee to develop, implement, and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients and practitioners with prescriptive authority in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine; a dentist licensed by the West Virginia Board of Dental Examiners; a physician licensed by the West Virginia Board of Osteopathic Medicine; a licensed physician certified by the American Board of Pain Medicine; a licensed physician board certified in medical oncology recommended by the West Virginia State Medical Association; a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care; a pharmacist licensed by the West Virginia Board of Pharmacy; a licensed

physician member of the West Virginia Academy of Family Physicians; an expert in drug diversion; and such other members as determined by the Board of Pharmacy.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with §60A-9-5(a)(2) of this code.

(C) Make recommendations for training, research, and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists, and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring Program set forth in §60A-9-3 of this code, and report on the feasibility of requiring real-time reporting.

(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program Database established in this article.

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual

usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation, or discipline resulting from the findings of the review committee within 30 days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy. The review committee shall also review notices provided by the chief medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as provided in this article and is not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory committee, after consultation with the licensing boards set forth in §60A-9-5(d)(4) of this code and in accordance with the provisions of §29A-3-1 *et seq.* of this code. The legislative rules must include, but shall not be limited to, the following matters:

(1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing patterns;

(2) Processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners, and dispensers;

(3) Establishing the information to be contained in reports and the process by which the reports will be generated and disseminated;

(4) Dissemination of these reports at least quarterly to:

(A) The West Virginia Board of Medicine codified in §30-3-1 *et seq.* of this code;

(B) The West Virginia Board of Osteopathic Medicine codified in §30-14-1 *et seq.* of this code;

(C) The West Virginia Board of Examiners for Registered Professional Nurses codified in §30-7-1 *et seq.* of this code;

(D) The West Virginia Board of Dentistry codified in §30-4-1 *et seq.* of this code; and

(E) The West Virginia Board of Optometry codified in §30-8-1 *et seq.* of this code; and

(5) Setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted, and maintained by the review committee is not disclosed except as provided in this section.

(e) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program Database pursuant to

this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database.

(f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program Database in prescribing or dispensing or refusing or declining to prescribe or dispense a Schedule II, III, IV, or V controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.

(g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this code, based on information obtained and reviewed from the Controlled Substances Monitoring Program Database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative, or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

(h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program Database except as provided in §60A-9-5 of this code.

(i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substances Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed legislation no later than January 1 of each year.

§60A-9-8. Creation of Fight Substance Abuse Fund.

There is created a special revenue account in the state treasury, designated the Fight Substance Abuse Fund, which shall be an interest-bearing account. The fund shall consist of all moneys received from whatever source to further the purpose of this article.

The fund shall be administered by the West Virginia Bureau for Public Health to provide funding for substance abuse prevention, treatment, treatment coordination, recovery and education. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest earnings on these investments shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article. There is created within the Office of the Secretary of the Department of Health and the Department of Human Services the Grant Writer Pilot Project. The Secretary shall hire a person as a grant writer, who shall be placed within the Office of the Secretary. This person shall identify, application and monitoring policies and procedures to increase grant applications and improve management and oversight of grants. The grant writer shall focus his or her abilities on obtaining grants concerning the prevention and treatment of substance abuse. The grant writer is not eligible for civil service. The department shall report to the Legislative Oversight Commission on Health and Human Resources Accountability on the implementation of the new grant policy; the number of grants obtained; and an analysis examining the costs associated with obtaining a grant verses the federal money received.

ARTICLE 11. CLANDESTINE DRUG LABORATORY REMEDATION ACT.

§60A-11-1. Legislative findings and purpose.

(a) *Findings.* — The Legislature finds that some residential and business properties are being used for the consumption, production and manufacture of illegal drugs resulting in contamination with hazardous chemical residues. These illegal laboratories present an immediate and ongoing danger to public health and safety. Innocent members of the public may be harmed when they are exposed to the chemical residues if the property is not decontaminated prior to subsequent rental, sale or use of the property.

(b) *Purpose.* -- The purpose of this article is to protect the public health, safety and welfare by designating the Department of Health as the state agency to set forth standards for the remediation of clandestine drug laboratories.

§60A-11-2. Definitions.

In this article:

(a) "Clandestine drug laboratory" means the area or areas where controlled substances, or their immediate precursors, have been, or were attempted to be, manufactured, processed, cooked, disposed of or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

(b) "Department" means the West Virginia Department of Health.

(c) "Controlled substance" means the same as that term is defined in section one hundred one, article one of this chapter and article ten, section three of this chapter a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(d) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the state Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(e) "Law-enforcement agency" means the West Virginia State Police or any other policing agency of the state or of any political subdivision of the state.

(f) "Remediation" means the act of rendering safe and usable for the purposes for which it is intended residential property, as defined in subsection (g) of this section, or any structure

appurtenant to the residential property, or other structure on the residential property that has been used for the manufacture or consumption of methamphetamines or other illicit drug products.

(g) "Residential property" means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including, but not limited to, a storage facility, a mobile home, manufactured home or recreational vehicle, hotel or motel that may be sold, leased or rented for any length of time.

(h) "Residential property owner" means the person holding record title to residential property as that term is defined in subsection (f) of this section.

§60A-11-3. Remediation of clandestine drug laboratories; promulgation of legislative rules.

(a) The Department of Health shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to address, at a minimum, the following issues:

(1) Establishment of scientific guidelines and numeric decontamination levels for the remediation of clandestine drug laboratories;

(2) Establishment of a certification program for persons or contractors who engage in the business of clandestine drug lab remediation;

(3) Establishment of a licensure procedure whereby individuals and businesses certified to do remediation of clandestine drug laboratories obtain a license from the Department of Health to do such work;

(4) Requiring licensed contractors to notify the Department of Health prior to beginning any remediation project;

(5) Setting forth certification procedures for the department to certify that the completed remediation of the residential property

fully meets the scientific guidelines and numeric decontamination levels set forth in the legislative rule; and

(6) Establishing requirements for property owners, sellers and landlords to disclose the existence of any former clandestine laboratory site or activity to any potential occupant of the residential property.

(b) Fees may be set by the legislative rule to be charged to persons or contractors engaged in the business of clandestine drug laboratory remediation for certification, licensing and notification as required in this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Kidnapping; penalty.

(a) Any person who unlawfully takes custody of, conceals, confines, transports, or restrains another person against his or her will by means of force, threat of force, duress, fraud, deceit, inveiglement, misrepresentation, or enticement with the intent to:

- (1) Hold another person for ransom, reward, or concession;
- (2) Inflict bodily injury;
- (3) Terrorize the victim or another person; or

(4) Use another person as a shield or hostage, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment by the Division of Corrections and Rehabilitation for life, and, notwithstanding the provisions of §62-12-1 *et seq.* of this code, is not eligible for parole.

(b) The following exceptions apply to the penalty contained in subsection (a) of this section:

(1) A jury may, in their discretion, recommend mercy, and if the recommendation is added to their verdict, the person is eligible

for parole in accordance with the provisions of §62-12-1 *et seq.* of this code;

(2) If the person pleads guilty, the court may, in its discretion, provide that the person is eligible for parole in accordance with the provisions of §62-12-1 *et seq.* of this code and, if the court so provides, the person is eligible for parole in accordance with the provisions of said article, in the same manner and with like effect as if the person had been found guilty by the verdict of a jury and the jury had recommended mercy;

(3) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but after ransom, money, or other thing, or any concession or advantage of any sort has been paid or yielded, the punishment shall be imprisonment by the Division of Corrections and Rehabilitation for a definite term of years not less than 20 nor more than 50; or

(4) In all cases where the person against whom the offense is committed is returned, or is permitted to return, alive, without bodily harm having been inflicted upon him or her, but without ransom, money, or other thing, or any concession or advantage of any sort having been paid or yielded, the punishment shall be imprisoned by the Division of Corrections and Rehabilitation for a definite term of years not less than 10 nor more than 30.

(c) For purposes of this section, "to use another as a hostage" means to seize or detain and threaten to kill or injure another in order to compel a third person or a governmental organization to do, or abstain from doing, any legal act as an explicit or implicit condition for the release of the person detained.

(d) Notwithstanding any other provision of this section, if a violation of this section is committed by a family member of a minor abducted or held hostage and he or she is not motivated by monetary purposes, but rather intends to conceal, take, remove the child, or refuse to return the child to his or her lawful guardian in the belief, mistaken or not, that it is in the child's interest to do so, he or she is guilty of a felony and, upon conviction thereof, shall

be imprisoned in a correctional facility for not less than one nor more than five years or fined not more than \$1,000, or both imprisoned and fined.

(e) Notwithstanding any provision of this code to the contrary, where a law-enforcement agency of this state or a political subdivision thereof receives a complaint that a violation of the provisions of this section has occurred, the receiving law-enforcement agency shall notify any other law-enforcement agency with jurisdiction over the offense, including, but not limited to, the State Police and each agency so notified, shall cooperate in the investigation immediately.

(f) It is a defense to a violation of subsection (d) of this section, that the accused's action was necessary to preserve the welfare of the minor child and the accused promptly reported his or her actions to a person with lawful custody of the minor, to law enforcement, or to the Child Protective Services Division of the Department of Human Services.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives, or agrees to give to another person money, property, service, or other thing of value in consideration for the recipient's locating, providing, or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(b) Any person who knowingly receives, accepts, or offers to accept money, property, service, or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in

the state correctional facility for not less than one year nor more than 10 years or, in the discretion of the court, be confined in jail not more than one year and fined not less than \$2,000 nor more than \$10,000.

(d) A child whose parent, guardian, or custodian has sold or attempted to sell said child in violation of the provisions of §48-22-1 *et seq.* of this code may be deemed an abused child as defined by §49-1-201 of this code. The court may place such a child in the custody of the Department of Human Services or with another responsible person as dictated by the best interests of the child.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the Department of Human Services or any licensed or duly authorized adoption or child-placing agency;

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth, and adoption proceedings;

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother; or

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement, or placement of a minor child for adoption.

(f) At the final hearing on the adoption as provided in §48-22-1 *et seq.* of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.

§61-2-29b. Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

(a) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of less than \$1,000 is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not more than \$1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of \$1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 and imprisoned in a state correctional facility not less than two nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(d) In determining the value of the money, goods, property, or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where the money, goods, property, or services were fraudulently obtained as part of a common scheme or plan.

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by §61-2-29 of this code;

(2) "Elderly person" means a person who is 65 years or older;

(3) "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person, or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person, or incapacitated adult with the management of his or her money or other things of value; and

(4) "Protected person" means any person who is defined as a "protected person" in §44A-1-4 of this code and who is subject to the protections of §44A-1-1 *et seq.* or §44C-1-1 *et seq.* of this code.

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee, or attorney for, or holding power of attorney for, an elderly person, protected person, or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

(j) Any person who willfully violates a material term of an order entered pursuant to §55-7J-1 *et seq.* of this code is guilty of a misdemeanor and, upon conviction, shall:

(1) For the first offense, be fined not more than \$1,000 or confined in jail not more than 90 days, or both fined and confined; and

(2) For a second or subsequent offense, be fined not more than \$2,500 or confined in jail not more than one year, or both fined and confined.

**ARTICLE 7A. STATE MENTAL HEALTH REGISTRY;
REPORTING OF PERSONS PROSCRIBED FROM
FIREARM POSSESSION DUE TO MENTAL
CONDITION TO THE NATIONAL INSTANT CRIMINAL
BACKGROUND CHECK SYSTEM; LEGISLATIVE
FINDINGS; DEFINITIONS; REPORTING
REQUIREMENTS; REINSTATEMENT OF RIGHTS
PROCEDURES.**

**§61-7A-3. Persons whose names are to be supplied to the
central state mental health registry.**

(a) The Superintendent of the West Virginia State Police and the Secretary of the Department of Human Services, or their designees, shall cooperate with the circuit clerk of each county and Administrator of the West Virginia Supreme Court of Appeals in compiling and maintaining a database containing the names and identifying information of persons who have been adjudicated to be mentally defective or who have been committed to a mental institution. The registry shall be maintained by the Administrator of the Supreme Court of Appeals or the superintendent of the West Virginia State Police.

(b) The name of any person who has been adjudicated to be mentally defective or who has been committed to a mental institution shall be provided to the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central state mental health registry. Upon receipt of the information being received by the central state mental health registry it may be transmitted to the National Instant Criminal Background Check System and to county sheriffs;

(c) The Secretary of Department of Human Services and the circuit clerk of each county shall, as soon as practicable after the effective date of this article, supply to the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police for inclusion in the central state mental health registry the name and identifying information required by the provisions of subsection (d) of this section of all persons covered

by the provisions of this article and shall on an ongoing basis continue to provide such information as it is developed;

(d) The central state mental health registry shall contain the name, address at the time of commitment or adjudication, date of birth, date of commitment or adjudication of all persons who have been adjudicated to be mentally defective or who have been committed to a mental institution.

(e) The central state mental health registry shall provide only such information about a person on the registry to county sheriffs and the National Instant Criminal Background Check System as is necessary to identify registrants; and

(f) On or before January 1, 2010, the central state mental health registry shall contain the name, address at the time of commitment or adjudication, date of birth, date of commitment or adjudication and any other identifying characteristics of all persons who have been adjudicated to be mentally defective or who have been committed to a mental institution . Under no circumstances shall the registry contain information relating to any diagnosis or treatment provided.

(g) To the extent the central state mental health registry contains the names of any children under fourteen years of age on the effective date of this article, the Administrator of the West Virginia Supreme Court of Appeals shall take whatever steps are necessary to remove those individuals from the central state mental health registry.

§61-7A-4. Confidentiality; limits on use of registry information.

(a) Notwithstanding any provision of this code to the contrary, the Superintendent of the State Police, the Secretary of the Department of Human Services, the circuit clerks, and the Administrator of the Supreme Court of Appeals may provide notice to the central state mental health registry and the National Instant Criminal Background Check System established pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18

U. S. C. §922, that a person: (i) Has been involuntarily committed to a mental institution ; (ii) has been adjudicated as a mental defective ; or (iii) has regained the ability to possess a firearm by order of a circuit court in a proceeding under section five of this article.

(b) The information contained in the central state mental health registry is to be used solely for the purpose of records checks related to firearms purchases and for eligibility for a state license or permit to possess or carry a concealed firearm.

(c) Whenever a person's name and other identifying information has been added to the central state mental health registry, a review of the state concealed handgun registry shall be undertaken and if such review reveals that the person possesses a current concealed handgun license, the sheriff of the county issuing the concealed handgun license shall be informed of the person's change in status.

ARTICLE 8D. CHILD ABUSE.

***§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.**

(a) If any parent, guardian or custodian shall abuse a child and by such abuse cause such child bodily injury as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If any parent, guardian or custodian shall abuse a child and by such abuse cause said child serious bodily injury as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections not less than two nor more than ten years.

***NOTE:** This section was also amended by H. B. 5662 (Chapter 91), which passed subsequent to this Act.

(c) Any parent, guardian or custodian who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian or custodian who has not previously been convicted under this section, section four of this article or a law of another state or the federal government with the same essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in section one, article eight-b of this chapter, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.

(2) For a second offense under this subsection or for a person with one prior conviction under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than thirty days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both.

(e) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other

appropriate services, or any combination thereof, as determined by Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to article thirteen, chapter fifteen of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

(f) Nothing in this section shall preclude a parent, guardian or custodian from providing reasonable discipline to a child.

***§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.**

(a) If a parent, guardian or custodian neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in section one, article eight-b of this chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian or custodian neglects a child and by such neglect cause the child serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than ten years, or both.

(c) If a parent, guardian or custodian grossly neglects a child and by that gross neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, of the child then the parent, guardian or custodian is guilty of a felony and, upon conviction

***NOTE:** This section was also amended by H. B. 5662 (Chapter 91), which passed subsequent to this Act.

thereof, shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both.

(d)(1) If a parent, guardian or custodian who has not been previously convicted under this section, section three of this article or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in section one, article eight-b of this chapter, to the child, then the parent, guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.

(2) For a second offense under this subsection or for a person with one prior conviction under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than thirty days nor more than one year, or both.

(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian is due primarily to a lack of financial means on the part of such parent, guardian or custodian.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of article thirteen, chapter fifteen of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

(a) Notwithstanding any provisions of §61-11-26 of this code to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of §61-11-26 of this code and who: (1) Has a medically documented history of substance abuse and of successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health; or (2) graduates from a West Virginia Department of Education-approved job readiness adult training course, or both, if applicable, may petition the circuit court or circuit courts in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith as provided in §61-11-26 of this code as follows:

(1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is eligible for expungement pursuant to §61-11-26(a)(1) of this code upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved job readiness adult training course, or both, if applicable, but after the completion of any

sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) Any person who has been convicted of multiple misdemeanors that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(1) of this code until one year after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(2) of this code until three years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(b) In addition to the required content of a petition for expungement as required by §61-11-26(d) of this code, any person petitioning for an expungement pursuant to the provisions of this section shall also include the following, if applicable:

(1) Documentation of compliance with an approved treatment or recovery and counseling program; and

(2) Certificate of graduation from an approved job readiness adult training course.

(c) The fee of \$100 to the records division of the West Virginia State Police for the cost of processing the order of expungement required in §61-11-26(n) of this code is waived for petitions of expungement filed pursuant to the provisions of this section.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-6. State guidelines for fair treatment of crime victims and witnesses in the criminal justice system.

(a) No later than July 1, 1984, the Attorney General shall promulgate rules and regulations in accordance with the provisions

of chapter twenty-nine-a of this code, establishing guidelines for law-enforcement agencies and prosecuting attorneys' offices consistent with the purposes of this article. The Attorney General shall seek the advice of the West Virginia State Police and Department of Human Services and the Department of Health in preparing such rules and regulations. In preparing such rules and regulations, the following objectives shall be considered:

(1) The arresting law-enforcement agency should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following:

(A) Availability of crime victim compensation (where applicable);

(B) Community-based victim treatment programs;

(C) The role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

(D) Stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) The prosecuting attorney or his or her assistant should ensure that victims and witnesses receive information on steps that law-enforcement officers and prosecuting attorneys can take to protect victims and witnesses from intimidation.

(3) All victims and witnesses who have been scheduled to attend criminal justice proceedings should be notified by the prosecuting attorneys' offices as soon as possible of any scheduling changes which will affect their appearances.

(4) Victims, witnesses, one member of the immediate family and any adult household member residing with the victim should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of judicial proceedings relating to their case, from the prosecuting attorney's office, including:

(A) The arrest of an accused;

(B) The initial appearance of an accused before a judicial officer;

(C) The release of the accused pending judicial proceedings; and

(D) Proceedings in the prosecution of the accused including, but not limited to, the entry of a plea of guilty, trial, sentencing and, where a term of imprisonment is imposed, the release of the accused from such imprisonment.

(5) The victim of a serious crime, or in the case of a minor child or a homicide the family of the victim, shall be consulted by the prosecuting attorney in order to obtain the views of the victim or family about the disposition of any criminal case brought as a result of such crime, including the views of the victim or family about:

(A) Dismissal;

(B) Release of the accused pending judicial proceedings;

(C) Plea negotiations; and

(D) Pretrial diversion program.

(6) Victims and other prosecution witnesses should be provided a waiting area that is separate from all other witnesses prior to court appearances, if feasible.

(7) Law-enforcement agencies should promptly return victims' property held for evidentiary purposes unless there is a compelling law-enforcement reason for retaining it.

(8) A victim or witness who so requests should be assisted by law-enforcement agencies and prosecuting attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law-enforcement agencies or attorneys for the government, is subjected to serious financial strain

should be assisted by the appropriate state agencies in dealing with creditors.

(b) Nothing in this section shall be construed as creating a cause of action against the State of West Virginia or any of its political subdivisions.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-12. Facilities and services available to medical examiners.

Pursuant to rules promulgated by the Secretary of the Department of Health, the facilities of the Office of the Chief Medical Examiner and its laboratory, and the services of its professional staff, shall be made available to the county medical examiners and coroners in their investigations under the provisions of §61-12-8 of this code, and to the persons conducting autopsies under the provisions of §61-12-10 of this code.

ARTICLE 14. HUMAN TRAFFICKING.

§61-14-7. General provisions and other penalties.

(a) *Separate violations.* — For purposes of this article, each adult or minor victim constitutes a separate offense.

(b) *Aggravating circumstance.* —

(1) Notwithstanding any provision of this code to the contrary, if an individual is convicted of an offense under this article and the trier of fact makes a finding that the offense involved an aggravating circumstance, the individual shall not be eligible for parole before serving three years in a state correctional facility.

(2) For purposes of this subsection, "aggravating circumstance" means the individual recruited, enticed or obtained the victim of the offense from a shelter or facility that serves runaway youths, children in foster care, the homeless or victims of human trafficking, domestic violence or sexual assault.

(c) *Restitution.* —

(1) The court shall order a person convicted of an offense under this article to pay restitution to the victim of the offense.

(2) A judgment order for restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action in accordance with section four, article eleven-a of this chapter, including filing a lien against the person, firm or corporation against whom restitution is ordered.

(3) The court shall order restitution under subdivision (1) of this subsection even if the victim is unavailable to accept payment of restitution.

(4) If the victim does not claim restitution ordered under subdivision (1) of this subsection within five years of the entry of the order, the restitution shall be paid to the Crime Victims Compensation Fund created under section four, article two-a, chapter fourteen of this code.

(d) *Eligibility for Compensation Fund.* — Notwithstanding the definition of victim in section three, article two-a, chapter fourteen of this code, a victim of any offense under this article is a victim for all purposes of article two-a, chapter fourteen of this code: *Provided,* That for purposes of subsection (b), section fourteen, article two-a, chapter fourteen of this code, if otherwise qualified, a victim of any offense under this article may not be denied eligibility solely for the failure to report to law enforcement within the designated time frame.

(e) *Law Enforcement Notification.* — Should a law-enforcement officer encounter a child who reasonably appears to be a victim of an offense under this article, the officer shall notify the Department of Human Services. If available, the Department of Human Services may notify the Domestic Violence Program serving the area where the child is found.

(f) *Forfeiture; Debarment.* —

(1) The following are declared to be contraband and no person shall have a property interest in them:

(A) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this article; and

(B) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this article.

(2) In any action under this section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) Forfeiture actions under this section shall use the procedure set forth in article seven, chapter sixty-a of this code.

(4) Any person or business entity convicted of a violation of this article shall be debarred from state or local government contracts.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1D. WIRETAPPING AND ELECTRONIC SURVEILLANCE ACT.

§62-1D-2. Definitions.

As used in this article, unless the context in which used clearly requires otherwise, the following terms have the meanings indicated:

(a) "Aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(b) "Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, that is licensed by Bureau of Family Assistance for the care of children in any setting.

(c) "Communications common carrier" means any telegraph company or telephone company and any radio common carrier.

(d) "Contents" when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication.

(e) "Electronic, mechanical or other device" means any device or apparatus: (i) Which can be used to intercept a wire, oral or electronic communication; or (ii) the design of which renders it primarily useful for the surreptitious interception of any such communication. There is excepted from this definition:

(1) Any telephone or telegraph instrument, equipment or facility or any component thereof: (a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business or by an investigative or law-enforcement officer in the ordinary course of his or her duties; or

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal; or

(3) Any device used in a lawful consensual monitoring including, but not limited to, tape recorders, telephone induction coils, answering machines, body transmitters and pen registers.

(f) "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(g) "Designated judge" means a circuit court judge designated by the Chief Justice of the West Virginia Supreme Court of Appeals to hear and rule on applications for the interception of wire, oral or electronic communications.

(h) "Investigative or law-enforcement officer" means a member or members of the West Virginia State Police who is or are empowered by law to conduct investigations of or to make arrest for offenses enumerated in this chapter.

(i) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation. The term does not include:

(A) An electronic communication; or

(b) An oral communication uttered in any child care center where there are written notices posted informing persons that their oral communications are subject to being intercepted.

(j) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(k) "Person" means any person, individual, partnership, association, joint stock company, trust or corporation and includes any police officer, employee or agent of this state or of a political subdivision thereof.

(l) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of the connection in a switching station) furnished or operated by any person engaged in providing or operating the facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of the communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(m) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electro-magnetic, photoelectronic or photooptical system but does not include:

(1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

(2) Any wire or oral communication; or

(3) Any combination made through a tone-only paging device.

(n) "User" means any person or entity who or which uses an electronic communication service and is duly authorized by the provider of the service to engage in the use.

(o) "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communications.

(p) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(q) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(r) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life

imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor are eligible for probation, notwithstanding the provisions of §61-11-18 and §61-11-19 of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment, or brandishing of a firearm is not eligible for probation. Nothing in this section may apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm may not be applicable unless the fact is clearly stated and included in the indictment or presentment by which that person is charged and is either:

(A) Found by the court upon a plea of guilty or nolo contendere;

(B) Found by the jury, if the matter is tried before a jury, upon submitting to the jury a special interrogatory for that purpose; or

(C) Found by the court, if the matter is tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year 1981:

(A) Apply to all applicable offenses occurring on or after August 1 of that year;

(B) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(C) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state shall give notice in writing of its intent to seek that finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding is sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(D) May not apply with respect to cases not affected by the amendment and in those cases the prior provisions of this section shall apply and be construed without reference to the amendment.

Insofar as the amendments relate to mandatory sentences without probation, all matters requiring that sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means.

(e) Any person who has been found guilty of, or pleaded guilty to, a violation of §61-3C-14b, §61-8-12, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-5 of this code may only be eligible for probation after undergoing a physical, mental, and psychiatric or psychological study and diagnosis which shall include an ongoing treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: *Provided*, That nothing disclosed by the person during that study or diagnosis may be made available to any law-enforcement agency or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the probationer to do harm to any person, animal, institution, or property, in which case the information may be released only to those persons necessary for protection of the person, animal, institution, or property.

Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Human Services shall propose rules and emergency rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, §61-8D-5, §61-8D-6, §61-2-14, §61-8-12, and §61-8-13 of this code, or of a felony violation involving a minor of §61-8-6 or §61-8-7 of this code, or of a similar provision in another jurisdiction, shall register upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender send written notice to the State Police of the release of the offender. The notice shall include:

- (1) The full name of the person;
- (2) The address where the person shall reside;
- (3) The person's Social Security number;
- (4) A recent photograph of the person;
- (5) A brief description of the crime for which the person was convicted;
- (6) Fingerprints; and
- (7) For any person determined to be a sexually violent predator as defined in §15-12-2a of this code, the notice shall also include:
 - (i) Identifying factors, including physical characteristics;
 - (ii) A history of the offense; and

(iii) Documentation of any treatment received for the mental abnormality or personality disorder.

ARTICLE 15B. FAMILY DRUG TREATMENT COURT ACT.

§62-15B-1. Oversight and implementation of family drug treatment courts.

(a) The Supreme Court of Appeals of West Virginia may implement a Family Drug Treatment Court program.

(b) Family drug treatment courts are specialized court dockets within the existing structure of West Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of individuals with substance use disorder involved in a child abuse and neglect case pursuant to §49-4-601, *et. seq.*

(c) The Supreme Court of Appeals of West Virginia may:

(1) Provide oversight for the distribution of funds for family drug treatment courts;

(2) Provide technical assistance to family drug treatment courts;

(3) Provide training for judges who preside over family drug treatment courts;

(4) Provide training to the providers of administrative, case management, and treatment services to family drug treatment courts; and

(5) Monitor the completion of evaluations of the effectiveness and efficiency of family drug treatment courts in the state.

(d) A state family drug treatment court advisory committee shall be established to:

(1) Evaluate and recommend standards for the planning and implementation of family drug treatment courts;

(2) Assist in the evaluation of their effectiveness and efficiency; and

(3) Encourage and enhance cooperation among agencies that participate in their planning and implementation.

(e) The committee shall be chaired by the Chief Justice of the Supreme Court of Appeals of West Virginia or his or her designee and shall include a circuit court judge who presides over a family drug treatment court; the Director of the Office of Drug Control Policy or the executive assistant to the director; Cabinet Secretary of the Department of Health or his or her designee; Cabinet Secretary of the Department of Human Services or his or her designee; the commissioners or their designee of the following bureaus: the Bureau for Social Services; the Bureau for Public Health; and the Bureau for Behavioral Health; the Executive Director of the West Virginia Prosecuting Attorneys Institute or his or her designee; the Executive Director of the West Virginia Public Defender Services or his or her designee; and the Executive Director of West Virginia CASA Association or his or her designee.

(f) Each circuit selected to establish a family drug treatment court shall establish and maintain a local family drug treatment court advisory committee. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the family drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees:

- (1) The family drug treatment court judge;
- (2) The prosecuting attorney of the county;
- (3) The public defender or a member of the county bar who represents individuals in child abuse and neglect cases;
- (4) The Community Service Manager of the Bureau for Social Services;
- (5) A court appointed special advocate, as applicable; and
- (6) Any other individuals selected by the family drug treatment court advisory committee.

CHAPTER 150

(Com. Sub. for H. B. 4874 - By Delegates Summers and Tully)

[Passed March 1, 2024; in effect from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4, of the Code of West Virginia, 1931, as amended; and to repeal §61-12A-5 of said code, all relating to fatality and mortality review team; providing team members; providing timeframe for team have meetings; updating the authority of review team; removing the study of certain deaths; removing advisory boards; requiring certain reports; and eliminating required reporting and analysis.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12A. FATALITY AND MORTALITY REVIEW TEAM.

§61-12A-1. Fatality and Mortality Review Team.

(a) The Fatality and Mortality Review Team is continued under the Department of Health. The Fatality and Mortality Review Team is a multidisciplinary team created to oversee and coordinate the examination, review, and assessment of

The deaths resulting from suspected domestic violence; and

The deaths of all infants and all women who die during pregnancy, at the time of birth, or within one year of the birth of a child, and the deaths of children under 18 years of age;

(b) The Fatality and Mortality Review Team shall consist of the following members:

(1) The state health officer, who is to serve as the chairperson and who is responsible for calling and coordinating at least quarterly, or more often, if needed, meetings of the Fatality and Mortality Review Team;

(2) The Commissioner of the Bureau for Public Health or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) A prosecuting attorney, as appointed by the Prosecuting Attorneys Institute, who shall serve for a term of three years unless otherwise reappointed. A prosecuting attorney appointed to the team shall continue to serve until his or her term expires or until his or her successor has been appointed;

(5) A designee of the Chief Medical Examiner;

(6) A designee selected by the Chair of the Minority Health Institute at Marshall University that has an expertise in the causes of the disproportionate high mortality rates of minority births in West Virginia;

(7) A designee of the Perinatal Partnership;

(8) A licensed physician with training in obstetrics, appointed by the state health officer;

(9) A licensed physician with training in neonatology, appointed by the state health officer;

(10) A hospital-based nurse with experience in obstetrics, labor and delivery, post-partum, or maternity care, appointed by the state health officer;

(11) A licensed nurse or physician with training in domestic violence, appointed by the state health officer; and

(12) Any additional persons may be added on a case-by-case basis when expertise is needed, as determined by the chair. The

designee may change based upon the circumstances of each particular case.

(c) Each member shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

§61-12A-2. Responsibilities of the Fatality and Mortality Review Team.

(a) The Fatality and Mortality Review Team shall:

(A) Review and analyze the deaths resulting from suspected domestic violence, the deaths of all infants and all women who die during pregnancy, at the time of birth or within one year of the birth of a child, and the deaths of children under 18 years of age;

(B) Ascertain and document the trends, patterns, and risk factors; and

(C) Provide statistical information and analysis regarding the causes of certain fatalities; and

(D) Establish processes and protocols for the review and analysis of fatalities and mortalities of those who were not suffering from mortal diseases shortly before death;

(b) Actions the team may not take or engage in, including:

(A) Call witnesses or take testimony from individuals involved in the investigation of a fatality;

(B) Contact a family member of the deceased, unless there is a clear public health interest which is approved by a majority vote of the team;

(C) Enforce any public health standard or criminal law or otherwise participate in any legal proceeding; or

(D) Otherwise take any action which, in the determination of a prosecuting attorney or his or her assistants, impairs the ability of

the prosecuting attorney, his or her assistants or any law-enforcement officer to perform his or her statutory duties.

(c) The Fatality and Mortality Review Team shall submit an annual report to the Governor, the Office of the Inspector General, and to the Legislative Oversight Commission on Health and Human Resources Accountability concerning its activities. The report is due annually starting on December 1, 2024, and shall reflect the previous year's data. The report is to include statistical information and an epidemiological analysis concerning cases reviewed during the year, trends and patterns concerning these cases and the team's recommendations to reduce the number of fatalities and mortalities that occur in the state.

(d) The Fatality and Mortality Review Team may provide reporting to birth facilities, practitioners, and government entities to inform internal peer review activities of recommend changes to practices or policies. The information is confidential and shall be used only for peer review purposes.

§61-12A-3. Access to information; other agencies of government required to cooperate.

(a) Notwithstanding any other provision of this code to the contrary, the Fatality and Mortality Review Team may request information and records as necessary to carry out its responsibilities. Records and information that may be requested under this section include:

- (1) Medical, dental, and mental health records;
- (2) Substance abuse records to the extent allowed by federal law; and
- (3) Information and records maintained by any state, county, and local government agency, except as provided in §61-12A-2(b) of this code.

(b) State, county, and local government agencies shall provide the Fatality and Mortality Review Team with any information requested in writing.

§61-12A-4. Confidentiality.

(a) Proceedings, records, and opinions of the Fatality and Mortality Review Team are confidential and are not subject to discovery, subpoena, or introduction into evidence in any civil or criminal proceeding. This section does not limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another credible source and entirely independent of the proceedings of the team.

(b) Members of the Fatality and Mortality Review Team may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. This subsection does not prevent a member of the team from testifying to information obtained independently of the team which is public information.

(c) Proceedings, records, and opinions of the Fatality and Mortality Review Team are exempt from disclosure under the Freedom of Information Act as provided in §29B-1-1 *et seq.* of this code.

(d) Notwithstanding any other provisions to the contrary, the Fatality and Mortality Review Team may prepare a data compilation to be shared, on an annual basis or more often as needed, with the Centers for Disease Control and Prevention to study maternal mortality in an effort to reduce mortality rates. No individually identifiable records may be produced.

§61-12A-5. Required reporting and analysis.

[Repealed]

CHAPTER 151

(H. B. 4976 - By Delegate Jennings)

[Passed February 14, 2024; in effect ninety days from passage.]

[Approved by the Governor on February 29, 2024.]

AN ACT to amend and reenact §15A-13-1 of the Code of West Virginia, 1931, as amended, relating to requiring agencies and boards administered as a part of the Department of Homeland Security to display the contact information of the Inspector General on their websites and in their office spaces.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. OFFICE OF THE INSPECTOR GENERAL.

§15A-13-1. Office created; appointment of Inspector General.

(a) There is hereby created the Office of the Inspector General as a separate and independent operating agency within the department.

(b) The Office of the Inspector General shall be headed by the Inspector General.

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

(d) The term of the Inspector General is five years.

(e) At the end of a term, an Inspector General shall be eligible for reappointment by the Governor, subject to confirmation as required by the provisions of subsection (c) of this section. The Inspector General may continue to serve until a successor is appointed if he or she is not reappointed.

(f) If a vacancy occurs in the position, an interim Inspector General may be appointed as successor to serve until a successor is appointed.

(g) The Inspector General may be removed by the Governor during his or her term only for:

- (1) Malfeasance or gross misfeasance in office;
- (2) Persistent failure to perform the duties of the office; or
- (3) Conduct prejudicial to the proper administration of justice.

(h) The Inspector General shall be appointed without regard to political affiliation and shall be professionally qualified through experience or education in at least two of the following areas:

- (1) The practice of law;
- (2) Auditing;
- (3) Government operations;
- (4) Financial analysis;
- (5) Management analysis;
- (6) Public administration; or
- (7) Fraud investigation.

(i) The Inspector General shall be paid an annual salary not to exceed \$95,000.

(j) The Inspector General:

(1) Shall perform inspections, evaluations, and reviews, and provide quality control for all investigations within the department, and supervise all personnel of the Office of the Inspector General;

(2) Shall investigate fraud, waste, abuse of departmental funds, and behavior in the department that threatens public safety or

demonstrates negligence, incompetence, misfeasance, or malfeasance;

(3) Shall cooperate with and coordinate investigative efforts with law enforcement, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the appropriate prosecuting attorney or the appropriate federal law-enforcement agency; and

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

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

(i) Compliance with the order or subpoena; or

(ii) Testimony or the production of evidence.

(k) If the Office of the Inspector General is unable to investigate a complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to the Attorney General for referral to another investigative entity.

(l) Neither the Governor, the secretary, nor any other person, may impede, interfere, or inhibit the Inspector General from initiating, conducting, or completing any investigation, inspection, evaluation, review, or other activity regarding oversight of any investigation conducted by the Office of the Inspector General.

(m) The position of the Inspector General shall be governed by the classified-exempt service provisions in §29-6-4 of this code: *Provided, That*, any employees of the Office of the Inspector General shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder.

(n) The Inspector General may employ such professional personnel, investigators, and other personnel, including certified law-enforcement officers, necessary for the proper administration of the office.

(o) The Inspector General may delegate duties to other employees or obtain services through contract, but the Inspector General is responsible for all official tasks so delegated.

(p) The Inspector General shall propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement provisions of this section and to carry out the duties prescribed therein. The Inspector General may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this section.

(q) Reports of investigations are confidential and shall be provided under seal to the Governor, the secretary, and the Joint Committee on Government and Finance on a quarterly basis.

(r) Reports and documents relating to active investigations involving possible criminal conduct are confidential and are not subject to the provisions of 29B-1-1 *et seq.*

(s) All agencies and boards listed in §5F-2-1(i) of this code shall keep posted in any physical office space, when applicable and in a conspicuous place on their website as required by §5F-1-7 of this code, the office contact information of the Inspector General, including office location and mailing address, telephone number, facsimile number, office hours, and a secure electronic means of contacting the office such as a contact portal or other interface.

CHAPTER 152

(Com. Sub. for H. B. 5432 - By Delegate Linville)

[By Request of the West Virginia Office of Technology]

[Passed March 6, 2024; in effect ninety days from passage.]
 [Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §5A-6-1, §5A-6-3, and §5A-6-4 of the Code of West Virginia, 1931, as amended; and to repeal §5A-7-1, §5A-7-2, §5A-7-3, §5A-7-4, §5A-7-4a, §5A-7-5, §5A-7-6, §5A-7-7, §5A-7-8, §5A-7-9, §5A-7-10, and §5A-7-11 of said code, all relating to combining Information Services and Communications Division with the West Virginia Office of Technology; transferring funds from the Information Systems and Communications Division to the Office of Technology; renaming special revenue fund and providing purposes for expenditures; closing funds and transferring unexpended balances; authorizing the Chief Information Officer to conduct requisition reviews; authorizing the Chief Information Officer to collect a fee for services provided to other public bodies; providing guidance and services to support data retention and electronic discovery of executive agency data in compliance with agency data retention policies and directives; and requiring the Chief Information Officer to provide mail service for state spending units.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. OFFICE OF TECHNOLOGY

§5A-6-1. Findings and purposes.

The Office of Technology is hereby continued as an integral part of the Department of Administration, for the purpose of

establishing and developing information technology services for state agencies and promulgating information technology standards. The Office of Technology is authorized to advise and make recommendations to all state spending units on state information systems and to have the authority to oversee coordination of the state's technical infrastructure. Beginning July 1, 2024, the Information Services and Communications Division created under the Department of Administration is hereby dissolved and its functions assumed by the West Virginia Office of Technology.

§5A-6-3. Office of Technology; Chief Information Officer; appointment and qualifications; continuation of special funds.

(a) The Office of Technology is continued within the Department of Administration, to be led by a Chief Information Officer, who shall be appointed by and serve at the will and pleasure of the Governor. The Chief Information Officer shall have knowledge in the field of information technology, experience in the design and management of information systems, and an understanding of the special demands upon government with respect to budgetary constraints, the protection of privacy interests, and federal and state standards of accountability.

(b) On July 1, 2024, the administration of the Information Services and Communication Fund created under the former §5A-7-10 of this code is hereby transferred to, and thereafter shall be administered by, the Chief Information Officer of the Office of Technology, and is hereby renamed the Office of Technology Fund. The fund shall be a special revolving fund, consisting of funds received for services provided pursuant to this article and §5A-6B-1 *et seq.* and §5A-6C-1 *et seq.* of this code, and all gifts, grants, bequests or transfers from any source. Expenditures from the fund are authorized from collections for the purposes set forth in this article but are to be made only in accordance with appropriation by the Legislature and with the provisions of §12-3-1, *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1, *et seq.* of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but

shall remain in the fund and be expended as provided by this section.

(c) On July 1, 2024, the Chief Technology Officer Administration Fund created by prior enactment of this section shall be closed, and any unexpended balances remaining in the fund shall be transferred to the Office of Technology Fund.

(d) On July 1, 2024, the Telecommunications Services Payment and Reserve Fund created in the former §5A-7-4a of this code shall be closed, and any unexpended balances remaining in the fund shall be transferred to the Office of Technology Fund.

§5A-6-4. Powers and duties of the Chief Information Officer generally.

(a) With respect to all state spending units the Chief Information Officer may:

(1) Establish information technology governance to align technology management with departmental and agency business goals, including, but not limited to:

(A) Standards necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the state receive the greatest possible security, value, and user experience from investments made in technology;

(B) Standards relating to the exchange, acquisition, storage, use, sharing, and distribution of data; and

(C) Standards for the connectivity, interoperability, and continuity of technology for government operations in times of disaster or emergency;

(2) Evaluate all information technology requisitions for compatibility with established information technology governance, including evaluation of the economic justification, system design, and suitability;

(3) Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of data;

(4) Broker contracts for or deliver directly information technology and technology services in support of state spending units: *Provided*, That other public bodies may utilize information technology and technology services offered by the Chief Information Officer with approval;

(5) Create new technologies to be used in government, convene conferences, and develop incentive packages to encourage the utilization of technology;

(6) Charge a fee to the state spending units and other public bodies for services provided under the provisions of this article §5A-6B-1 *et seq.* and §5A-6C-1 *et seq.* of this code;

(7) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(8) Develop job descriptions and qualifications necessary to perform duties related to information technology as outlined in this article;

(9) Provide information technology related training to facilitate efficient use of state technology resources;

(10) Submit resource and support requests to the federal government to support technology or cyber security initiatives or programs;

(11) Engage in any other activities as directed by the Governor; and

(12) Promulgate legislative rules, in accordance with the provisions of §29A-3-1 *et seq.* as may be necessary to standardize and make effective the administration of the provisions of this article.

(b) With respect to executive agencies, the Chief Information Officer may:

(1) Develop a unified and integrated structure for information systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and timelines for addressing the information technology requirements of executive agencies;

(3) Draw upon staff of other executive agencies for advice and assistance in the formulation and implementation of administrative and operational plans and policies;

(4) Recommend to the Governor transfers of equipment and human resources from any executive agency for the most effective and efficient uses of the fiscal resources of executive agencies to modernize information technology investments;

(5) Provide guidance and services where feasible to support proper cleansing of electronic data;

(6) Develop an information technology recycling program to redistribute or reuse properly cleansed technology equipment. Transfers and disposal of information technology equipment are specifically exempt from the surplus property requirements enumerated in §5A-3-43, §5A-3-44, §5A-3-45, and §5A-3-46 of this code; and

(7)(A) Provide guidance and services to support data retention and electronic discovery of executive agency data in compliance with agency data retention policies and directives: *Provided*, That executive agencies communicate such requirements.

(B) In furtherance of this goal, the Chief Information Officer, in conjunction with the appropriate authority of each executive agency, shall coordinate an effort to ensure that every executive branch agency establishes a written digital document retention and destruction policy to be posted on the agency's website accessible by the public and conducts an annual review of the components of such policy.

(c) The Chief Information Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

(d) The Chief Information Officer may oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent including auditing telecommunications services and usage and negotiation of telecommunications contracts.

(e) The Chief Information Officer shall provide central mail services during regular business hours for state spending units. All state spending units having their offices in the capitol, except the legislative branch of government, shall dispatch all mail through the central mailing office: *Provided*, That mail prepared after gathering time and mail for special handling may be posted without utilizing the central mailing office upon approval of the Chief Information Officer. The Chief Information Officer is authorized to make such expenditures as necessary to process and presort all outgoing mail or to enter contracts to supply the service.

(f) The Chief Information Officer may convene and chair an advisory committee made up of a representative from each of the departments as identified in §5F-1-2 of this code, and any other members deemed necessary by the Chief Information Officer to provide advice and recommendations on technology issues for state agencies.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-1. Definitions.

[Repealed].

§5A-7-2. Division created; purpose; use of facilities; rules and regulations.

[Repealed].

§5A-7-3. Director; appointment and qualifications.

[Repealed].

§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

[Repealed].

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

[Repealed].

§5A-7-5. Control over central mailing office.

[Repealed].

§5A-7-6. Central mailing office employees.

[Repealed].

§5A-7-7. Central mailing office responsibilities.

[Repealed].

§5A-7-8. Use of the central mailing office.

[Repealed].

§5A-7-9. Preparation of mail for special rates.

[Repealed].

§5A-7-10. Special fund created; payments into fund; charges for services; disbursements from fund.

[Repealed].

§5A-7-11. Confidential records.

[Repealed].

CHAPTER 153

(H. B. 5594 - By Delegates Hanshaw (Mr. Speaker), Chiarelli, Warner, Statler, and Williams)

[Passed March 7, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §5A-3-1 of the Code of West Virginia, 1931, as amended, relating to exempting the West Virginia School of Osteopathic Medicine, West Virginia University and Marshall University from contracts, agreements, or memorandums of understanding with spending units in state government with exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

(1) To serve as a source of expertise in procurement methods and practices for the various state agencies, and to assist and facilitate state agencies in procurement matters, including for travel services;

(2) To simplify, clarify and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units for those spending units to better serve this state's businesses and residents.

(b) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(c) The provisions of this article do not apply to the judicial branch, the West Virginia State Police, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(d) The provisions of this article do not apply to any contract, agreement, or memorandum of understanding between a spending unit of state government and West Virginia School of Osteopathic Medicine, West Virginia University or Marshall University for services, except that any contract entered into under §9-2-6(5) of

this code for the provision of Medicaid services by a risk-bearing entity is not exempt from the provisions of this article.

(e) Notwithstanding any other provisions of this article, commodities and services may be purchased by a spending unit in the open market for immediate delivery in emergencies: *Provided*, That the purchase and a description of the circumstances warranting such emergency purchase are timely reported by the agency head or other authorized agent of the spending unit under the provisions of § 5A-3-4(a)(2) of this code.

(f) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds, except as otherwise provided by this article or by law.

CHAPTER 154

**(Com. Sub. for S. B. 503 - By Senators Grady, Taylor,
Maynard, Roberts, Deeds, Azinger, and Rucker)**

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §18B-20-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting state institutions of higher education from discriminating against student organizations which limit membership to those persons who adhere to the organization's sincerely held beliefs, comply with the organization's standards of conduct, and further the organization's mission, expression, or purpose.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. FREE EXPRESSION ON CAMPUS.

§18B-20-5. Freedom of association and nondiscrimination against students and student organizations.

A state institution of higher education may not deny a religious, political, or ideological student organization any benefit or privilege generally available to other student organizations, or otherwise discriminate against the organization based on a requirement of the organization that its leaders and members:

- (1) Affirm and adhere to the organization's sincerely held beliefs;
- (2) Comply with the organization's standards of conduct; and
- (3) Further the organization's mission, expression, or purpose.

CHAPTER 155

(S. B. 529 - By Senators Queen, Caputo, Oliverio, and Martin)

[Passed March 4, 2024; in effect 90 days from passage (June 2, 2024)]
[Approved by the Governor on March 13, 2024.]

AN ACT to amend and reenact §18C-7-3 of the Code of West Virginia, 1931, as amended, relating to including Salem University as a program wherein the PROMISE Scholarship is accepted.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-3. Definitions.

(a) General. — For the purposes of this article, terms have the meaning ascribed to them in §18C-1-2 of this code, unless the context in which the term is used clearly requires a different meaning or a specific definition is provided in this section.

(b) Definitions. — (1) "Eligible institution" means:

(A) A state institution of higher education as defined in §18B-1-2 of this code;

(B) Appalachian Bible College, Bethany College, Davis and Elkins College, the University of Charleston, West Virginia Wesleyan College, and Wheeling University, all in West Virginia. Any institution listed in this subdivision ceases to be an eligible institution if it meets either of the following conditions:

(i) It loses regional accreditation; or

(ii) It changes its status as a private, not-for-profit institution;

(C) West Virginia Junior College and Salem University; and

(D) Any other public or private regionally accredited institution in this state approved by the commission.

(2) "Tuition" means the quarter, semester or term charges imposed by an eligible state institution of higher education and, additionally, all mandatory fees required as a condition of enrollment by all students. For the purposes of this article, the following conditions apply:

(A) West Virginia University, Potomac State College, and West Virginia University Institute of Technology are considered separate institutions for purposes of determining tuition rates; and

(B) The tuition amount paid by undergraduate health sciences students at West Virginia University is considered to be the same as the amount of tuition paid by all other West Virginia University undergraduate students.

(3) "Enrolled" means either currently enrolled or in the process of enrolling in an eligible institution.

CHAPTER 156

**(S. B. 543 - By Senators Maynard, Grady, Jeffries, Oliverio,
Woelfel, and Queen)**

[Passed February 9, 2024; in effect 90 days from passage (May 9, 2024)]
[Approved by the Governor on February 20, 2024.]

AN ACT to amend and reenact §18B-12-3, §18B-12-4, and §18B-12-10 of the Code of West Virginia, 1931, as amended, all relating to research and economic development agreements for state institutions of higher education; and clarifying that the governing boards of state institutions of higher education are authorized to enter into agreements and contractual relationships with corporations formed with respect to such state institutions of higher education for purposes of fostering economic development efforts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS FOR STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-12-3. Boards authorized to contract with corporations; characteristics of corporations.

Each governing board for a state institution of higher education may enter into agreements and any other contractual relationships with one or more corporations formed with respect to such state institution of higher education, but only if each such corporation meets the following descriptions:

(1) The president and the president's appointees from the institution shall constitute a majority of the voting corporate directors.

(2) The corporation shall be organized as a nonprofit, nonstock corporation under the general corporation laws of the state exclusively for charitable, educational or scientific purposes within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended, to foster and support research and economic development efforts at the respective state institution of higher education and to provide evaluation, development, patenting, management and marketing services for inventions of the faculty, staff and students of such state institution of higher education.

(3) The meetings of the corporate directors shall be subject to §6-9A-3 of this code.

(4) Upon dissolution of the corporation, the assets of the corporation shall be transferred to such entity as the appropriate governing board shall designate for the benefit of the state institution of higher education: *Provided*, That such recipient shall be an organization operated exclusively for charitable, educational, or scientific purposes as shall at such time qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

§18B-12-4. Agreement; required provisions.

(a) Notwithstanding §12-3-10 of this code or any other provision of law to the contrary, each governing board is hereby authorized to enter into an agreement with one or more private corporations, which agreement shall be for the benefit of the state institution of higher education and contain the following provisions, subject to further specification as is mutually agreed upon by the governing board and the corporation:

(1) On the effective date of the agreement, the corporation is charged with the responsibility of serving as fiscal agent for sponsored projects conducted by the faculty, staff and students of the state institution of higher education, and grants shall be accepted by the corporation on behalf of the institution and assigned to the corporation for fiscal management.

(2) The corporation shall provide evaluation, development, patenting, licensing, management, and marketing services for inventions, processes, trademarks, except institutional trademarks an institution's governing board elects to retain, copyrights or any other intellectual property developed by faculty, staff, and students of any state institution of higher education.

(3) The corporation may determine the application of the proceeds from any invention, process, trademark, except institutional trademarks an institution's governing board elects to retain, copyright or any other intellectual property developed by the faculty, staff, or students of an institution among the corporation, the inventor or developer, and the institution.

(4) The corporation may receive, purchase, hold, lease, use, sell, and dispose of real and personal property of all classes subject to the provisions of section ten of this article.

(5) The corporation has such additional responsibilities related to the administration of research and development at the institution or the fostering of economic development as are necessary or desirable.

(b) Upon termination of the agreement, the funds or grants paid or held by the corporation, and all other property held by the corporation, shall be transferred to the institution or its designee as the governing board directs.

(c) A corporation may utilize both corporation employees and personnel of the institution. The corporation may pay the costs incurred by the institution including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement. The corporation may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the institution, pursuant to the terms of the agreement, and that a board may be reimbursed for expenses incurred by it pursuant to the agreement.

§18B-12-10. Assignment or transfer of property to certain corporations.

(a) Institutional boards of governors may provide and transfer funding and property, both real and personal, to corporations as defined in section one of this article, and with which the institution under its jurisdiction has contracted pursuant to the provisions of this article. Any deed that transfers real property under the provisions of this section to a corporation, as defined in §18B-12-1 of this code, for either: (i) Research and development; (ii) economic development projects resulting in the creation of employment by the corporation and the state institution of higher education; or (iii) both; under this section shall include provisions requiring that the real property revert to the institution under the following circumstances:

(1) For a period of two years, the property is not used for at least one of the purposes for which it may be conveyed;

(2) The corporation to which the real property is transferred is dissolved; or

(3) The corporation files a petition in bankruptcy.

(b) Any corporation, as that term is defined in §18B-12-1 of this code, may provide and transfer funding and property, both real and personal, to another person, firm or corporation for: (i) Research and development; (ii) economic development projects resulting in the creation of employment by the corporation and the state institution of higher education; or (iii) both. Any deed that transfers real property to a person, firm or corporation shall include provisions requiring that the real property revert to the corporation, as defined in §18B-12-1 of this code, under the following circumstances:

(1) For a period of six months, the property is not used for at least one of the purposes for which it may be conveyed;

(2) The corporation to which the real property is transferred is dissolved; or

(3) The corporation files a petition in bankruptcy.

(c) The person, firm or corporation that receives real property from the corporation, as defined in §18B-12-1 of this code, may not transfer the property to another party without the written permission of the corporation, as defined in §18B-12-1 of this code. The corporation, as defined in section one of this article, may not grant any such request unless the corporation determines that covenants in the deed or lease agreement provide adequate assurance that the terms of subsections (a) and (b) of this section are preserved.

(d) At least 20 days before the transfer of any property pursuant to the provisions of this section, the institutional board of governors or the corporation, as defined in §18B-12-1 of this code, whichever is appropriate, shall give public notice of the transfer through a Class II legal advertisement in accordance with the provisions of §59-3-1 *et seq.* of this code.

CHAPTER 157

(S. B. 681 - By Senators Weld, Takubo, Deeds, and Maroney)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended, relating to the service obligation for tuition and fees for a doctor of medicine or doctor of osteopathic medicine degree program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the Army National Guard or Air National Guard who is enrolled in an educational program which leads to a certificate, undergraduate degree, master's degree, doctor of medicine, or doctor of osteopathic medicine, and is attending any accredited community and technical college, college, university, or business, career-technical, vocational, trade, or aviation school, located in West Virginia, may be entitled to payment of tuition and fees for that program during the period of his or her service in the National Guard.

(1) The Adjutant General may prescribe criteria of eligibility for payment of tuition and fees. The payment is contingent upon appropriations being made by the Legislature for the express purpose of this section.

(2) A member may receive payment for only one certificate, undergraduate degree, and master's degree pursuant to this section.

(3) Not more than two members a year may be selected by the Adjutant General to receive payment for either a doctor of medicine or doctor of osteopathic medicine degree program. Any candidate selected for this program must remain a member of the Army National Guard or the Air National Guard after receiving a doctor of medicine or doctor of osteopathic medicine degree for a mandatory service obligation as prescribed by the Adjutant General, or be subject to recoupment for all moneys paid pursuant to this subdivision.

(b) The amount of the payment for a member attending a state-supported school is determined by the Adjutant General and may not exceed the actual cost of tuition and fees at the school. The amount of the payment for a member attending a private school is determined by the Adjutant General and may not exceed the highest amount payable at any state-supported school.

(c) Any member of the Army National Guard or Air National Guard who is receiving payments under a federally funded continuing education system and is eligible to receive tuition and fee payments pursuant to this section may be entitled to payment of tuition and fees under this section. The sum of payments received under this section and a federally funded continuing education system may not exceed the actual amount of tuition and fees at the school and in any event may not exceed the highest amount payable at any state-supported school. If a member of the Army National Guard or Air National Guard uses education benefits that are administered by the U.S. Department of Veterans Affairs, such as the Post 9/11 GI Bill or any other program that pays tuition or fees directly to the institutions of higher education, the institution of higher education shall first assess the U.S. Department of Veterans Affairs for payment of tuition and fees payable by those programs, with the remaining tuition and fees, if any, then being payable in accordance with this section.

(d) For any member of the West Virginia Army National Guard or West Virginia Air National Guard who is participating in the PROMISE Scholarship program provided in §18C-7-1 *et seq.* of this code, the Adjutant General may pay directly to the member an

amount equal to the amount of tuition and fees which otherwise would have been paid to the school.

(e) A member of the West Virginia Army National Guard or West Virginia Air National Guard who is receiving payments for tuition and fees under this section and is discharged from the military service due to wounds or injuries received in the line of duty may continue to receive payments for tuition and fees under this section as if he or she were still a member.

(f) The Adjutant General shall administer the tuition and fee payments authorized under this section and shall establish policies to implement the provisions of this section.



CHAPTER 158

(H. B. 4305 - By Delegates Statler, Young, Dittman, and Toney)

[Passed March 9, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-10-1d, relating to granting in-state resident status to economic development participants for the purpose of determining the rate of tuition to be charged for attendance at state institutions of higher education; establishing criteria that must be met to meet the definition of economic development participant; and setting forth time frame for recognition of resident status.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1d. Resident tuition rates for economic development participants.

(a) The term "resident" or "residency", or any other term or expression used to designate a West Virginia resident student, when used to determine the rate of tuition to be charged students attending state institutions of higher education, may be construed to include economic development participants.

(b) To meet the definition of "economic development participant" under this section, the following criteria must be met:

(1) The person or the person's parent or legal guardian received economic development incentives to locate to West Virginia, offered pursuant to §5B-2-3b of this code; and

(2) The person files with that institution of higher education a letter of intent to establish residency in this state.

(c) An economic development participant who qualifies as a resident on the first day of the semester or term of the institution of higher education shall be eligible for resident tuition rates.



CHAPTER 159

(H. B. 4768 - By Delegates Ellington, Toney, Statler, and Brooks)

[Passed March 5, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §18C-3-5 of the Code of West Virginia, 1931, as amended, all relating to increasing the number of out-of-state medical students receiving in-state tuition rates who agree to practice for a specific time within West Virginia; and requiring each medical student that participates in the program to practice in a medically underserved area and in a primary care or specialty practice or field in which there is a shortage of physicians.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-5. Nonresident Medical Student Tuition Regularization Program.

(a) The Legislature finds as follows:

(1) There is a critical need for additional primary care physicians practicing in West Virginia;

(2) West Virginia has an aging population and an increasing need for recruiting primary care physicians, and placing primary care physicians in rural areas of the state;

(3) West Virginia has a historically low retention rate of state resident medical students following graduation;

(4) Efforts by the medical schools in West Virginia to increase class sizes as a means of increasing the number of physicians practicing in the state have been largely ineffective;

(5) The primary care field of practice yields a lower wage than other medical specialties and maintains an extreme shortage of practicing physicians, particularly in rural areas of the state;

(6) The high cost of nonresident medical education tuition, and resulting high level of debt incurred by students, often prohibit nonresident graduates who remain in the state from entering a primary care practice;

(7) Many nonresident medical students in West Virginia have indicated that they would be willing to remain in the state as a practicing physician if it was affordable;

(8) A waiver of the state resident to nonresident tuition rate differential would offset the significant student debt load incurred by nonresident medical school graduates;

(9) Beginning a medical practice with up to four years committed to practicing medicine in a specific area has a strong likelihood of influencing a nonresident medical school graduate to remain in that area following the service commitment;

(10) Investing resources, developing professional networks, and creating community ties all serve to create permanent connections to an area for an individual who is not originally from that area; and

(11) Attracting practicing physicians to rural and medically underserved areas of the state will further attract related health care professionals that support a medical practice or facility and will expand the economic and job-growth potential of such areas.

(b) It is the purpose of this section to offer nonresident medical students a partial tuition waiver as a means of recruiting practicing physicians to underserved areas, and to primary care and practitioner shortage fields in West Virginia.

(c) There is created the Nonresident Medical Student Tuition Regularization Program to be administered by the Vice Chancellor for Health Sciences in cooperation with the deans of the three medical schools in the state.

(1) Four nonresident medical students from each medical school in the state are selected annually to participate in the program subject to the exception provided in subsection (f) of this section.

(2) Each student selected is charged the state resident tuition rate for each academic year he or she is enrolled in the program and has the cost differential between the resident and nonresident rates waived by the institution at which he or she is enrolled.

(3) For each academic year that a medical student participates in the program, he or she shall commit to render services for one calendar year as a medical doctor or a doctor of osteopathy in this state in a medically underserved area and in a primary care or specialty practice or field in which there is a shortage of physicians, as determined by the Division of Health at the time the application for the program is submitted. The service commitment begins within six months after graduation from an accredited residency program.

(4) Once selected to participate in the program, a student may continue in the program for as long as he or she continues to meet the eligibility criteria in subsection (d) of this section, for a maximum of four academic years.

(d) An individual is eligible for enrollment or continuation in the program if he or she meets the following criteria:

(1) Is enrolled or accepted for enrollment at the West Virginia University School of Medicine, the Marshall University School of Medicine, or the West Virginia School of Osteopathic Medicine in a program leading to the degree of Medical Doctor (M.D.) or Doctor of Osteopathy (D.O.);

(2) Has not yet received one of the degrees provided in subdivision (1) of this subsection;

(3) Satisfies the academic standards established by the program rule;

(4) Is not in default of any previous student loan;

(5) Is a nonresident student who is charged nonresident tuition rates;

(6) Commits to render services for one calendar year as a Medical Doctor or a Doctor of Osteopathy in this state in a medically underserved area and in a primary care or specialty practice or field in which there is a shortage of physicians for each academic year for which he or she participates in the program;

(7) Submits to the commission:

(A) An application for enrollment in the program as provided by the commission; and

(B) A sworn statement of commitment to service on a form provided by the commission for that purpose; and

(8) Other criteria as established by the program rule.

(e) (1) A program participant violates the service commitment if he or she:

(A) Fails to render services as a Medical Doctor or Doctor of Osteopathy in accordance with the sworn statement he or she submitted to the commission. This includes failure to begin serving within six months of completing an accredited residency program, or failure to complete each one-year term to which he or she committed to serve; or

(B) Fails to complete or remain enrolled in the medical education program for which he or she obtained the tuition waiver.

(2) A program participant who violates the service commitment is subject to the following:

(A) He or she shall repay the amount of nonresident tuition charges waived plus interest at a rate of five percent per annum;

(B) The granting or renewal of a license to practice medicine in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia is contingent upon commencing payment and continuing payment until full repayment of the obligation if the recipient fails to complete the required practice commitment. A license, renewal, or reciprocity may not be granted to an individual whose repayments are in arrears. The West Virginia Board of Medicine shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the tuition amount.

(f) The commission shall develop policy to provide for:

(1) A method for selecting annually the 12 new students to be enrolled in the program, with priority consideration to applicants in the earliest academic years of the medical education program;

(2) A method for selecting greater or fewer than four participants from a single medical school in any year where four suitable applicants are not available at each school;

(3) A method for the applicant to select the service area and specialty to which he or she commits to practice medicine;

(4) A method for developing a mutually agreeable modification to the terms of a participant's service commitment regarding the medically underserved area and primary care or specialty practice or field in which he or she committed to serve under circumstances where the Division of Health determines at the time the participant's service commitment is scheduled to commence that the area is no longer medically underserved or that primary care or service specialty is no longer experiencing a physician shortage;

(5) Provisions for enforcing sanctions against a participant who fails to satisfy the service commitment; and

(6) Such other provisions as the commission considers necessary to administer the program.

(g) There is continued in the State Treasury a special revenue account to be designated the Nonresident Medical Student Tuition Regularization Fund which is an interest-bearing account that may be invested and retain all earnings. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with §11B-2-1 *et seq.* of this code.

CHAPTER 160

(H. B. 4814 - By Delegates Ellington, Toney, and Statler)

[Passed February 29, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18B-1D-11 of the Code of West Virginia, 1931, as amended, relating to extending the reporting and sunset dates of the State Advisory Council on Postsecondary Attainment Goals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-11. State Advisory Council on Postsecondary Attainment Goals.

(a) There is hereby created the State Advisory Council on Postsecondary Attainment Goals. The council's purpose is to ensure that students are provided opportunities to learn and earn the most relevant industry-demanded knowledge, skills, and credentials to prepare students for the challenges of college, careers, and life, while helping the state and its employers attain economic growth through collaboration with K-12 education leaders, employers and industry leaders, state agency leaders, the Higher Education Policy Commission, and the Council for Community and Technical College Education to identify high-value and in-demand postsecondary credentials, and to develop a plan to assist the state in achieving its postsecondary attainment goal of having 60 percent of West Virginians between the ages of 25 and 64 hold a degree, certificate, or other postsecondary workforce credential of value in the workplace by 2030.

(b) The State Advisory Council on Postsecondary Attainment Goals shall consist of the following members:

(1) The Chancellor of the Higher Education Policy Commission, or his or her designee;

(2) The State Superintendent of Schools, or his or her designee;

(3) The Secretary of the Department of Commerce, or his or her designee;

(4) The Director of WorkForce West Virginia, or his or her designee;

(5) Two presidents representing the state's four-year institutions of higher education, at least one of which shall be the president of a regional institution, appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(6) Two presidents representing the state's community and technical colleges appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(7) Representatives from at least two employers, industry associations, or chambers of commerce, appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(8) Representatives from at least two regional economic development and workforce investment boards, appointed jointly by the President of the Senate and the Speaker of the House Delegates;

(9) The chair of the Senate Committee on Education as an ex officio nonvoting member;

(10) The chair of the House Committee on Education as an ex officio nonvoting member; and

(11) Any other individuals deemed appropriate and appointed jointly by the President of the Senate and the Speaker of the House Delegates.

(c) The council shall be chaired by the Chancellor of the Higher Education Policy Commission. The council shall meet at least quarterly and at the call of the chair. Quorum shall be a simple

majority of the council. The administrative functions of the council are the responsibility of the joint staff of the Higher Education Policy Commission and the Council for Community and Technical Education.

(d) The council shall consult with and advise the Legislature on matters related to the progress toward achieving the state's postsecondary attainment goal as established in subsection (a) of this section, including identifying high-value and in-demand postsecondary credentials. The council may:

(1) Make recommendations to the Legislature as required by this section;

(2) Provide guidance to the Legislature on potential statutory solutions relative to achievement of the state's postsecondary attainment goal;

(3) Establish workgroups or subcommittees as the council considers necessary to address pertinent issues related to achievement of the state's postsecondary attainment goal, and to provide consistency in the development of further regulation, if further regulation is determined to be necessary by the council;

(4) Consult with entities and persons with expertise in the areas being studied by the council as the council considers necessary in the fulfillment of its duties, including public and private sector partnerships; and

(5) Provide a forum for a full and fair discussion of issues relating to achievement of the state's postsecondary attainment goal.

(e) The council shall provide leadership, strategic direction, and evaluation of the state's investments in, and progress toward, implementing high-quality career and technical education programs that are accessible to all students and improves the career readiness of the state's workforce by conducting an annual review of career and technical education offerings in K-12 and the state's community college and technical education system to determine the alignment of existing offerings with employer demand,

postsecondary degree or certificate programs, and professional industry certifications. The review shall identify career and technical education offerings that are linked to occupations that are in high-demand by employers, require high-level skills, and provide middle- and high-level wages. The review shall include analyses of:

(1) Participating students and their outcomes, including the following:

(A) Academic achievement;

(B) Attainment of industry certifications;

(C) Program completion;

(D) Applied learning experiences;

(E) College credit attainment through the career and technical education program, including dual enrollment or articulation;

(F) Postsecondary enrollment and credential attainment, including enrollment in four-year degree programs for state college system students; and

(G) Employment outcomes, including wages;

(2) Demographics of participating students by pathway and credential attainment;

(3) Educational settings of the courses;

(4) Alignment with high-growth, high-demand, and high-wage employment opportunities;

(5) Current and projected economic, labor, and wage data on the needs of the state, regional, and global economy and workforce;

(6) Alignment with certificate or degree programs offered at the postsecondary level or professional industry certifications;

(7) Employment outcomes, including wages, by career and technical education program offerings;

(8) Apprenticeship and pre-apprenticeship offerings;

(9) Qualifications and specialized knowledge and expertise of instructors and the opportunities for these educators to upskill in the latest in-demand skills of employers; and

(10) Extent to which federal, state, and local funding is used to foster career and technical education program success and program efficiency.

(f) The council shall report its findings to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance by December 31, 2024, and annually thereafter until the council terminates, pursuant to the provisions of this section. The report shall include, at a minimum, the following:

(1) Conclusions and recommendations about the means to achieve the state's postsecondary attainment goal;

(2) Recommendations for statutory and regulatory modifications, if the council determines that such modifications are necessary;

(3) Identification of any action that the Legislature may take to better foster awareness of the actions being taken to achieve the state's postsecondary attainment goal; and

(4) Any other ancillary issues relative to achievement of the state's postsecondary attainment goal.

(g) The State Board of Education, the Superintendent of Schools, the Department of Commerce, WorkForce West Virginia, the presidents of the state's public institutions of higher education, and all other entities of state government shall cooperate with the council in the exchange of data, information, and expertise, if so requested by the council, including, but not limited to:

(1) Providing the entity's plans to assist in achievement of the state's postsecondary attainment goal;

(2) Identifying equity gaps among certain high-risk populations, including, but not limited to, returning adults, academically underprepared students, the economically disadvantaged, and underrepresented racial or ethnic minorities;

(3) Sharing information on the economic impact of achievement of the state's postsecondary goal on the State of West Virginia;

(4) Providing an assessment of the benefits of implemented programs and activities aimed at achieving the state's postsecondary attainment goal;

(5) Assisting in the development or revision of detailed action plans to achieve the state's postsecondary attainment goal; and

(6) Providing resources required to implement the plan to achieve the state's postsecondary attainment goal.

(h) The council and all provisions of this section shall terminate and no longer be in effect on December 31, 2027.

CHAPTER 161

(Com. Sub. for H. B. 4882 - By Delegates Hanshaw (Mr. Speaker), Hornbuckle, Hornby, Kimble, Warner, Tully, Cooper, Heckert, and Fehrenbacher)

[Passed March 7, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18B-10-1a of the West Virginia Code 1931, as amended, to extend in-state tuition rates to all members and veterans of the National Guard, reserves, and armed forces as well as their spouses and dependents, when they choose to move to West Virginia for the purpose of attending state institutions of higher education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1a. Resident tuition rates for members or veterans of the National Guard, reserves, armed forces, and their spouses and dependents.

(a) Notwithstanding any provision of this code to the contrary, the following persons shall be charged in-state tuition rates at the state's institutions of higher education regardless of domicile:

(1) Members of the National Guard or reserves who are not residents of West Virginia but who are active members of a National Guard or reserve unit in West Virginia;

(2) Current members of the United States armed forces who reside in or move to West Virginia;

(3) Veterans of the National Guard, a reserve unit, or the armed forces of the United States who reside in or move to West Virginia for the purpose of attending a state institution of higher education; and

(4) Spouses or dependents of a member or veteran of the National Guard, a reserve unit, or the armed forces of the United States who reside in or move to West Virginia with such member or veteran.

(b) The requirements of this section may not be construed to deny to a person eligible for in-state tuition rates under this section any waiver of tuition rates otherwise available to that person under any other provision of this code.

(c) The provisions of this section apply at the beginning of the semester or term immediately following the effective date of this section.

CHAPTER 162

**(Com. Sub. for H. B. 4919 - By Delegates Riley, Horst,
Dittman, Hornbuckle, Hott, Mazzocchi, Toney, Maynor,
Griffith, Linville, and Westfall)**

[Passed March 7, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §18C-7-6 of the Code of West Virginia, 1931, as amended, relating to requiring the reinstatement of a Promise Scholarship Award upon meeting certain criteria; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.

(a) A PROMISE scholarship annual award shall meet the following conditions:

(1) For a student enrolled in a state institution of higher education, the annual award is equal to the lesser of the cost of tuition or \$4,750, except that a student who was awarded and used a PROMISE scholarship annual award prior to January 1, 2010, shall continue to receive the annual award calculated under the same terms and conditions that applied on the day before the effective date of this article;

(2) For a student enrolled in an eligible institution other than a state institution of higher education, the annual award is equal to, but may not exceed, the lesser of the cost of tuition or \$4,750,

except that a student who was awarded and used a PROMISE scholarship annual award prior to January 1, 2010, shall continue to receive the annual award calculated under the same terms and conditions that applied on the day before the effective date of this article;

(3) The annual award may exceed \$4,750, if the commission determines that adequate funds are available, but in any case may not be greater than the actual cost of tuition;

(4) The annual award shall be used by an eligible institution to supplement, but may not supplant, a tuition and fee waiver for which the individual is eligible pursuant to §18B-10-5, §18B-10-6a, §18B-10-7, or §18B-10-7b of this code.

(b) The total cost of all scholarships awarded by the commission in any year may not exceed the amount of funds available to the commission during that fiscal year.

(c) In order to be eligible to receive a PROMISE scholarship award, an individual shall:

(1) Submit a scholarship award application to the commission:

(A) Within two years of completing a secondary education program in a public, private, or home school or within two years of obtaining a GED or equivalent; or

(B) Within seven years of initially entering military service, and within one year of discharge from military service, if the individual has entered the United States armed services within two years after completing a secondary education program in a public, private, or home school or obtaining a GED or equivalent;

(2) Apply for and submit a Free Application for Federal Student Aid;

(3) Maintain a grade point average of at least 3.0 on a 4.0 grading scale in the required core and elective course work necessary to prepare students for success in post-secondary education at the associate and baccalaureate degree levels as

determined by the commission, if the individual has completed not more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit, and comparable courses while the student is enrolled in high school;

(4) Maintain appropriate academic progress toward the completion of a degree at the undergraduate education level as determined by the commission if the individual has completed more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school; *school: Provided, That a recipient of the PROMISE scholarship award who does not meet the requirements of this subdivision and loses the award may petition the institution to reinstate the award upon successfully reattaining the credit hour and minimum overall grade point qualifications set out in the commission's rule governing eligibility for receipt of the PROMISE scholarship: Provided, however, That a student who has lost the PROMISE scholarship award is only eligible to be reinstated one time; if the student becomes ineligible for the PROMISE scholarship award a second time, the student may not again petition the institution for reinstatement of the award nor again be reinstated: Provided further, That the student forfeits a term of eligibility for each term in which the student is enrolled to meet the renewal requirements as authorized by this subdivision: And provided further, That upon a finding that the student successfully reattained the credit hour and minimum overall grade point qualifications set out in the commission's rule governing eligibility for receipt of the PROMISE scholarship award as required by this subdivision, the institution shall reinstate the award;*

(5) Be a United States citizen or legal immigrant to the United States;

(6) Meet additional objective standards the commission considers necessary to promote academic excellence and to maintain the financial stability of the fund; and

(7) Enroll in an eligible institution. A student enrolled at an eligible institution who receives a PROMISE scholarship award may retain and renew the scholarship to complete his or her undergraduate education at that institution or any other eligible institution under the following circumstances:

(A) The institution at which the student is enrolled loses its status as an eligible institution pursuant to the provisions of §18B-7-3(b)(1) of this code; and

(B) The student meets all other renewal requirements of this code and of commission rules.

(d) It is the intent of the Legislature that the commission shall strongly encourage prospective candidates for the PROMISE scholarship to perform at least 20 hours of unpaid community service while in high school to help prepare them for success in post-secondary education. The community service may include, but is not limited to, participation with nonprofit, governmental or community-based organizations designed with any or all of the following purposes:

(1) Improving the quality of life for community residents;

(2) Meeting the needs of community residents; or

(3) Fostering civic responsibility.

(e) The commission shall promulgate a legislative rule in accordance with the provisions of §29A-3A-1 *et seq.* of this code.

(1) The rule shall include at least the following provisions:

(A) The amount of a PROMISE scholarship award in combination with aid from all other sources may not exceed the cost of education at the institution the recipient is attending. This provision does not apply to members of the West Virginia National Guard, recipients of an Underwood-Smith teacher scholarship and recipients of a West Virginia engineering, science and technology scholarship;

(B) Additional objective standards the commission considers necessary:

(i) To promote academic excellence;

(ii) To maintain the financial stability of the fund; and

(iii) To operate the program within the limits of available funds;

(C) Provisions for making the highest and best use of the PROMISE Scholarship Program in conjunction with the West Virginia College Prepaid Tuition and Savings Program Act set forth in §18-30-1 *et seq.* of this code;

(D) A provision defining the relationship of PROMISE scholarship awards to all other sources of student financial aid to ensure maximum coordination. The provision shall include the following:

(i) Methods to maximize student eligibility for federal student financial aid;

(ii) A requirement that PROMISE scholarship awards not supplant tuition and fee waivers; and

(iii) Clarification of the relationship between the PROMISE Scholarship Program, tuition savings plans and other state-funded student financial aid programs;

(E) A method for awarding scholarships within the limits of available appropriations, including circumstances when program funds are not sufficient to provide awards to all eligible applicants. The commission may not use any of the following methods:

(i) Providing for an annual PROMISE scholarship award that is less than the amounts provided for in this section; or

(ii) Eliminating any current recipient from eligibility; and

(F) A method for applicants to appeal determinations of eligibility and renewal.

(2) The rule may provide for or require the following at the commission's discretion:

(A) Requiring repayment of the amount of the scholarship, in whole or in part, if a scholarship recipient chooses to work outside the state after graduation. The rule may not require a recipient to repay a scholarship, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the PROMISE scholarship award;

(B) Targeting a portion of the scholarship funds to be used for applicants enrolled in an engineering, science, technology or other designated program;

(C) Determining what other sources of funding for higher education are to be deducted from the PROMISE scholarship award; and

(D) Providing additional criteria as determined by the commission.

(3) Any rule promulgated by the commission pursuant to previous enactments of this article in effect on the effective date of the amendment and reenactment of this article in the year 2009 remains in effect until amended, modified, repealed, or replaced by the commission.

CHAPTER 163

(H. B. 5153 - By Delegates Ellington, Statler, Toney, Hornby, W. Clark, Lucas, and Longanacre)

[Passed February 13, 2024; in effect ninety days from passage.]

[Approved by the Governor on February 29, 2024.]

AN ACT to amend and reenact §18C-6-1, §18C-6-2, §18C-6-3, §18C-6-4, §18C-6-5, and §18C-6-6 of the Code of West Virginia, 1931, as amended, all relating to the engineering, science, and technology scholarship.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. WEST VIRGINIA SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS SCHOLARSHIP PROGRAM.

§18C-6-1. Scholarship fund created; purposes; funding; limit on number of new scholarships per year.

(a) The purpose of this article is to attract talented students to West Virginia colleges and universities to major in science, technology, engineering, and mathematics (STEM). The Legislature recognizes that a larger pool of STEM talent in West Virginia will build the state's economy and businesses. In addition, long-term population increases for West Virginia will develop a strong economic base. The new economy requires that West Virginia retain its education infrastructure in order to maintain economic growth.

(b) The Higher Education Policy Commission shall propose a legislative rule in accordance with the provisions of §29A-3A-1, *et seq.* of this code, to implement the provisions of this article. The rule shall provide for the administration of the West Virginia STEM scholarship program by the vice chancellor for

administration in furtherance of the purposes of this article, including, but not limited to, an expression of legislative intent that academic ability be the primary criteria for selecting scholarship recipients, scholarship selection criteria and procedures, renewal, compliance, noncompliance, repayment, deferral, and excusal. The rule also shall provide for appeal procedures under which a recipient may appeal any determination of noncompliance. The rule shall establish appropriate guidelines for program operation.

(c) There is hereby created in the State Treasury a special revolving fund known as the "West Virginia Science, Technology, Engineering, and Mathematics (STEM) Scholarship Fund" to be administered by the commission solely for granting scholarships to prospective scientists, technologists, engineers, and mathematicians in accordance with this article. Any moneys which may be appropriated by the Legislature, or received by the commission from other sources, for the purposes of this article shall be deposited in the fund. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the commission by reason of default of a scholarship agreement under this article also shall be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.

(d) The commission may accept and expend any gift, grant, contribution, bequest, endowment, or other money for the purposes of this article and shall make a reasonable effort to encourage external support for the scholarship program.

(e) For the purpose of encouraging support for the scholarship program from private sources, the commission may set aside no more than half of the funds appropriated by the Legislature for West Virginia STEM scholarships to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

(f) Nothing in this article requires any specific level of funding by the Legislature.

§18C-6-2. Definitions.

When used in this article the following terms have the following meanings, unless the context clearly indicates a different meaning:

"Eligible institution of higher education" means a state institution of higher education as defined in §18B-1-2 of this code; and Appalachian Bible College, Bethany College, Davis and Elkins College, the University of Charleston, West Virginia Wesleyan College, and Wheeling University, all in West Virginia, and any other institution of higher education in this state, public or private, approved by the commission: *Provided*, That if any institution listed in this paragraph is not accredited by an accreditor approved by the United States Department of Education, it shall not be included as an eligible institution.

"Industry-based certification" means any special certification required, necessary or deemed preferred for employment in the field.

"STEM" or STEM-related field" means a major in biological sciences, chemistry, computer science, physics, engineering, physical sciences, or mathematics at an eligible institution of higher education or any other academic program identified as a "STEM field" by the federal Department of Homeland Security or other appropriate federal agency.

§18C-6-3. Selection criteria and procedures.

(a) The vice chancellor for administration shall select the recipients of West Virginia STEM scholarships from among those applicants who meet eligibility criteria set forth in subsection (b) of this section.

(b) To be eligible to receive a scholarship under the provisions of this article, applicants must meet the following conditions:

(1) Be a United States citizen or person who meets the definition of an "eligible noncitizen" under federal Title IV requirements;

(2) Have a cumulative grade point average of 3.0 on a 4.0 grading scale upon graduation from high school or the equivalent or have a cumulative grade point average of at least 3.0 on a 4.0 grading scale after completing one semester of course work at an eligible institution of higher education; and

(3) Be enrolled or accepted for enrollment in an accredited STEM or STEM-related program leading to a certificate, associate or baccalaureate degree at an eligible institution of higher education.

(c) In accordance with the intent of this article, in the rule authorized by §18C-6-1 of this code, the commission shall develop criteria and procedures for the selection of scholarship recipients that reflect the purposes of this article and the areas in which the commission shall make particular efforts in the selection of recipients as set forth in section one of this article and which may include, but not be limited to:

(1) The grade point average of the applicant;

(2) Involvement in extracurricular activities;

(3) Financial need;

(4) Current academic standing; and

(5) An expression of interest in a career in a STEM or STEM-related field as demonstrated in an essay written by the applicant.

The criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others.

(d) In developing the rule regarding selection criteria and procedures for the West Virginia STEM scholarship, the commission shall solicit the views of public and private science,

technology, engineering, and mathematics agencies and institutions and other interested parties.

(e) The commission shall make application forms for West Virginia STEM scholarships available to public and private high schools, charter schools, home schools, learning pods, microschools, and other educational programs authorized by the Legislature that encompass education commonly received in grades 9 through 12, in the state and other locations convenient to applicants, parents, and others and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing careers in STEM or STEM-related fields and who are under-represented in those fields.

(f) In awarding the scholarships, the commission shall give preference to applicants who are West Virginia residents.

(g) The commission shall award scholarships based on established statewide need.

§18C-6-4. Scholarship agreement.

(a) Each recipient of a West Virginia STEM scholarship shall enter into an agreement with the commission under which the recipient shall:

(1) Provide the commission with evidence of compliance with §18C-6-5(a) of this code;

(2) Agree that within one year following the date the recipient ceases to be a full-time student at an eligible institution in a STEM program for which the scholarship was awarded he or she will:

(A) Begin working full-time in a STEM-related field in this state for a duration of not less than one year for each year the scholarship was received. *Provided*, That recipients who are serving as members of the United States armed forces in a STEM-related field and maintaining legal residency in West Virginia while posted to a different location shall be considered as meeting this employment requirement; or

(B) Begin repayment of all or part of the West Virginia STEM scholarship received under this article plus interest and, if applicable, reasonable collection fees, in accordance with §18C-6-5(b) of this code, except as provided in subsections §18C-6-5(c) and (d) of this code.

(b) A scholarship agreement shall disclose fully the terms and conditions of this article under which the scholarship is provided and under which repayment of the scholarship may be required.

§18C-6-5. Renewal conditions; noncompliance; deferral; excusal.

(a) The recipient of a West Virginia STEM scholarship is eligible for scholarship renewal if the recipient is:

(1) Enrolled as a full-time student in an eligible institution of higher education;

(2) Pursuing a course of study leading to a certificate, associate or baccalaureate degree in a STEM-related field;

(3) Maintaining satisfactory progress as determined by the eligible institution of higher education the recipient is attending; and

(4) Complying with any other standards established by the rule authorized by §18C-6-1 of this code.

(b) A recipient who violates a scholarship agreement shall repay the amount of any scholarship award received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the rule authorized by §18C-6-1 of this code. The rule shall also provide for a method of prorating repayment amounts against any amount of the work requirement that has been fulfilled by the recipient.

(c) A recipient is not in violation of the agreement entered into under §18C-6-3 of this code during any period in which the recipient is:

(1) Pursuing a full-time course of study in a STEM or STEM-related field at an accredited institution of higher education; or

(2) Satisfying the provisions of additional repayment exemptions that are established by the commission's rule.

(d) The commission may forgive repayment of a West Virginia STEM scholarship received under this article if the recipient dies or becomes permanently and totally disabled as established by submission of a death certificate or sworn affidavit of a physician qualified to make such a determination as set out in the rule authorized by §18C-6-1 of this code.

(e) The commission's rule shall provide that the length of the repayment period may not exceed 10 years: *Provided*, That the rule may include provisions under which the commission may, if extenuating circumstances exist, extend the period for fulfilling the obligation to 15 years.

§18C-6-6. Amount and duration of scholarship; relation to other assistance.

(a) Subject to subsection (b) of this section, each recipient of a West Virginia STEM scholarship is eligible to receive an award of up to \$3,000 for each academic year of higher education. No individual may receive a scholarship award for more than four academic years for the completion of a baccalaureate degree.

(b) No individual may receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees. If the amount of the West Virginia STEM scholarship award and the amount of financial assistance which the recipient has received from all other sources exceed the cost of attendance, the institution's financial aid officer, in consultation with the recipient, shall determine which source of financial aid to reduce and shall do so in a manner to the best advantage of the recipient.

CHAPTER 164

(Com. Sub. for H. B. 5435 - By Delegates Rohrbach, Ellington, Worrell, Criss, Statler, Maynor, Green, Moore, T. Clark, Winzenreid, and Campbell)

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-3D-7, establishing the registered apprenticeship to associate of applied science program to be known as the Skilled Trades Apprenticeship Nontraditional Degree (STAND) program; specifying purpose; defining terms; requiring the chancellor to establish the program under the supervision of the Council for Community and Technical College Education; allowing the state's public community and technical colleges to offer general education courses to eligible students in a manner and on a timeline that will allow the eligible student to earn at least 15 credit hours of general education courses toward an associate of applied science degree; specifying eligibility requirements; specifying the time in which an apprentice or journeyworker can apply for enrollment in the program; specifying time limit for completing and passing all general education coursework; providing for funding; allowing the council to propose emergency and legislative rules to implement the section; requiring chancellor to report to the Legislative Oversight Commission on Education Accountability on any programs created; and specifying minimum information the report shall contain.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-7. STAND - Registered apprenticeship to associate in applied science degree program established; definitions; funding; annual reporting.

(a) *Purpose and Intent.* – The purpose of this section is to create a comprehensive registered apprenticeship to associate of applied science degree program to be known as the Skilled Trades Apprenticeship Nontraditional Degree (STAND) program to provide apprentices or journeyworkers with the opportunity to obtain associate degrees in applied science while gaining practical skills and on-the-job training through federally recognized apprenticeship programs. The registered apprenticeship to associate of applied science degree program aims to bridge the gap between postsecondary education and the apprenticeship learning experience, fostering a skilled workforce that meets the demands of varied and evolving industries.

(b) *Definitions.* – As used in this section, unless used in a context that clearly requires a different meaning, the term:

"Apprenticeship" or "apprenticeship program" means an apprenticeship program registered under the federal National Apprenticeship Act, 29 U.S.C. 50, *et seq.*, or another federal apprenticeship program administered by the United States Department of Labor's Office of Apprenticeship.

"Associate of applied science degree" means an associate-level college degree with a focus on a particular applied science or technical skill designed for students planning to enter the workforce upon degree completion.

"Eligible course" means any class or program of instruction offered at a public community and technical college for which the eligible student receives credit toward the general education requirements that lead to an associate of applied science degree. Applied academics for adult education instruction, developmental education, physical education courses, and recreation and leisure studies courses are not eligible courses for purposes of this program.

"Eligible student" means any person who has graduated from high school or has obtained a general equivalency diploma or other approved equivalency-based test, is 18 years of age or older, and is an apprentice or participating in an apprenticeship program as verified by the registered apprenticeship program who registers to participate in the program. "Eligible student" also includes journeyworkers who have received a certificate recognized by the United States Department of Labor.

"Student-apprentice" means a student who has been accepted into and is participating in the program created in this section.

(c) *Apprenticeship to associate of applied science degree program established.* – Under the supervision of the council, the chancellor shall establish the STAND program whereby the state's public community and technical colleges may offer general education courses to eligible students in a manner and on a timeline that will allow the eligible student to earn at least 15 credit hours of general education courses toward an associate of applied science degree.

(1) To be eligible for the STAND program, an individual must be enrolled in an apprenticeship program recognized by the United States Department of Labor's Office of Apprenticeship or must have received a United States Department of Labor Certificate of Completion of Apprenticeship.

(2) An apprentice or journeyworker may apply for enrollment in the STAND program at the next available program offering.

(3) Student-apprentices shall complete and pass all general education coursework within six years from the initial date of enrollment in the STAND program or within two years after completing the apprentice program, whichever is longer. Journeyworkers shall complete and pass all general education coursework within six years from the initial date of enrollment.

(d) *Funding.* – From appropriations to the council for the purposes of implementing and administering the STAND program established in this section, the council shall pay directly to the

participating public community and technical colleges the cost of the tuition and academic fees incurred by eligible students taking courses through the STAND program. This funding may not be used to pay for any of the costs associated with the apprenticeship program or otherwise incurred by the apprenticeship program in conducting such training.

(e) *Rulemaking.* – The council may propose emergency and legislative rules pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section.

(f) *Annual reports.* – By December 1, 2025, and annually thereafter, the chancellor shall report to the Legislative Oversight Commission on Education Accountability on any STAND programs created. The report shall contain, at a minimum, the following information: the number of student-apprentices and journeyworkers participating in the STAND program; the number of associate of applied science degrees earned by students who have participated in the STAND program; projected growth in the STAND program and funding needs for the next year; and any issues with the STAND program reported by students, the registered apprenticeship program, and the community and technical colleges, how these issues are being addressed, and whether the issues require legislative action.

CHAPTER 165

(Com. Sub. for S. B. 820 - By Senators Weld and Plymale)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §9-5-29 of the Code of West Virginia, 1931, as amended, relating to substance abuse; defining terms; requiring the Department of Human Services to develop performance measures; stating the Department of Human Services will obtain input from specified stakeholders regarding provider-level outcome measures; to receive input establishing deadlines; requiring reporting; requiring the department to develop a quality withhold program; establishing deadlines; and requiring the department to develop a workplan for automatic day one enrollment to a managed care organization for all Medicaid enrollees who are eligible for managed care.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

***§9-5-29. Department of Human Services to develop outcome measures for substance use disorder; develop a quality withhold program; and develop and implement plan for day one enrollment of Medicaid enrollees.**

(a) For purposes of this section:

"Department" means the Department of Human Services.

"Managed care organizations" means a certified health maintenance organization (HMO) that provides health care services to Medicaid members pursuant to an agreement or contract with the Bureau for Medical Services.

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

“Quality withhold” means, in a capitated model, having a portion of a rate withheld subject to performance consistent with established quality requirements.

(b) The department, shall develop performance outcome measures to be implemented at the provider level for substance use disorder in-patient providers. These provider-level outcome measures will include, but not be limited to, nationally recognized measures of performance outcomes related to substance use disorder in-patient care. The Department will utilize national standards from Hedis and/or Atlas, as well as other standardized measures, in developing the provider-level outcome measures and will obtain input from the West Virginia Behavioral Healthcare Providers Association and West Virginia Association of Addiction and Prevention Professionals. The measures will be reported to the Legislative Oversight Commission on Health and Human Resources Accountability on or before August 30, 2024, and will be implemented no later than January 1, 2025, from the initial baseline. These measures shall be shared with the managed care organizations to inform contracting decisions.

(c) The department, shall develop a managed care quality withhold program based upon nationally recognized measures of performance outcomes, including those related to substance use disorder in-patient care. These measures will be reported to the Legislative Oversight Commission on Health and Human Resources Accountability on or before May 30, 2024, and implemented for baseline July 1, 2024. The baseline year will be to establish new entrant into the market. The capitation withhold will begin July 1, 2025.

(d) The department, shall plan for automatic day one enrollment to a managed care organization for all Medicaid enrollees who are eligible for managed care. This workplan shall be presented to the Legislative Oversight Commission on Health and Human Resources Accountability on or before September 30, 2024. The workplan will detail the steps to accomplish this goal, the system changes required, the Center for Medicare and Medicaid Service (CMS) authority changes required along with a detailed timeline of milestones, and a projected completion deadline.



CHAPTER 166

(H. B. 4594 - By Delegates Summers, Tully, Hite, Rohrbach, and Fehrenbacher)

[Passed February 13, 2024; in effect from passage.]

[Approved by the Governor on February 29, 2024.]

AN ACT to amend and reenact §9-5-27 of the Code of West Virginia, 1931, as amended, relating to foster care; removing stakeholder requirements; removing reporting requirements; removing termination date of foster care contract; and removing duties of Foster Care Ombudsman.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

***§9-5-27. Transitioning foster care into managed care.**

(a) “Eligible services” means acute care, including medical, pharmacy, dental, and behavioral health services.

(b) The secretary shall transition to a capitated Medicaid program for a child classified as a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure the appropriate care is delivered in the most appropriate place and time.

(c) The secretary shall make payments for the eligible services, including home and community-based services, using a managed care model.

***NOTE:** This section was also amended by S. B. 300 (Chapter 208) and H. B. 4274 (Chapter 149), both of which passed prior to this Act.

(d) The secretary shall submit, if necessary, applications to the United States Department of Health and Human Services for waivers of federal Medicaid requirements that would otherwise be violated in the implementation of the program and shall consolidate any additional waivers where appropriate: *Provided*, That this subsection does not apply to the Aged and Disabled Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

(e) If a selected managed care organization ceases to contract to provide Medicaid managed care services, it must provide all patient records, including medical records, to the next selected managed care organization to ensure the Eligible Medicaid Beneficiaries do not experience an interruption in care.

(f) In designing the program, the secretary shall ensure that the program:

(1) Reduces fragmentation and offers a seamless approach to meeting participants' needs;

(2) Delivers needed supports and services in the most integrated, appropriate, and cost-effective way possible;

(3) Offers a continuum of acute care services, which includes an array of home and community-based options; and

(4) Includes a comprehensive quality approach across the entire continuum of care services.

(g) An employee of the department who, as a function of that employment, has engaged in the development of any contract developed pursuant to the requirements of this section may not for a period of two years thereafter be employed by any agency or company that has benefitted or stands to benefit directly from a contract between the department and that agency or company.

(h) Any managed care company selected as the managed care contractor pursuant to the provisions of this article shall have at least 80 percent of the total full-time equivalent positions allocated to manage care of foster children in West Virginia according to the contract must have a primary workplace in the state of West Virginia.

CHAPTER 167

(Com. Sub. for H. B. 4933 - By Delegate Summers)

[Passed March 1, 2024; in effect July 1, 2024.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §9-5-12a of the Code of West Virginia, 1931, as amended, relating to Medicaid dental coverage; providing coverage is limited to \$2,000 per two-year budget period; providing recipients must pay for services over the \$2,000; requiring reporting; and removing expired internal effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

***§9-5-12a. Medicaid program; dental care.**

(a) The following terms are defined:

(1) "Cosmetic services" means dental work that improves the appearance of the teeth, gums, or bite, including, but not limited to, inlays or onlays, composite bonding, dental veneers, teeth whitening, or braces.

(2) "Diagnostic and preventative services" means dental work that maintains good oral health and includes oral evaluations, routine cleanings, x-rays, fluoride treatment, fillings, and extractions.

(3) "Restorative services" means dental work that involves tooth replacement, including, but not limited to, dentures, dental implants, bridges, crowns, or corrective procedures such as root canals.

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

(b) The Department of Human Services shall extend Medicaid coverage to adults aged 21 and over covered by the Medicaid program for diagnostic and preventative dental services and restorative dental services, excluding cosmetic services. This coverage is limited to \$2,000 per two-year budget period. Recipients must pay for services over the \$2,000 limit. No provision in this section shall restrict the department in exercising new options provided by, or to be in compliance with, new federal legislation that further expands eligibility for dental care for adult recipients.

(c) The department is responsible for the implementation of, and program design for, a dental care system to reduce the continuing harm and continuing impact on the health care system in West Virginia. The dental health system design shall include oversight, quality assurance measures, case management, and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations. The department shall seek authority from the Centers for Medicare and Medicaid Services to implement the provisions of this section.

(d) On or before December 1, 2027, the Bureau for Medical Services shall file a report with the Legislative Oversight Commission on Health and Human Resources Accountability and the Joint Committee on Government and Finance analyzing Medicaid expenditures related solely to the dental program for the plan year immediately prior to the passage of this legislation and each plan year until the date of submission of the required report. The report shall include at a minimum an analysis of the enrollees served, the state share of the Medicaid expenditures, and the federal share of expenditures.

CHAPTER 168

(Com. Sub. for H. B. 4786 - By Delegates Westfall and Hott)

[Passed March 9, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia 1931, as amended, by adding thereto a new article, designated §33-63-1, §33-63-2, §33-63-3, §33-63-4, §33-63-5, and §33-63-6, all relating to creating the Delivery Network Company Insurance Act; providing a short title; defining terms; defining interaction with other laws; providing insurance and disclosure requirements relating to delivery network companies and delivery network drivers; specifying minimum insurance coverage amounts required of delivery network companies and delivery network drivers; setting forth when delivery network companies must assume primary liability; authorizing exclusions in motor vehicle liability insurance policies and retaining other rights of insurers; and creating an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 63. DELIVERY NETWORK COMPANY INSURANCE ACT.

§33-63-1. Short title and definitions.

(a) This article may be cited as the “Delivery Network Company Insurance Act.”

(b) As used in this article:

(1) "Delivery network company" or "DNC" means a corporation, partnership, sole proprietorship, or other entity that operates in West Virginia and uses a digital network to connect a delivery network company customer to a delivery network driver

to provide delivery services. A DNC shall not be deemed to control, direct, or manage the personal vehicles or delivery network drivers that connect to its digital network, except where agreed to by written contract.

(2) "Delivery network company customer" or "customer" means a person who uses a digital network and orders the delivery of goods and prompts a delivery network driver to deliver such goods at the direction of the customer.

(3) "Delivery network driver" or "driver" means a person who provides delivery services through a DNC's digital network using a personal vehicle. For purposes of this Act, a driver shall be deemed to be an independent contractor and not an employee of the DNC, unless otherwise agreed in writing.

(4) "Delivery available period" means the period when a delivery network driver:

(A) Is operating a personal vehicle;

(B) Has logged on to a digital network and is eligible to receive requests to provide delivery services from a delivery network company, and

(C) Is not providing delivery services or operating in the delivery service period.

(5) "Delivery services" means the fulfillment of delivery requests made by a customer through a digital network, including the pickup of any goods and the delivery of the goods by a delivery network driver. Delivery services may include a series of deliveries to different customers, or to different locations at the direction of a customer.

(6) "Delivery service period" means the period beginning when a driver starts operating a personal vehicle to pick up goods for a delivery or series of deliveries as documented via a digital network controlled by a delivery network company, continuing while the driver transports the requested deliveries, and ending upon delivery of the requested goods to:

(A) The customer or the last customer in a series of deliveries;

(B) A location designated by the customer, or the last location so designated in a series of deliveries; or

(C) The location designated by the delivery network company, including for purposes of returning the goods.

(7) "Digital network" means any online-enabled application, software, website, or system offered or utilized by a delivery network company that enables deliveries with delivery network drivers.

(8) "Personal vehicle" means a vehicle as defined in §17C-1-2 of this code that is:

(A) Used by a delivery network driver to provide delivery services via a digital network;

(B) Owned, leased, or otherwise authorized for use by the delivery network driver;

(C) A two axel vehicle, the primary purpose of which is the transportation of passengers, including motorcycles and mopeds.

§33-63-2. Interaction with other law.

Nothing in this article limits the scope of federal or state law regarding delivery or transport of goods. Deliveries made under this article that are subject to such other law must also comply with the requirements of that law. In the event of a conflict between this article and another law dealing with the delivery or transport of goods, the other law prevails.

§33-63-3. Insurance requirements.

(a) A delivery network company shall ensure that during the delivery available period, if it applies, and during the delivery service period, primary motor vehicle liability insurance is in place that recognizes that the driver is a delivery network company driver or that does not exclude coverage for use of a personal vehicle to provide deliveries.

(b) During the delivery service period and delivery available period, the delivery network driver, delivery network company, or any combination of the two shall maintain insurance that insures the driver for liability to third parties of not less than \$50,000 for damages arising out of bodily injury sustained by any one person in an accident, of not less than \$100,000 for damages arising out of bodily injury sustained by all persons injured in an accident, and of not less than \$25,000 for all damages arising out of damage to or destruction of property in an accident: *Provided*, That no provision in this article relieves the DNC and driver from the requirements of §17A-1-1 *et seq.* and §17D-1-1 *et seq.* of this code and from the uninsured motorists' coverage requirements of §33-6-31 of this code.

(c) If the insurance coverage maintained by a delivery network driver pursuant to subsections (a) and (b) of this section has lapsed or does not provide the required coverage, insurance maintained by the delivery network company shall provide the coverage required by this section beginning with the first dollar of a claim and the insurance maintained by the delivery network company shall have the duty to defend the claim.

(d) Coverage under a motor vehicle insurance policy maintained by the delivery network company shall not be dependent upon another motor vehicle liability insurer first denying a claim, nor shall another motor vehicle liability insurance policy be required to first deny a claim.

(e) Insurance coverage required by this section may be obtained from an insurance company duly licensed to transact business under the insurance laws of this state or by an eligible surplus lines broker under §33-12C-1 *et seq.* of this code.

(f) The coverage required pursuant to this section shall be deemed to meet the financial responsibility law of this state.

(g) A delivery network driver shall carry proof of insurance required pursuant to this section at all times while using a personal vehicle in connection with a digital network. In the event of an accident, a delivery network driver shall, upon request, provide

insurance coverage information to the directly interested parties, motor vehicle insurers, and investigating law enforcement officers. The insurance coverage information may be displayed or provided in either paper or electronic form as provided in §17D-2A-4 of this code. A delivery network driver shall, upon request, disclose to the directly interested parties, motor vehicle insurers, and investigating law enforcement officers whether the driver was operating during the delivery available period or the delivery service period at the time of the accident.

(h) In a claims coverage investigation, a delivery network company or its insurer shall cooperate with all insurers that are involved in the claims coverage investigation to facilitate the exchange of information and shall immediately provide upon request by directly involved parties or any insurer the precise times that a delivery network driver began and ended the delivery available period, the delivery service period, or both periods on the delivery network company's digital network in the 12-hour period immediately preceding the accident and in the 12-hour period immediately following the accident. Insurers potentially providing the coverage required in this section shall disclose, upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any motor vehicle insurance maintained in order to satisfy the requirements of this section.

(i) The insurer or insurers of a delivery network company providing coverage under subsections (a) and (b) of this section shall assume primary liability for a claim when a dispute exists as to when the delivery available period, the delivery service period, or both periods began or ended and the delivery network company does not have available, did not retain, or fails to provide the information required by subsection (h) of this section.

§33-63-4. Disclosures to delivery network drivers.

A delivery network company shall not permit a delivery network driver to accept a request for a delivery or engage in delivery services on a DNC's digital network until the DNC discloses in writing to the driver:

(1) The insurance coverage, including the types of coverage and the limits for each coverage, that the delivery network company provides while the driver uses a personal vehicle in connection with a delivery network company's digital network; and

(2) That the delivery network driver's own motor vehicle insurance policy might not provide any coverage during the delivery available period, if it applies, or the delivery service period.

§33-63-5. Exclusions in motor vehicle liability insurance policies.

(a) An authorized insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any injury or loss that occurs during the delivery available period and the delivery service period, including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Uninsured and underinsured motorist coverage pursuant to §33-6-31 of this code;

(3) Medical payments coverage;

(4) Comprehensive physical damage coverage; and

(5) Collision physical damage coverage.

(b) Nothing in this article invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles used for delivery or for any business use.

(c) Nothing in this article invalidates, limits, or restricts an insurer's ability under existing law to underwrite any insurance policy. Nothing in this article invalidates, limits, or restricts an insurer's ability under existing law to cancel and non-renew policies.

(d) A motor vehicle liability insurer that defends or indemnifies a claim against a delivery network driver that is excluded under the terms of its policy shall have the right to seek recovery against the insurer providing coverage under §33-63-3(a) and §33-63-3(b) of this code if the claim:

(1) Occurs during the delivery available period or the delivery service period; and

(2) Is excluded under the terms of its policy.

§33-63-6. Effective date.

This article shall take effect on July 1, 2025.

CHAPTER 169

**(Com. Sub. for H. B. 4809 - By Delegates Hornby, Chiarelli,
Willis, Pinson, and Heckert)**

[Passed February 26, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §35-1B-1, §35-1B-2, §35-1B-3, §35-1B-4, §35-1B-5, and §35-1B-6, all relating to creating the Health Care Sharing Ministries Freedom to Share Act; exempting a health care sharing ministry from the state's insurance laws; providing definitions; setting forth requirements for health care sharing ministries to qualify for; providing that membership in a health care sharing ministry satisfies a requirement to have health care insurance by a public institution of higher education; and providing that a health care sharing ministry is not a third-party payer for any purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. HEALTH CARE SHARING MINISTRIES FREEDOM TO SHARE ACT.

§35-1B-1. Short title.

This article shall be known as the "Health Care Sharing Ministries Freedom to Share Act".

§35-1B-2. Rule of Construction.

Nothing in this Article shall be construed to abrogate or reduce a right, privilege or protection reserved for or accruing to a religious organization pursuant to §35-1A-1 of this code.

§35-1B-3. Exemption of Health Care Sharing Ministries from the Insurance Code.

A health care sharing ministry may not be considered to be engaging in the business of insurance for purposes of chapter 33 of this code.

§35-1B-4. Definition.

"Health care sharing ministry" for purposes of this article means a not for profit organization:

(a) Whose members are limited to those who share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs without regard to the state in which a member resides or is employed;

(b) That provides for the financial or medical needs of a member through contributions from other members;

(c) Whose members retain membership even after they develop a medical condition;

(d) Provides amounts that members may contribute with no assumption of risk or promise to pay among the members and no assumption of risk or promise to pay by the health care sharing ministry to the members;

(e) Provides to the members annually the total dollar amount of qualified needs actually shared in the previous year in accordance with criteria established by the health care sharing ministry;

(f) Conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public by providing a copy upon request, or by posting on the organization's website; and

(g) Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of

the organization that is substantially similar to the following: Notice: The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payments for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills. Complaints concerning this health care sharing ministry may be reported to the Attorney General of your state.

§35-1B-5. Public Institutions of Higher Education.

If a public institution of higher education in this state requires a student to purchase health care insurance, the institution shall allow the student to satisfy this requirement through membership in a health care sharing ministry.

§35-1B-6. Third-party Payers.

Health Care Sharing Ministries may not be considered third-party payers for any purposes where the term "Third Party Payer or Payers" occurs in any sections of law of this code, including financial assistance programs for hospitals, Medicaid, SCHIP, other safety net programs for health care, and chapter 33 of this code.



CHAPTER 170

(Com. Sub. for H. B. 5057 - By Delegates Hall and Green)

[Passed February 23, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §33-11A-7 of the Code of West Virginia, 1931, as amended, relating to defining the term "nominal fee" for providing a referral to an insurance company or producer.

Be it enacted by the Legislature of West Virginia:

§33-11A-7. Referrals by unlicensed persons allowed.

(a) A person who is not licensed to sell insurance may refer a customer who seeks to purchase, or seeks an opinion or advice on, any insurance product to a person, or provide the phone number of a person, who sells or provides opinions or advice on such product, only if the person making the referral receives no fee or only a nominal fee for such referral and such fee is not based on the customer's application for or purchase of insurance.

(b) For purposes of this section "nominal fee" means a one-time fee of \$100 or less.



CHAPTER 171

(Com. Sub. for H. B. 5162 - By Delegates Howell, Mallow, Adkins, Campbell, DeVault, Householder, Jeffries, Thorne, Ferrell, Foster, and Willis)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-7g; to amend and reenact §21-1E-2 of said Code; to amend and reenact §21-1E-3 of said Code; and to amend and reenact §21-6-2 of said Code, all relating to creating the Youth Apprenticeship Program which allows certain students to enroll in apprenticeship programs; allowing any student participating in the program to receive secondary credit or other credentialing for the apprenticeship under certain conditions; making the West Virginia Department of Education responsible for establishing the program; requiring the program to include a broad range of skills including those specifically focused in certain areas; requiring the county boards of education to develop materials in conjunction with industry to promote awareness of apprenticeship for students and to encourage recruitment; requiring program to create a structural linkage between secondary and postsecondary components of the program leading to the school awarding a high school diploma and postsecondary certification of occupational skills to the student; requiring the department to develop pilot projects for the 2024-2025 school year and to implement and direct a comprehensive apprenticeship program for all school systems by the beginning of the 2025-2026 school year; requiring each apprenticeship to meet the department's criteria; specifying minimum criteria; adding definition of "Youth Apprenticeship Program"; providing that training hours accumulated by a student's participation in the program count

towards the student's certifications or licensures, if appropriate; requiring maintenance of a list of current apprenticeships throughout the state along with certain other resources, planning materials, credentials, certifications, and exams; authorizing students enrolled in a Youth Apprenticeship Program to work on machinery associated with certain listed occupations otherwise prohibited for a child under 18 years of age on an occasional and incidental basis while under mandatory direct supervision; providing exemptions for certain students performing roofing operations under certain conditions; and allowing the department to grant other limited exemptions for nonagricultural work in compliance with the U.S. Child Labor Provisions for nonagricultural occupations under the Fair Standards Act, Child Labor Bulletin 101.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7G. Youth Apprenticeship Program.

(a) In addition to any other registered apprenticeship programs, there is herein created the "Youth Apprenticeship Program," which shall allow for any public, private, or home school student in the eleventh or twelfth grade, or are 16 years or older, the opportunity to enroll in apprenticeship programs.

(b) For the purposes of this section, "apprenticeship program" shall have the same meaning as defined in §21-1E-2 of this code.

(c) Any student participating in the program may receive secondary credit or other credentialing for the apprenticeship when the apprenticeship is approved by the local county board of education and in keeping with the rules of the Division of Labor (hereinafter "the division.")

(d) The West Virginia Department of Education (hereinafter "the department") is responsible for establishing the Youth

Apprenticeship Program, including setting standards, providing guidelines for county boards of education to approve local enterprise and granting release time from public schools to participate in the program.

(1) The Youth Apprenticeship Program shall include a broad range of skills, including those specifically focused on manufacturing, engineering technology, administration and office technology, and health care.

(2) The county boards of education shall develop materials in conjunction with industry to promote awareness of apprenticeship for students and to encourage recruitment.

(3) The program shall create a structural linkage between secondary and postsecondary components of the program leading to the school awarding a high school diploma and postsecondary certification of occupational skills to the student.

(e) The department shall develop pilot projects for the 2024-2025 school year and shall implement and direct a comprehensive apprenticeship program for all school systems by the beginning of the 2025-2026 school year.

(f) Each apprenticeship shall meet the department's criteria which shall include, but is not limited to:

(1) A detailed training plan between the employer and the apprentice that identifies specific work tasks that will develop workplace competency;

(2) A minimum of 135 classroom hours of related academic instruction and training;

(3) A minimum of 400 hours of on-the-job training;

(4) A progressive wage schedule established by the participating employer;

(5) On-site evaluation of the student's performance; and

(6) Training remediation as necessary at the school site.

CHAPTER 21. LABOR

ARTICLE 1E. CAREER TRAINING EDUCATION AND APPRENTICESHIPS

§21-1E-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

"Apprentice" means someone who is enrolled in an apprenticeship program.

"Apprenticeship program" means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

"Employer sponsored training program" means a program approved in accordance with a rule promulgated pursuant to authority established in §21-1E-4 of this code.

"License" means a valid and current certification or license issued by the Commissioner of Labor in accordance with the provisions of this article.

"Career technical education" means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

"Youth Apprenticeship Program" means the program created in §18-2-7g of this code and is subject to the definition of "apprentice" set forth in this section.

§21-1E-3. Recognition of training and apprenticeships; maintenance of current list of apprenticeships.

(a) Beginning July 1, 2019, applicants for certification or licensure shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure in the same occupation in accordance with the standards

and procedures authorized in accordance with this article. The training hours accumulated by a student's participation in the "Youth Apprenticeship Program" created in §18-2-7g of this code shall count towards the student's certifications or licensures, if appropriate.

(b) The State Board of Education, Higher Education Policy Commission, and Department of Commerce shall jointly maintain a list of current apprenticeships throughout the state along with free career exploration resources and planning materials for postsecondary opportunities in addition to credentials, certifications, and/or exams that reflect industry requirements or lead to postsecondary credit.

ARTICLE 6. CHILD LABOR.

§21-6-2. Employment of children under eighteen in certain occupations; determination as to other occupations; exemptions for certain students performing roofing operations.

(a) A child under 18 years of age may not be employed, permitted, or suffered to work in, about, or in connection with any of the following occupations:

(1) Motor vehicle driver and outside helper whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivery of goods;

(2) The manufacture, storage, handling or transportation of explosives or highly flammable substances;

(3) Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or in any other place in which the heating, melting, or heat treatment of metals is carried on;

(4) Logging and saw milling occupations;

(5) Power-driven woodworking machine occupations;

(6) Occupations involving exposure to radioactive substances and ionizing radiations;

(7) Power-driven hoisting apparatus occupations;

(8) Power-driven metal-forming, punching, and shearing machine occupations;

(9) Mining, including coal mining;

(10) Occupations involving slaughtering, meat-packing, or processing or rendering;

(11) Power-driven bakery machines;

(12) Power-driven paper-products machine occupations;

(13) Occupations involved in the manufacturing of brick, tile, and kindred products;

(14) Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears;

(15) Occupations involved in wrecking, demolition, and ship-breaking operations;

(16) Roofing operations above ground level, subject to subsection (d) of this section; and

(17) Excavation operations.

(b) A child under 18 years of age may not be employed or permitted to work in a bar, or be permitted, employed, or suffered to sell, dispense, or serve alcoholic beverages in any place or establishment where the consumption of alcoholic beverages is permitted by law.

(c) A child under 18 years of age may not be employed or permitted to work in any occupation prohibited by law or determined by the commissioner to be dangerous or injurious: *Provided*, That a child between the ages of 16 and 18 years who is enrolled in, participating in, or has completed the minimum

training requirements of the West Virginia State Fire Commission, West Virginia Department of Education Public Service Training, or West Virginia University fire service extension, or equivalent approved program, and who has the written consent of his or her parents or guardian, may be employed by or elected as a member of a volunteer fire department to perform firefighting functions: *Provided, however,* That no child may be permitted to operate any fire fighting vehicles, enter a burning building in the course of his or her employment or work or enter into any area determined by the fire chief or fireman in charge at the scene of a fire or other emergency to be an area of danger exposing the child to physical harm by reason of impending collapse of a building or explosion, unless the child is under the immediate supervision of a fire line officer.

(d) Students enrolled in a Youth Apprenticeship Program pursuant to §18-2-7g of this code are authorized to work on machinery associated with occupations listed in §21-6-2(a) of this code only on an occasional and incidental basis while under mandatory direct supervision. For the purposes of this section, the term “occasional and incidental use” means use done for training purposes and for no more than five percent of the student’s training hours a day.

(e) In compliance with U.S. Child Labor Provisions for nonagricultural occupations under the Fair Labor Standards Act, Child Labor Bulletin 101, exemptions shall be made for students 16 years of age or older performing roofing operations above ground level for the express purpose of learning how to install, wire, or repair a rooftop or other equipment provided the student is employed under the following conditions:

(1) The student is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;

(2) Written consent of the parent or legal guardian for the student to perform roofing operations pursuant to this subsection is

submitted to both the cooperative vocational training program or private school, as applicable, and the employer; and

(3) The student is employed under a written agreement which stipulates that:

(A) The work will be intermittent and under the direct and close supervision of a qualified and experienced person;

(B) Safety instruction will be provided by the school and coordinated with the employer through on-the-job training; and

(C) A schedule of organized and progressive work processes be performed.

(f) Other limited exemptions for nonagricultural work in compliance with U.S. Child Labor Provisions for nonagricultural occupations under the Fair Standards Act, Child Labor Bulletin 101 may be permitted by the department.



CHAPTER 172

(Com. Sub. for S. B. 2 - By Senator Woodrum)

[Passed March 8, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to alternative emission limitations during startup and shutdown operations; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of particulate matter air pollution from the combustion of fuel in indirect heat exchangers; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from the operation of hot mix asphalt plants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of refuse; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of particulate matter air pollution from manufacturing processes and associated operations; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental

Protection to promulgate a legislative rule relating to control of air pollution from the emission of sulfur oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from the emission of volatile organic compounds; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of greenhouse gas emissions from existing coal-fired electric utility generating units; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to administration of Drinking Water Treatment Revolving Fund and safe drinking water set-asides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground injection control.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (alternative emission limitations during startup and shutdown operations, 45 CSR 01), is authorized with the following amendments:

On page 1, subsection 1.6., by striking the word “The” and inserting in lieu thereof the words “This rule applies to the”;

On page 1, subsection 1.6. after the word “limitations” by inserting the words “imposed by those rules”;

And,

On page 5, section 1, line 69, by striking out “§22-11-7a” and inserting in lieu thereof “§22-11B-7”.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (control of particulate matter air pollution from the combustion of fuel in indirect heat exchangers, 45 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (control of air pollution from the operation of hot mix asphalt plants, 45 CSR 03), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (control of air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas, 45 CSR 05), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code,

modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (control of air pollution from combustion of refuse, 45 CSR 06), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (control of particulate matter air pollution from manufacturing processes and associated operations, 45 CSR 07), is authorized.

(g) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 08), is authorized.

(h) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the Department of Environmental Protection (control of air pollution from the emission of sulfur oxides, 45 CSR 10), is authorized.

(i) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(j) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to

the Department of Environmental Protection (control of air pollution from the emission of volatile organic compounds, 45 CSR 21), is authorized.

(k) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(l) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control of greenhouse gas emissions from existing coal-fired electric utility generating units, 45 CSR 44), is authorized.

(m) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-36-2 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Department of Environmental Protection (administration of Drinking Water Treatment Revolving Fund and safe drinking water set-asides, 60 CSR 12), is authorized.

(n) The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §22-18-6 of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023 relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.

(o) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §22-11-7a of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Department of Environmental Protection (underground injection control, 47 CSR 13), is authorized.

CHAPTER 173

(Com. Sub. for S. B. 17 - By Senator Woodrum)

[Passed March 9, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Health to promulgate a legislative rule relating to public water systems operators; authorizing the Department of Health to promulgate a legislative rule relating to wastewater systems and operators; authorizing the Department of Health to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health to promulgate a legislative rule relating to assisted living residences; authorizing the Department of Health to promulgate a legislative rule relating to cross-connection control and backflow prevention; authorizing the Department of Health to promulgate a legislative rule relating to fees for permits; authorizing the Department of Health to promulgate a legislative rule relating to fees for services; authorizing the Department of Health to promulgate a legislative rule relating to medical examiner requirements for postmortem inquiries; authorizing the Department of Health to promulgate a legislative rule relating to newborn screening system; authorizing the Department of Health to promulgate a legislative rule relating to distribution of funds from Emergency Medical Services Salary Enhancement Fund; authorizing the Department of Health to promulgate a

legislative rule relating to West Virginia Clearance for Access, registry and employment screening; authorizing the Department of Health to promulgate a legislative rule relating to cooperative agreement approval and compliance; authorizing the Department of Health to promulgate a legislative rule relating to certificate of need; authorizing the Department of Health to promulgate a legislative rule relating to chronic pain management clinic licensure; and authorizing the Department of Health to promulgate a legislative rule relating to medication-assisted treatment and office-based, medication-assisted treatment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health.

(a) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §16-1-4 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (public water systems operators, 64 CSR 04), is authorized.

(b) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §16-1-4 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (wastewater systems and operators, 64 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §27-9-1 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of

Health (behavioral health centers licensure, 64 CSR 11), is authorized.

(d) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §16-5B-8 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (hospital licensure, 64 CSR 12), is authorized.

(e) The legislative rule filed in the State Register on February 16, 2023, authorized under the authority of §16-5D-5 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2023, relating to the Department of Health (assisted living residences, 64 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §16-1-9a of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (cross-connection control and backflow prevention, 64 CSR 15), is authorized with the following amendment:

“On page 3, by striking section 5 in its entirety and inserting in lieu thereof a new section 5 to read as follows:

§64-15-5. When Protection Is Required.

5.1. The commissioner or his or her designee may determine, upon conducting a risk assessment, that any water supply system must be equipped with a backflow prevention assembly to protect the health and sanitation of water, whether publicly or privately owned: *Provided*, That water supply systems shall not require a backflow prevention assembly unless any of the following are met:

5.1.1. it cross-connects with a sprinkler or fire suppression system;

5.1.2. it cross-connects with an active auxiliary water source or water well;

5.1.3. it cross-connects with any fluid storage tank, tub, pool or cistern 85 gallons or larger with a public water inlet that can be below the water level;

5.1.4. it cross-connects with a boiler system;

5.1.5. it cross-connects with any land irrigation system; or

5.1.6. The property serviced by the public water supply is a funeral home or mortuary, restaurant, dry cleaner, medical facility, beauty and nail salon, car wash, multi-tenant retail space, commercial building three stories or taller, or commercial space with a dedicated fire service line/sprinkler system, industrial facility, salvage and/or wastewater facility, food processing facility, recycling facility where cross-connected to the public water supply, correctional facility, or any other customer using chemicals harmful to human health that are cross-connected to the public water supply.”.

(g) The legislative rule filed in the State Register on July 21, 2023, authorized under the authority of §16-1-4 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (fees for permits, 64 CSR 30), is authorized.

(h) The legislative rule filed in the State Register on July 21, 2023, authorized under the authority of §16-1-4 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (fees for services, 64 CSR 51), is authorized.

(i) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §61-12-16 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of

Health (medical examiner requirements for postmortem inquiries, 64 CSR 84), is authorized.

(j) The legislative rule filed in the State Register on February 16, 2023, authorized under the authority of §16-22-3 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 22, 2023, relating to the Department of Health (newborn screening system, 64 CSR 91), is authorized.

(k) The legislative rule filed in the State Register on July 18, 2023, authorized under the authority of §16-4C-25 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (distribution of funds from Emergency Medical Services Salary Enhancement Fund, 64 CSR 116), is authorized.

(l) The legislative rule filed in the State Register on July 19, 2023, authorized under the authority of §16-49-9 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Health (West Virginia Clearance for Access: registry and employment screening, 64 CSR 123), is authorized.

(m) The legislative rule filed in the State Register on October 5, 2022, authorized under the authority of §16-29B-28 of this code, relating to the Department of Health (cooperative agreement approval and compliance, 65 CSR 06), is authorized.

(n) The legislative rule filed in the State Register on July 21, 2023, authorized under the authority of §16-2D-4 of this code, relating to the Department of Health (certificate of need, 65 CSR 32), is authorized.

(o) The legislative rule filed in the State Register on February 16, 2023, authorized under the authority of §16-5H-9 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on August 21, 2023, relating to the Department of Health (chronic pain management clinic licensure, 69 CSR 08), is authorized.

(p) The legislative rule filed in the State Register on February 16, 2023, authorized under the authority of §16-5Y-13 of this code, modified by the Department of Health to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2023, relating to the Department of Health (medication-assisted treatment and office based, medication-assisted treatment, 69 CSR 12), is authorized.

CHAPTER 174

(Com. Sub. for S. B. 31 - By Senator Woodrum)

[Passed February 5, 2024; in effect from passage]
[Approved by the Governor on February 15, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §64-5A-1 and §64-5A-2, all relating generally to authorizing certain agencies of the Department of Human Services to promulgate legislative rules; authorizing the rules as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Human Services to promulgate a legislative rule relating to collection and exchange of data related to overdoses; authorizing the Department of Human Services to promulgate a legislative rule relating to procedure to contest the substantiation of child abuse or neglect; and authorizing the Family Protection Services Board to promulgate a legislative rule relating to domestic violence program licensure standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. AUTHORIZATION FOR DEPARTMENT OF HUMAN SERVICES TO PROMULGATE LEGISLATIVE RULES.

§64-5A-1. Department of Human Services.

(a) The legislative rule filed in the State Register on July 18, 2023, authorized under the authority of §16-5T-5 of this code, modified by the Department of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the

Department of Human Services (collection and exchange of data related to overdoses, 67 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §49-4-601b of this code, modified by the Department of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Department of Human Services (procedure to contest the substantiation of child abuse or neglect, 78 CSR 27), is authorized with the following amendment:

On page 2, subsection 3.1, by striking out the word “either” and inserting in lieu thereof the word “any”.

§64-5A-2. Family Protection Services Board.

The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §48-26-403 of this code, modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Family Protection Services Board (domestic violence program licensure standards, 191 CSR 02), is authorized.

CHAPTER 175

(Com. Sub. for S. B. 36 - By Senator Woodrum)

[Passed March 8, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §64-6-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Homeland Security to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Governor's Committee on Crime, Delinquency, and Correction to promulgate a legislative rule relating to law-enforcement training and certification standards; authorizing the Governor's Committee on Crime, Delinquency, and Correction to promulgate a legislative rule relating to protocol for law-enforcement response to domestic violence; authorizing the Governor's Committee on Crime, Delinquency, and Correction to promulgate a legislative rule relating to sexual assault forensic examinations; authorizing the Division of Emergency Management to promulgate a legislative rule relating to industrial accident rapid response; authorizing the State Fire Commission to promulgate a legislative rule relating to the fire code; authorizing the State Fire Commission to promulgate a legislative rule relating to certification and evaluation of local fire departments; authorizing the State Fire Commission to promulgate a legislative rule relating to certification of fire chiefs; authorizing the State Fire Marshal to promulgate a legislative rule relating to certification of electrical inspectors; authorizing the State Fire Marshal to promulgate a legislative rule relating to supervision of fire protection work; authorizing the State Fire Marshal to promulgate a legislative rule relating to electrician licensing

rules; authorizing the State Fire Marshal to promulgate a legislative rule relating to standards for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors and plans examiners; authorizing the State Fire Marshal to promulgate a legislative rule relating to certification of home inspectors; authorizing the West Virginia State Police to promulgate a legislative rule relating to West Virginia State Police member grievance procedures; and authorizing the West Virginia State Police to promulgate a legislative rule relating to motor vehicle inspections.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF
HOMELAND SECURITY TO PROMULGATE
LEGISLATIVE RULES.**

**§64-6-1. Governor's Committee on Crime, Delinquency, and
Correction.**

(a) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-29-3 of this code, modified by the Governor's Committee on Crime, Delinquency, and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2023, relating to the Governor's Committee on Crime, Delinquency, and Correction (law-enforcement training and certification standards, (149 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §48-27-1102 of this code, modified by the Governor's Committee on Crime, Delinquency, and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2023, relating to the Governor's Committee on Crime, Delinquency, and Correction (protocol for law-enforcement response to domestic violence, 149 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on September 8, 2023, authorized under the authority of §15-9B-4 of this code, modified by the Governor's Committee on Crime, Delinquency, and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 9, 2023, relating to the Governor's Committee on Crime, Delinquency, and Correction (sexual assault forensic examinations, 149 CSR 11), is authorized with the following amendment:

On page 7, subsection 7.1, following the word “maintained” by inserting the words “at no cost to the victim”.

§64-6-2. Division of Emergency Management.

The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §15-5B-3a of this code, relating to the West Virginia Division of Emergency Management (industrial accident rapid response rule, 170 CSR 02), is authorized.

§64-6-3. State Fire Commission.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §15A-11-3 of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2023, relating to the State Fire Commission (fire code, 87 CSR 01), is authorized with the following amendments:

On page 3, after “NFPA 1” by inserting the words “(2021 Edition)”;

On page 5, paragraph 2.1.d.1., by striking out the word “may”;

On page 5, after paragraph 2.1.d.2., by adding 2 new paragraphs to read as follows:

“2.1.d.3. The State Fire Marshal’s Office shall provide a system for the electronic filing of all documents submitted for the plan

review of projects, including payments, attachments, drawings or other requirements. The State Fire Marshal's Office shall have the system in place by January 1, 2025. After that date, the owner or occupant applying for a final inspection or certificate of occupancy shall submit all documents for a plan review electronically.

2.1.d.4. The appropriate AHJ shall complete a plan review for a project within 45 days of receiving the project plan's submission. If the submitted project plans do not meet the requirements of this subdivision, the AHJ shall notify the owner or occupant of the project plan's deficiencies with specificity. The owner or occupant has 10 days to submit any additional required documentation to the AHJ. The AHJ has 10 days to complete the plan review once all of the requirements of this subdivision have been met."

On page 7, paragraph 2.2.c.1A, after "section 9.6." by inserting a comma and the words "Chapters 11 through 43, and other applicable NFPA codes";

On page 21, paragraph 2.2.j.2.T. by striking out "2.2.q.6.C." and inserting in lieu thereof "2.2.f.6.C";

And,

On page 27, subsection 15.1 by striking out the words "Certified Employee Training Program (CETP) and inserting in lieu thereof the words "Training Program".

(b) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §15A-11-8 of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the State Fire Commission (certification and evaluation of local fire departments, 87 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §15A-11-8 of this code, modified by the State Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on September 26, 2023, relating to the State Fire Commission (certification of fire chiefs, 87 CSR 13), is authorized.

§64-6-4. State Fire Marshal.

(a) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §29-3C-4 of this code, modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2023, relating to the State Fire Marshal (certification of electrical inspectors, 103 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §29-3D-4 of this code, modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the State Fire Marshal (supervision of fire protection work, 103 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §29-3B-5 of this code, modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the State Fire Marshal (electrician licensing rules, 103 CSR 05), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §15A-10-5 of this code, modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the State Fire Marshal (standards for the certification and continuing education of municipal, county, and other public sector building code officials, building code inspectors and plans examiners, 103 CSR 06), is authorized.

(e) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §15A-10-5 of this code,

modified by the State Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the State Fire Marshal (certification of home inspectors, 103 CSR 07), is authorized.

§64-6-5. West Virginia State Police.

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §15-2-6 of this code, relating to the West Virginia State Police (West Virginia State Police member grievance procedures, 81 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §17C-16-4 of this code, modified by the West Virginia State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia State Police (motor vehicle inspections, 81 CSR 19), is authorized.

CHAPTER 176

(Com. Sub. for S. B. 50 - By Senator Woodrum)

[Passed March 8, 2024; in effect from passage]

[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §64-7-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed, as modified, and as modified and amended by the Legislative Rule-Making Review Committee, and as amended by the Legislature; directing certain agencies of the Department of Revenue to amend current legislative rules; directing the Alcohol Beverage Control Commissioner to amend a legislative rule relating to private club licensing; directing the Alcohol Beverage Control Commissioner to amend a legislative rule relating to nonintoxicating beer licensing and operations procedures; authorizing the West Virginia Insurance Commissioner to promulgate a legislative rule relating to AIDS regulation; authorizing the West Virginia Insurance Commissioner to promulgate a legislative rule relating to health benefit plan network access and adequacy; authorizing the West Virginia Insurance Commissioner to promulgate a legislative rule relating to bail bondsmen in criminal cases; authorizing the West Virginia Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the West Virginia Tax Department to promulgate a legislative rule relating to aircraft operated under a fractional ownership program; authorizing the West Virginia Tax Department to promulgate a legislative rule relating to a citizen tax credit for property taxes paid; authorizing the West Virginia Tax Department to promulgate a legislative rule relating to income tax paid at the entity level by electing pass-through entities;

authorizing the West Virginia Tax Department to promulgate a legislative rule relating to income tax credits for property taxes paid; authorizing the West Virginia Tax Department to promulgate a legislative rule relating to administration of the tax on purchases of wine and liquor inside and outside of municipalities; and authorizing the West Virginia Tax Department to promulgate a legislative rule relating to the privilege tax on sales of hemp-derived cannabinoid and kratom products.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7. AUTHORIZATION FOR THE DEPARTMENT
OF REVENUE TO PROMULGATE LEGISLATIVE
RULES.**

§64-7-1. Alcohol Beverage Control Commissioner.

The Legislature directs the Alcohol Beverage Control Commissioner to amend the legislative rule filed in the State Register on July 1, 2022, authorized under the authority of §60-2-16 of this code, relating to the Alcohol Beverage Control (private club licensing, 175 CSR 02), with the amendments set forth below:

On page 1, section 1, subsection 1.5, by striking the word “2032” and inserting in lieu thereof the word “2029”.

On page 6, striking out the entirety of subdivision 2.22.3. and inserting, in lieu thereof, a new subdivision 2.22.3. to read as follows:

“2.22.3. Maintains a fresh food inventory capable of being prepared in the private club restaurant’s full kitchen.”

On page 7, by striking out the entirety of subdivision 2.23.3. and inserting, in lieu thereof, a new subdivision 2.23.3. to read as follows:

“2.23.3. Have one or more members operating who maintain a fresh food inventory capable of being prepared for events

conducted at the private farmers market in the private club restaurant's full kitchen.”

On page 11, by striking out the entirety of subdivision 2.28.4 and inserting, in lieu thereof, the following:

“Maintains a fresh food inventory capable of being prepared in the private manufacturer club's full kitchen.”

On page 30, section 4, by striking out all of subsections 4.8 and 4.9 and inserting in lieu thereof a new subsection 4.8, to read as follows:

“4.8. Hours of operation. - The licensed premises of all private clubs shall be closed for operation and cleared of all members and guests 30 minutes after the hours of sale of alcoholic liquors and nonintoxicating beer have expired, except for: (i) a private resort hotel holding a license issued pursuant to W. Va. Code §60-7-1 *et seq.* may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the licensed premises when also licensed under W. Va. Code §29-22A-1 *et seq.* and W. Va. Code §29-22C-1 *et seq.* or W. Va. Code §29-25-1 *et seq.*; (ii) members and guests staying at a private resort hotel, but the members and guests must clear any bar and restaurant areas 30 minutes after the hours of sale of alcoholic liquors and nonintoxicating beer have expired; and (iii) members and guests staying at a private hotel, but the members and guests must clear any bar and restaurant areas 30 minutes after the hours of sale of alcoholic liquors and nonintoxicating beer have expired. Employees of the licensee shall leave the licensed premises no later than one hour after the premises are closed for operation. Licensed premises shall not be occupied by members and guests any sooner than 30 minutes prior to the hours of sale of alcoholic liquors and nonintoxicating beer, except for: (i) a private resort hotel holding a license issued pursuant to W. Va. Code §60-7-1 *et seq.* may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the licensed premises when also licensed under W. Va. Code §29-22A-1 *et seq.* and W. Va. Code §29-22C-1 *et seq.* or W. Va. Code §29-25-1 *et seq.*; (ii) members and guests staying at a private resort hotel where the members and guests may not enter any bar and restaurant areas until 30 minutes

before the hours of sale of alcoholic liquors and nonintoxicating beer; and (iii) members and guests staying at a private hotel where the members and guests may not enter any bar and restaurant areas until 30 minutes before the hours of sale of alcoholic liquors and nonintoxicating beer. Employees may not enter any bar and restaurant serving areas until one hour before the hours of sale of alcoholic liquors and nonintoxicating beer.”

And,

By renumbering the remaining subsections.

§64-7-2. Alcohol Beverage Control Commissioner - Beer.

The Legislature directs the Alcohol Beverage Control Commissioner - Beer to amend the legislative rule filed in the State Register on July 1, 2022, authorized under the authority of §60-2-16 of this code, relating to the Alcohol Beverage Control - Beer (nonintoxicating beer licensing and operations procedures, 176 CSR 01), with the amendments set forth below:

On page 3, by adding a new subsection designated 2.18 to read as follows:

““Delivery day” means any day that the distributor is open for business.”;

And,

By renumbering the remaining subsections;

And,

On page 33, by striking out all of paragraph 6.3.d.3. and inserting in lieu thereof a new paragraph 6.3.d.3. to read as follows:

“6.3.d.3. A distributor or a resident brewer acting in a limited capacity as a distributor may rotate, stock, merchandise, price, and presell nonintoxicating beer in a licensed nonintoxicating beer retail establishment only on nonintoxicating beer or nonintoxicating craft beer delivery day.”

§64-7-3. West Virginia Insurance Commissioner.

(a) The legislative rule filed in the State Register on March 29, 2023, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (AIDS regulations, 114 CSR 27), is authorized.

(b) The legislative rule filed in the State Register on July 12, 2023, authorized under the authority of §33-55-9 of this code, modified by the West Virginia Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the West Virginia Insurance Commissioner (health benefit plan network access and adequacy, 114 CSR 100), is authorized.

(c) The legislative rule filed in the State Register on July 11, 2023, authorized under the authority of §51-10-8 of this code, modified by the West Virginia Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023, relating to the West Virginia Insurance Commissioner (bail bondsmen in criminal cases, 114 CSR 103), is authorized with the amendments set forth below:

“On page 3, paragraph 3.2.1.h., following the words "felony crime", by striking out the remainder of the paragraph and inserting a semi-colon.

And,

On page 6, after subsection 3.11., by adding a new subsection 3.12. to read as follows:

“3.12. Any person who has been convicted of a felony is not qualified to be licensed as a bail bondsman and the Commissioner shall not license any such person. The Commissioner shall revoke or not renew the license of a bail bondsman who is convicted of a felony, after licensure, and shall not renew the license of a bail bondsman who was previously convicted of a felony, and who was issued a license prior to the enactment of this subsection.”.

§64-7-4. West Virginia Racing Commission.

The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §19-23-6 of this code, relating to the West Virginia Racing Commission (thoroughbred racing, 178 CSR 01), is authorized with the amendment set forth below:

On page 67, subdivision 41.2.g., by striking out the words "Entry of a" and inserting in lieu thereof the word: "A".

§64-7-5. West Virginia Tax Department.

(a) The legislative rule filed in the State Register on March 28, 2023, authorized under the authority of §11-15-9p of this code, relating to the West Virginia Tax Department (aircraft operated under a fractional ownership program, 110 CSR 15K), is authorized.

(b) The legislative rule filed in the State Register on December 30, 2022, authorized under the authority of §29A-3-19 of this code, modified by the West Virginia Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2023, relating to the West Virginia Tax Department (citizen tax credit for property taxes paid, 110 CSR 21B), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §11-21-3a of this code, relating to the West Virginia Tax Department (income tax paid at the entity level by electing pass-through entities, 110 CSR 21G), is authorized.

(d) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §11-13MM-6 of this code, relating to the West Virginia Tax Department (income tax credits for property taxes paid, 110 CSR 21H), is authorized.

(e) The legislative rule filed in the State Register on December 30, 2022, authorized under the authority of §60-3-9d of this code, modified by the West Virginia Tax Department to meet the objections of the Legislative Rule-Making Review Committee and

refiled in the State Register on August 21, 2023, relating to the West Virginia Tax Department (administration of tax on purchases of wine and liquor inside and outside of municipalities, 110 CSR 49), is authorized.

(f) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §19-12E-12 of this code, relating to the West Virginia Tax Department (privilege tax on sales of hemp-derived cannabinoid and kratom products, 110 CSR 99), is authorized.



CHAPTER 177

(Com. Sub. for S. B. 60 - By Senator Woodrum)

[Passed March 8, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Transportation to promulgate legislative rules; authorizing the rules as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to motor vehicle titling; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to dealer licensing; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to handicapped parking permits; authorizing the Division of Highways to promulgate a legislative rule relating to construction and reconstruction of state roads; authorizing the Division of Highways to promulgate a legislative rule relating to traffic and safety rules; and authorizing the Division of Multimodal Transportation Facilities to promulgate a legislative rule relating to valuation of used rolling stock and equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §11-15-3C of this code,

modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Division of Motor Vehicles (motor vehicle titling, 91 CSR 03), is authorized with the following amendments:

On page 1, by striking out all of subsection 2.1 and inserting in lieu thereof a new subsection 2.1. to read as follows:

“2.1. Application. An application for a certificate of title must be accompanied by the appropriate fees:

21.1 Proof of Insurance;

2.1.2. Photo identification and identity validation and verification developed by the Division of Motor Vehicles;

2.1.3. If the vehicle was previously titled in another state or jurisdiction, that title;

2.1.4. If a registration plate is also being transferred, appropriate registration information;

2.1.5. If the vehicle requires registration, the appropriate fee for the registration plate; and,

2.1.6. Sales tax as calculated in subsection 2.2 of this section.”:

On page 1, after subsection 2.1 by adding a new subsection 2.2 to read as follows:

“2.2. Application for non-resident businesses. An application by a non-resident business for a title through the Title Clearinghouse must be accompanied by any documents prescribed by the Commissioner.”;

And,

By renumbering the remaining subsections.

(b) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §17A-2-9 of this code,

modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Division of Motor Vehicles (dealer licensing, 91 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §17C-13-6 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Division of Motor Vehicles (handicapped parking permits, 91 CSR 10), is authorized.

§64-8-2. Division of Highways.

(a) The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §17-2A-8 of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 7, 2023, relating to the Division of Highways (construction and reconstruction of state roads, 157 CSR 03), is authorized with the amendment set forth below:

On pages 15 and 16, by striking out all of subdivision 5.5.a. and inserting in lieu thereof a new subdivision 5.5.a. to read as follows:

“5.5.a. The successful bidder has the option of submission of the bond in an amount equivalent to either 102 percent or 100 percent of the contract price.”;

And,

On page 16, by adding 4 new subdivisions, designated 5.5.b., 5.5.c., 5.5.d., and 5.5.e., all to read as follows:

“5.5.b. The submission of the aforementioned bond in an amount equivalent to 102 percent of the contract price by the successful bidder is the standard expectation of the division in order to comply with the current special provision for subcontractor prompt payment and does not necessitate the

withholding of retainage by the division from monies due on future progress voucher estimates payable under the terms of the contract. Further, the decision by a particular contractor to submit a bond in an amount equivalent to 102 percent of the contract price shall be consistent and applicable throughout the duration of the contract for which the bond is being submitted and shall be consistent and applicable to all contracts executed between the Division and that particular contractor.

5.5.c. If the successful bidder elects to submit the bond in an amount equivalent to 100 percent of the contract price, it is necessary that the bidder notify the Contract Administration Division in writing prior to the submission of the bond. Submission of a bond in an amount equivalent to 100 percent of the contract price requires the withholding of retainage by the Division from monies due on future progress voucher estimates payable under the terms of the contract and as set forth in 11.6 of this rule. Further, the decision by a particular contractor to submit a bond in an amount equivalent to 100 percent of the contract price shall be consistent and applicable throughout the duration of the contract for which the bond is being submitted and shall be consistent and applicable to all contracts executed between the division and that particular contractor.

5.5.d. As an alternate, the successful bidder may deposit with the State Treasurer cash bond, United States Treasury Bonds, United States Treasury Certificates of Indebtedness, United States Treasury Bills or West Virginia Road Bonds in the amount of either 102 percent or 100 percent of the contract amount. A safe keeping receipt from a bank located in the State of West Virginia may be deposited with the State Treasurer in lieu of any of the definitive securities.

5.5.e. The State Treasurer shall, on a regular basis, collect all interest or income on the obligations so deposited and pay same, when and if collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the State Treasurer shall deliver each coupon as it matures to the contractor.”

(b) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §17-2A-8 of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 8, 2023, relating to the Division of Highways (traffic and safety rules, 157 CSR 05), is authorized with the amendments set forth below:

On page 14, Subdivision 7.4.h. by striking out the words “Vehicle speed shall not exceed 35 miles per hour” and inserting the following:

“Vehicle speed shall not exceed the posted or statutory speed limit in effect and shall not exceed the recommended speed on all warning signs when passing through the area of concern (curve, intersection, etc.).”;

On page 14, Subdivision 7.4.j. by striking out the words “or main highway”;

And,

On page 14, Subdivision 7.4.j., after the word “measures.”, by inserting the following:

“When approaching an intersecting roadway, vehicles shall obey any traffic control devices such as stop signs, yield signs, and traffic lights.”

§64-8-3. Division of Multimodal Transportation Facilities.

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §17-16F-5 of this code, modified by the Division of Multimodal Transportation Facilities to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 29, 2023, relating to the Division of Multimodal Transportation Facilities (valuation of used rolling stock and equipment, 220 CSR 01), is authorized.

CHAPTER 178

(S. B. 547 - By Senators Grady and Plymale)

[Passed February 12, 2024; in effect from passage]

[Approved by the Governor on February 22, 2024.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Guidelines for Employing and Evaluating Presidents; Higher Education Adult Part-Time Student Grant Program; West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence Scholarship Program; Dual Enrollment Pilot Program; West Virginia Science, Technology, Engineering, and Math Scholarship Program; West Virginia Higher Education Grant Program; Nursing Scholarship Program; authorizing legislative rules for the Council for Community and Technical College Education regarding Higher Education Accountability System; Dual Enrollment Pilot Program; Initial Authorization of Degree-Granting Institutions; Tuition and Fees; and repealing the Council for Community and Technical College Education's rule regarding Accountability System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission

(Underwood-Smith Teacher Scholarship Program rule), is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science, and Technology Scholarship Program rule), is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule), is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program), is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program), is authorized, with the following amendment:

On page two, subsection 5.1, following the words "financial aid office" by inserting a new subdivision 5.1.3 to read as follows: "United States citizenship or legal immigrant status while actively pursuing United States citizenship."

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System), is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program), is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized, with the following amendment:

On page 28, subsection 9.1.b, following the words "Good cause shall consist of" by inserting the words "any one or more of the following".

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management), is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(v) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(w) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(x) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(y) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program), is authorized.

(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(bb) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(cc) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(dd) The legislative rule filed in the State Register on January 22, 2018, relating to the Higher Education Policy Commission (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards".;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an important factor in prioritizing capital projects across the systems.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive

priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category."; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: "A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.".

(ee) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

(ff) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Human Resources Administration), is repealed.

(gg) The legislative rule filed in the State Register on August 28, 2018, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.a. and inserting in lieu thereof a new subdivision 2.1.a., to read as follows: "Must complete high school graduation requirements at a West Virginia public, private or home school unless he or she

qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and";

On page one, subsection 2.1, by striking out all of subdivision 2.1.b. and inserting in lieu thereof a new subdivision 2.1.b., to read as follows: "Must complete at least one half of the credits required for high school graduation through attendance at a public, private or home school in this state, unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and";

On page one, subdivision 2.1.c., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4";

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Must have attained a cumulative grade point average of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core courses and overall coursework required for graduation by the State Board of Education, while enrolled in a public or private high school. If home-schooled pursuant to the exemption allowed by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must have completed in both the 11th and 12th grades the required core and elective coursework necessary to prepare students for success in postsecondary education at the associate and baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading scale in both core courses and overall coursework as determined by the Commission; and";

On page one, subsection 2.1, subdivision 2.1.f., preceding the words "have resided in West Virginia", by striking out the word "Must" and inserting in lieu thereof the words "The applicant and his or her parent or legal guardian must" ;

On page one, subdivision 2.1.f., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4";

On page one, subdivision 2.1.f., by striking out the words "Section 6" and inserting in lieu thereof the words "Section 5";

On page two, subsection 2.4., by striking out the words "Section 10.7 or 10.8" and inserting in lieu thereof the words "Section 9.7 or 9.8";

On page two, subsection 2.5, by striking out the words "Section 8" and inserting in lieu thereof the words "Section 7";

On page two, subsection 2.5, by striking out the words "Section 10" and inserting in lieu thereof the words "Section 9";

On page two, by striking out all of section 3 and renumbering the remaining sections accordingly;

On page three, subsection 4.4, by striking out the words "Section 14" and inserting in lieu thereof the words "Section 13";

On page five-six, subsection 10.6, by striking out the words "Section 10.3" and inserting in lieu thereof the words "Section 9.3";

On page six, subsection 10.6, by striking out the words "Section 10.2" and inserting in lieu thereof the words "Section 9.2";

On page six, subsection 10.9.c., by striking out the words "Section 5" and inserting in lieu thereof the words "Section 4"; and

On page eight, subsection 15.1.b, by striking out the words "Section 11.1" and inserting in lieu thereof the words "Section 10.1".

(ii) The legislative rule filed in the State Register on September 30, 2019, relating to the Higher Education Policy Commission (Higher Education Accountability System) is authorized.

(jj) The legislative rule filed in the State Register on November 5, 2019, relating to the Higher Education Policy Commission (Underwood-Smith Teaching Scholars Program and Teacher Education Loan Repayment Program) is authorized.

(kk) The legislative rule filed in the State Register on October 4, 2019, relating to the Higher Education Policy Commission (Accountability System) is repealed.

(ll) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the following amendments:

On page one, subdivision 3.1.b., after the words "family therapist," by inserting the words "psychiatric mental health nurse practitioner,";

On page two, subsection 6.1., by striking out the words "at least" and inserting in lieu thereof the words "up to"; and

On page three, subsection 9.1., after the words "family therapists" by inserting the words "psychiatric mental health nurse practitioners,".

(mm) The legislative rule filed in the State Register on March 11, 2021, relating to the Higher Education Policy Commission (Administrative Exemption) is authorized.

(nn) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Research Trust Fund Program) is authorized.

(oo) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(pp) The legislative rule filed in the State Register on July 29, 2022, relating to the Higher Education Policy Commission (Performance-Based Funding Formula) is authorized.

(qq) The legislative rule filed in the State Register on June 14, 2022, relating to the Higher Education Policy Commission (Capital Project Management) is authorized.

(rr) The legislative rule filed in the State Register on July 29, 2022, relating to the Higher Education Policy Commission (Tuition and Fee Policy) is authorized.

(ss) The legislative rule filed in the State Register on June 14, 2022, relating to the Higher Education Policy Commission (Higher Education Grant Program) is authorized.

(tt) The legislative rule filed in the State Register on July 29, 2022, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(uu) The legislative rule filed in the State Register on June 14, 2022, relating to the Higher Education Policy Commission (Human Resources Administration) is authorized.

(vv) The legislative rule filed in the State Register on July 25, 2023, relating to the Higher Education Policy Commission (Guidelines for Employing and Evaluating Presidents) is authorized.

(ww) The legislative rule filed in the State Register on September 12, 2023, relating to the Higher Education Policy Commission (Higher Education Adult Part-Time Student (HEAPS) Grant Program).

(xx) The legislative rule filed in the State Register on July 26, 2023, relating to the Higher Education Policy Commission (West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program) is authorized.

(yy) The legislative rule filed in the State Register on July 28, 2023, relating to the Higher Education Policy Commission (Dual Enrollment Pilot Program) is authorized.

(zz) The legislative rule filed in the State Register on July 24, 2023, relating to the Higher Education Policy Commission (West Virginia Science, Technology, Engineering, and Math (STEM) Scholarship Program) is authorized.

(aaa) The legislative rule filed in the State Register on July 24, 2023, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(bbb) The legislative rule filed in the State Register on July 24, 2023, relating to the Higher Education Policy Commission (Nursing Scholarship Program) is authorized.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (performance indicators), is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents), is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (performance indicators), is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (finance), is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System), is authorized.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (authorization of degree-granting institutions), is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program), is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized.

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and

Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(p) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Business, Occupational, and Trade Schools), is authorized.

(q) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(r) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: "Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: "Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: "Facility utilization rates will be an important factor in prioritizing capital projects across the systems.";

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: "Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive

priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category."; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: "A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.".

(s) The legislative rule filed in the State Register on July 2, 2018, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(t) The legislative rule filed in the State Register on September 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Acceptance of Advanced Placement Credit), is repealed.

(u) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (initial authorization of degree-granting institutions), is authorized.

(v) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants), is authorized.

(w) The legislative rule filed in the State Register on January 25, 2019, relating to the West Virginia Council for Community and

Technical College Education (Human Resources Administration), is repealed.

(x) The legislative rule filed in the State Register on June 3, 2019, relating to the West Virginia Council for Community and Technical College Education (West Virginia Invests Grant Program) is authorized.

(y) The legislative rule filed in the State Register on April 27, 2021 (Business, Occupational, and Trade Schools) is authorized.

(z) The legislative rule filed in the State Register on April 27, 2021 (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(aa) The legislative rule filed in the State Register on November 10, 2021 (West Virginia Invests Grant Program) is authorized.

(bb) The legislative rule filed in the State Register on July 22, 2022 (Performance-Based Funding Formula) is authorized.

(cc) The legislative rule filed in the State Register on June 13, 2022 (Capital Project Management) is authorized.

(dd) The legislative rule filed in the State Register on July 21, 2022 (Workforce Development Initiative Grant Programs) is authorized.

(ee) The legislative rule filed in the State Register on July 21, 2022 (Annual Reauthorization of Degree-Granting Institutions) is authorized, with the following amendment:

On page 13 by adding a new subsection designated 12.23 to read as follows: Nothing in this rule in any way affects or limits the due process protections or other protections afforded to proprietary schools under either W. Va. Code § 18B-2B-9 or 135 C.S.R. 35, Business, Occupational, and Trade Schools.

(ff) The legislative rule filed in the State Register on June 13, 2022 (Human Resources Administration) is authorized.

(gg) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Higher Education Accountability System) is authorized.

(hh) The legislative rule filed in the State Register on September 14, 2023, relating to the Council for Community and Technical College Education (Dual Enrollment Pilot Program) is authorized.

(ii) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Initial Authorization of Degree-Granting Institutions) is authorized.

(jj) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Tuition and Fees) is authorized.

(kk) The legislative rule filed in the State Register on July 26, 2023, relating to the Council for Community and Technical College Education (Accountability System) is repealed.

CHAPTER 179

(H. B. 4026 - By Delegate Smith)

[Passed February 2, 2024; in effect from passage.]
[Approved by the Governor on February 13, 2024.]

AN ACT to amend and reenact §64-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Department of Administration to promulgate a legislative rule relating to state owned vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. AUTHORIZATION FOR THE DEPARTMENT OF ADMINISTRATION PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

The legislative rule filed in the State Register on October 25, 2022, authorized under the authority of §5A-12-5 of this code, relating to the Department of Administration (state owned vehicles, 148 CSR 03), is authorized.



CHAPTER 180

(Com. Sub. for H. B. 4086 - By Delegate Smith)

[Passed February 29, 2024; in effect from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §64-10-1 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Commerce to promulgate legislative rules; authorizing the rules as filed, as modified, and as amended by the Legislative Rule-Making Review Committee and as amended by Legislature; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations – licensing; authorizing the Division of Forestry to promulgate a legislative rule relating to sediment control during commercial timber-harvesting operations - logger certification; authorizing the Division of Labor to promulgate a legislative rule relating to minimum wage, maximum hours, and overtime compensation; authorizing the Division of Labor to promulgate a legislative rule relating to licensing of elevator mechanics, accessibility technicians, and limited technicians and registration of elevator mechanic apprentices; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to safety provisions for clearing crews; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to protective clothing and equipment; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to reporting requirements for independent contractors; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to assessing health and safety violation penalties; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the application

process for the West Virginia Innovative Mine Safety Technology Tax Credit Act; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to the program for the sharing of information between employers; authorizing the Office of Miners' Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening, standards and procedures; authorizing the Miners' Health, Safety and Training to promulgate a legislative rule relating to operating diesel equipment in underground mines in West Virginia; authorizing the Division of Natural Resources to promulgate a legislative rule relating to hunting, fishing and other outfitters and guides; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to revocation of hunting and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to Cabwaylingo State Forest Trail System two-year pilot project permitting ATVs and ORVs; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping, and fishing licenses; and authorizing the Public Energy Authority to promulgate a legislative rule relating to petitioning the Public Energy Authority for approval of decommissioning or deconstruction activities related to any coal, oil, or natural gas fueled power plant.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. AUTHORIZATION FOR DEPARTMENT OF
COMMERCE TO PROMULGATE LEGISLATIVE
RULES.**

§64-10-1. West Virginia Division of Forestry.

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §19-1B-4 of this code, modified by the Division of Forestry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 13, 2023, relating to the Division of

Forestry (sediment control during commercial timber-harvesting operations - licensing, 22 CSR 02), is authorized with the following amendment:

On page 5, subsection 7.1, by striking the words “or entity”.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §19-1B-7 of this code, modified by the Division of Forestry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 13, 2023, relating to the Division of Forestry (sediment control during commercial timber-harvesting operations - logger certification, 22 CSR 03), is authorized with the following amendment:

On page 4, subsection 7.1, by striking the words “or entity”.

§64-10-2. West Virginia Division of Labor.

(a) The legislative rule filed in the State Register on June 6, 2023, authorized under the authority of §21-5C-6 of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 19, 2023, relating to the Division of Labor (minimum wage, maximum hours, and overtime compensation, 42 CSR 08), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §21-3C-11 of this code, relating to the Division of Labor (licensing of elevator mechanics, accessibility technicians, and limited technicians and registration of elevator mechanic apprentices, 42 CSR 21A), is authorized.

§64-10-3. Office of Miners' Health, Safety, and Training.

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-38 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 14, 2023,

relating to the Office of Miners' Health, Safety and Training (safety provisions for clearing crews, 56 CSR 02), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-2-55 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training (protective clothing and equipment, 56 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-6 of this code, relating to the Office of Miners' Health, Safety and Training (reporting requirements for independent contractors, 56 CSR 10), is authorized.

(d) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-6 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training (assessing health and safety violation penalties, 56 CSR 12), is authorized.

(e) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §11-13BB-13 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training (application process for the West Virginia Innovative Mine Safety Technology Tax Credit Act, 56 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1-4 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023,

relating to the Office of Miners' Health, Safety and Training (rules governing the program for the sharing of information between employers, 56 CSR 18), is authorized.

(g) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-1A-2 of this code, modified by the Office of Miners' Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Office of Miners' Health, Safety and Training (substance abuse screening, standards and procedures, 56 CSR 19), is authorized.

(h) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §22A-2A-1001 of this code, relating to the Miners' Health, Safety and Training (rules for operating diesel equipment in underground mines in West Virginia, 56 CSR 23), is authorized.

§64-10-4. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-1-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the Division of Natural Resources (hunting, fishing and other outfitters and guides, 58 CSR 11), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-2-23a of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized.

(c) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-2-38 of this code, modified by the Division of Natural Resources to meet the

objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the Division of Natural Resources (revocation of hunting and fishing licenses, 58 CSR 23), is authorized.

(d) The legislative rule filed in the State Register on July 20, 2023, authorized under the authority of §20-3-3a of this code, relating to the Division of Natural Resources (Cabwaylingo State Forest Trail System two-year pilot project permitting ATVs and ORVs, 58 CSR 36), is authorized.

(e) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §20-2B-7 of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 14, 2023, relating to the Division of Natural Resources (lifetime hunting, trapping, and fishing licenses, 58 CSR 67), is authorized.

§64-10-5. Public Energy Authority.

The legislative rule filed in the State Register on September 7, 2023, authorized under the authority of §5D-1-5c of this code, relating to the Public Energy Authority (rule to petition the Public Energy Authority for approval of decommissioning or deconstruction activities related to any coal, oil, or natural gas fueled power plant, 53 CSR 05), is authorized with the following amendments:

On page 3, by striking out subsection 4.3 in its entirety and inserting in lieu thereof a new subsection 4.3 to read as follows:

“4.3. One paper copy and one electronic PDF version of the Notice shall be filed with the Authority, in addition to the requirements set forth in subsections 6.1., 6.2., 6.3., and 6.4. of this rule.”;

On page 7, subsection 5.3. by striking out the word “five (5)” and inserting in lieu thereof “20”;

On page 7, subdivision 5.3.1. by striking out the word “five (5)” and inserting in lieu thereof “20”;

On page 7, subdivision 5.3.3. by striking out the words “Eight (8) copies” and inserting in lieu thereof the words: “One paper copy and one electronic PDF version”;

On page 7, by striking out subdivision 6.2.1. in its entirety;

On page 7, subsection 6.3., after the word “A”, by striking the word “copy” and inserting in lieu thereof the words “paper copy or electronic PDF version”;

On page 8, subsection 7.6., by striking out the words “not to exceed three (3) pages”;

On page 8, subdivision 8.1.3. by striking out the words “three-page”;

On page 8, by inserting a new subdivision, designated 8.1.4, to read as follows:

“8.1.4. The Authority shall make a decision on the Petition within one year after the submission of the Petition.”;

On page 9, by striking out subsection 9.2. and subdivision 9.2.1. in their entirety and inserting in lieu thereof the new subsections 9.2. and 9.2.1. to read as follows:

9.2. A Petitioner may redact or withhold any confidential or proprietary information that the Petitioner cannot legally disclose. The Petitioner shall include with the petition a letter generally describing the nature of the information redacted or withheld and the legal justification for the redaction or withholding of the information.

9.2.1. The Authority may determine in executive session what additional information is exempt from public disclosure under the West Virginia Freedom of Information Act and may make any additional redactions prior to publishing the Petition on the Authority’s website.

And,

On page 9, by adding a new section, designated §53-5-10 to read as follows:

“§53-5-10. Appeals.

10.1. All proceedings in the appeal of the Authority’s actions concerning a Petition or the proceedings therefore, and any judicial review thereof, shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* of this code and any procedural rules adopted pursuant thereto.”



CHAPTER 181

(Com. Sub. for H. B. 4110 - By Delegate Smith)

[Passed March 9, 2024; in effect from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §64-9-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain miscellaneous agencies and boards to promulgate legislative rules; authorizing the rules as filed. as modified and as disapproved by the Legislative Rule-Making Review Committee, and as amended by the Legislature; directing certain miscellaneous agencies and boards to amend current legislative rules; authorizing the West Virginia Board of Accountancy to promulgate a legislative rule relating to board rules and rules of professional conduct; authorizing the West Virginia Board of Acupuncture to promulgate a legislative rule relating to applications for licensure to practice acupuncture; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to frozen desserts and imitation frozen desserts; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to certified pesticide applicators; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to licensing pesticide businesses; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to West Virginia molluscan shellfish; not authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to select plant-based derivative products; authorizing the West Virginia Department of Agriculture to promulgate a legislative rule relating to agritourism; authorizing the West Virginia Board of Barbers and Cosmetologists to promulgate a legislative rule relating to procedures, criteria, and curricula for examination and licensure of barbers, cosmetologists, nail technicians,

aestheticians, and hair stylists; authorizing the West Virginia Board of Barbers and Cosmetologists to promulgate a legislative rule relating to the application for waiver of initial licensing fees for certain individuals; authorizing the West Virginia Board of Barbers and Cosmetologists to promulgate a legislative rule relating to cosmetology apprenticeships; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to licensing; authorizing the West Virginia Board of Examiners in Counseling to promulgate a legislative rule relating to marriage and family therapist licensing; authorizing the West Virginia Board of Dentistry to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program database; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to continuing professional education requirements; authorizing the West Virginia Board of Licensed Dietitians to promulgate a legislative rule relating to telehealth practice, requirements, and definitions; relating to authorizing the West Virginia Department of Economic Development to promulgate a legislative rule relating to the operation of motorsports complexes and events; authorizing the State Election Commission to promulgate a legislative rule relating to corporate and membership organization political activity; authorizing the State Election Commission to promulgate a legislative rule relating to regulation of campaign finance; authorizing the State Election Commission to promulgate a legislative rule relating to the application and approval process for Secretary of State expenditures from the County Assistance Voting Equipment Fund; directing the Board of Funeral Home Service Examiners to amend a legislative rule relating to funeral director, embalmer, apprentice, courtesy card holders, and funeral establishment requirements; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing the West Virginia Massage Therapy Licensure Board to

promulgate a legislative rule relating to a schedule of fees; authorizing the West Virginia Massage Therapy Licensure Board to promulgate a legislative rule relating to establishment licensure; authorizing the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners to promulgate a legislative rule relating to medical imaging technologists; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to licensure, practice requirements, disciplinary and complaint procedures, continuing education, and physician assistants; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to continuing education for physicians and podiatric physicians; authorizing the West Virginia Board of Medicine to promulgate a legislative rule relating to permitting and disciplinary procedures: educational permits for graduate medical interns, residents and fellows; authorizing the West Virginia Nursing Home Administrators Licensing Board to promulgate a legislative rule relating to nursing home administrators; authorizing the Board to promulgate a legislative rule relating to the West Virginia Board of Optometry; authorizing the West Virginia Board of Optometry to promulgate a legislative rule relating to continuing education; authorizing the West Virginia Board of Optometry to promulgate a legislative rule relating to injectable pharmaceutical agents certificates; authorizing the West Virginia Board of Optometry to promulgate a legislative rule relating to eyelid procedures; authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; to authorizing the West Virginia Board of Osteopathic Medicine to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to licensure and practice of pharmacy; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to continuing education for licensure for pharmacists; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to registration of pharmacy technicians; authorizing the West Virginia Board of Pharmacy to

promulgate a legislative rule relating to immunizations administered by pharmacists, pharmacy interns, and pharmacy technicians; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to centralized prescription processing; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to pharmacy permits; authorizing the West Virginia Board of Pharmacy to promulgate a legislative rule relating to substitution of biological pharmaceuticals; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to disciplinary and complaint procedures for psychologists; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to contested case hearing procedure; authorizing the West Virginia Real Estate Commission to promulgate a legislative rule relating to licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage businesses; authorizing the West Virginia Real Estate Commission to promulgate a legislative rule relating to a schedule of fees; authorizing the West Virginia Real Estate Commission to promulgate a legislative rule relating to requirements for real estate courses, course providers, and instructors; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to policies, standards and criteria for the evaluation, approval and national nursing accreditation of prelicensure nursing education programs; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to requirements for registration and licensure and conduct constituting professional misconduct; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to advanced practice registered nurse licensure requirements; authorizing the West Virginia Board of Registered Nurses to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the West Virginia Board of Respiratory Care to promulgate a legislative rule relating to student

temporary permits; authorizing the Secretary of State to promulgate a legislative rule relating to guidelines for the use of nicknames and other designations on the ballot; authorizing the Secretary of State to promulgate a legislative rule relating to Combined Voter Registration and Driver Licensing Fund; authorizing the Secretary of State to promulgate a legislative rule relating to minimum standards for election administration, infrastructure, and security; authorizing the West Virginia State Treasurer to promulgate a legislative rule relating to enforcement of the Uniform Unclaimed Property Act; and authorizing the West Virginia State Treasurer to promulgate a legislative rule relating to the Jumpstart Savings Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS BOARDS AND AGENCIES TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. West Virginia Board of Accountancy.

The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §30-9-5 of this code, relating to the West Virginia Board of Accountancy (board rules and rules of professional conduct, 1 CSR 01), is authorized.

§64-9-2. West Virginia Board of Acupuncture.

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-36-7 of this code, modified by the West Virginia Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Board of Acupuncture (applications for licensure to practice acupuncture, 32 CSR 03), is authorized.

§64-9-3. West Virginia Department of Agriculture.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-11B-10 of this code, modified by the West Virginia Department of Agriculture to meet

the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Department of Agriculture (frozen desserts and imitation frozen desserts, 61 CSR 04B), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-16A-4 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 3, 2023, relating to the West Virginia Department of Agriculture (certified pesticide applicator rules, 61 CSR 12A), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-16A-4 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Department of Agriculture (licensing to pesticide businesses, 61 CSR 12B), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-29-1 of this code, modified by the West Virginia Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Department of Agriculture (West Virginia molluscan shellfish, 61 CSR 23B), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §19-12E-7 of this code, relating to the West Virginia Department of Agriculture (select plant-based derivative products, 61 CSR 30), is not authorized.

(f) The legislative rule filed in the State Register on December 15, 2022, authorized under the authority of §19-36-1 of this code, relating to the West Virginia Department of Agriculture (agritourism, 61 CSR 37), is authorized.

§64-9-4. West Virginia Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-5 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 11, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (procedures, criteria, and curricula for examination and licensure of barbers, cosmetologists, nail technicians, aestheticians, and hair stylists, 3 CSR 01), is authorized with the following amendments:

On page 3, by striking out the entirety of subsection 11.1. and inserting in lieu thereof a new subsection 11.1. to read as follows:

“11.1. The Board shall issue a professional license to practice to an applicant who holds a comparable valid license or other authorization to practice in that particular field from another state, if the applicant demonstrates that he or she:

11.1.a. Holds a valid license or other authorization to practice in another state which was granted after completion of educational requirements required in another state;

11.1.b. Does not have charges pending against his or her valid license or other authorization to practice and has never had a valid license or other authorization to practice revoked;

11.1.c. Has paid the applicable fee;

11.1.d. Is at least 18 years of age;

11.1.e. Has a high school diploma, a GED, or has passed the "ability to benefit test" approved by the United States Department of Education;

11.1.f. Is a citizen of the United States or is eligible for employment in the United States; and

11.1.g. Has presented a certificate of health issued by a licensed physician.

11.2 The Board shall recognize reciprocity for military barbers with a DD214.”

(b) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-1-23 of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 24, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (application for waiver of initial licensing fees for certain individuals, 3 CSR 15), is authorized.

(c) The legislative rule filed in the State Register on June 14, 2023, authorized under the authority of §30-27-8a of this code, modified by the West Virginia Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2023, relating to the West Virginia Board of Barbers and Cosmetologists (cosmetology apprenticeship, 3 CSR 16), is authorized.

§64-9-5. West Virginia Board of Examiners in Counseling.

(a) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling (licensing rule, 27 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on October 6, 2023, authorized under the authority of §30-31-6 of this code, modified by the West Virginia Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Examiners in Counseling

(marriage and family therapist licensing rule, 27 CSR 08), is authorized.

§64-9-6. West Virginia Board of Dentistry.

The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §60A-9-5A of this code, modified by the West Virginia Board of Dentistry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2023, relating to the West Virginia Board of Dentistry (practitioner requirements for accessing the West Virginia Controlled Substances Monitoring Program database, 5 CSR 10), is authorized.

§64-9-7. West Virginia Board of Licensed Dietitians.

(a) The legislative rule filed in the State Register on April 25, 2023, authorized under the authority of §30-35-4 of this code, modified by the West Virginia Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2023, relating to the West Virginia Board of Licensed Dietitians (licensure and renewal requirements, 31 CSR 01), is authorized with the following amendment:

On page 2, paragraph 4.1.2.3., by striking out “\$50” and inserting in lieu thereof “\$46”.

(b) The legislative rule filed in the State Register on April 25, 2023, authorized under the authority of §30-35-4 of this code, modified by the West Virginia Board of Licensed Dietitians to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2023, relating to the West Virginia Board of Licensed Dietitians (continuing professional education requirements, 31 CSR 05), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-35-4 of this code, relating to the West Virginia Board of Licensed Dietitians (telehealth practice, requirements, and definitions, 31 CSR 07), is authorized.

§64-9-8. West Virginia Department of Economic Development.

The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §20-19-7 of this code, modified by the West Virginia Department of Economic Development to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 13, 2023, relating to the West Virginia Department of Economic Development (the operation of motorsports complexes and events, 145 CSR 19), is authorized with the following amendments:

On page 1, subsection 2.5., after the word “to” and before the word “impact” by inserting the word “reasonably”;

On page 2, subsection 3.1, after the word “is” by inserting the word “reasonably”;

On page 2, subsection 3.7., by striking out the words “at any time” and inserting in lieu thereof the words “during normal business hours”;

On page 2, by striking out the entirety of subdivision 3.8.1. and inserting in lieu thereof a new subdivision 3.8.1. to read as follows:

“3.8.1. Helmet and eye protection requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports events.”;

On page 2, by striking out the entirety of subdivisions 3.8.2., 3.8.3., and 3.8.4;

On page 3, by striking out the entirety of subdivisions 3.9.1., 3.9.2., 3.9.3., 3.9.4., and 3.9.5., and inserting in lieu thereof of new subdivision 3.9.1. to read as follows:

“3.9.1. Safety belts, shoulder harness, and crotch belt requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsport event.”;

On page 3, by striking out the entirety of subdivision 3.10.2. and inserting in lieu thereof a new subdivision 3.10.2. to read as follows:

“3.10.2. Vehicles participating in a race or race practice shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsport event.”;

On page 3, by striking out the entirety of subdivisions 3.11.1, 3.11.2., and 3.11.3 and inserting in lieu thereof a new subdivision 3.11.1. to read as follows:

“3.11.1. Clothing requirements for non-drivers shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports event.”

On page 3, by striking out the entirety of subdivision 3.13.1. and inserting in lieu thereof a new subdivision 3.13.1 to read as follows:

“3.13.1. Fences shall be erected around the perimeter of the road course, with the specific requirements determined by a risk assessment considering the track’s size, terrain, type of racing, and potential hazards.”

On page 4 by striking out the entirety of subdivisions 3.13.2. and 3.13.3. and inserting in lieu thereof a new subdivision 3.13.2. to read as follows:

“3.13.2. If the infield of the road course is accessible by spectators or other non-driving participants, multiple access points shall also be provided to allow emergency entry and exit.”;

On page 4, by striking out the entirety of subdivisions 3.14.1., 3.14.2., 3.14.3., 3.14.4., and 3.14.5. and inserting in lieu thereof a new subdivision 3.14.1. to read as follows:

“3.14.1. Flag station and flagmen requirements shall be governed by the safety procedures and requirements established by the sanctioning body hosting the motorsports event.”;

On page 4, subsection 4.1., after the word “maintained” by adding the words “in accordance with the requirements established by the sanctioning body hosting the motorsports event.”;

On page 5, by striking out the entirety of subsections 4.3. and 4.4.;

On page 5, by striking out the entirety of subsection 5.1. and inserting in lieu thereof a new subsection 5.1. to read as follows:

“5.1. All run-off areas at a motorsport facility must be of sufficient size and constructed with materials appropriate for the intended racing events to provide a reasonable expectation of minimizing injury or damage to the drivers and spectators in the event of an off-track excursion.”;

On page 5, by striking out the entirety of subdivision 6.1.1. and 6.1.2. and inserting in lieu thereof a new subdivision 6.1.1. to read as follows:

“6.1.1. Fire services provided by a motorsports operator must ensure all emergency equipment meets or exceeds State safety requirements.”;

And,

On page 5, by striking out the entirety of subdivisions 6.2.1. and 6.2.2.

§64-9-9. State Election Commission.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-8-8 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the State Election Commission (corporate and membership organization political activity, 146 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on September 13, 2023, authorized under the authority of §3-1A-5 of this code,

modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 17, 2023, relating to the State Election Commission (regulation of campaign finance, 146 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1-48 of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the State Election Commission (application and approval process for Secretary of State expenditures from the County Assistance Voting Equipment Fund, 146 CSR 07), is authorized.

§64-9-10. Board of Funeral Service Examiners.

The legislature directs the Board of Funeral Service Examiners to amend the legislative rule filed in the State Register on April 1, 2023, authorized under the authority of §30-6-6 of this code, relating to the Board of Funeral Service Examiners (funeral director, embalmer, apprentice, courtesy card holder, and funeral establishment requirements, 6 CSR 01), with the following amendments:

On page 1, subsection 2.2, by striking out the word “general” and inserting in lieu thereof the word “direct”;

On page 6, subdivision 5.7.1., by striking out the word “ABFSC” and inserting in lieu thereof the words “American Board of Funeral Home Education (ABFSE)”;

On page 10, by striking out subdivision 12.1.2 in its entirety;

And,

By renumbering the remaining subdivisions.

§64-9-11. West Virginia Massage Therapy Licensure Board.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Massage Therapy Licensure Board (general provisions, 194 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, modified by the West Virginia Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2023, relating to the West Virginia Massage Therapy Licensure Board (schedule of fees, 194 CSR 04), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-37-6 of this code, relating to the West Virginia Massage Therapy Licensure Board (establishment licensure, 194 CSR 07), is authorized.

§64-9-12. West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

The legislative rule filed in the State Register on July 24, 2023, authorized under the authority of §30-23-7 of this code, modified by the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2023, relating to the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners (medical imaging technologists, 18 CSR 01), is authorized.

§64-9-13. West Virginia Board of Medicine.

(a) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and

refiled in the State Register on November 1, 2023, relating to the West Virginia Board of Medicine (licensure, practice requirements, disciplinary and complaint procedures, continuing education, and physician assistants, 11 CSR 01B), is authorized.

(b) The legislative rule filed in the State Register on July 27, 2023, authorized under the authority of §30-3-7 of this code, modified by the West Virginia Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2023, relating to the West Virginia Board of Medicine (continuing education for physicians and podiatric physicians, 11 CSR 06), is authorized.

(c) The legislative rule filed in the State Register on November 21, 2022, authorized under the authority of §30-3-7 of this code, relating to the West Virginia Board of Medicine (permitting and disciplinary procedures: educational permits for graduate medical interns, residents and fellows, 11 CSR 12), is authorized.

§64-9-14. West Virginia Nursing Home Administrators Licensing Board.

The legislative rule filed in the State Register on June 9, 2023, authorized under the authority of §30-25-6 of this code, relating to the West Virginia Nursing Home Administrators Licensing Board (nursing home administrators, 21 CSR 01), is authorized with the following amendment:

On page 13, by adding a new paragraph 6.2.a.3.G., to read as follows:

“6.2.a.3.G Failure to cooperate with OHFLAC or the designated Medicare Beneficiary and Family Centered Care – Quality Improvement Organization is grounds for disciplinary action and further review by the Board.”

And,

By renumbering the remaining paragraphs.

§64-9-15. West Virginia Board of Optometry.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Optometry (rules of the West Virginia Board of Optometry, 14 CSR 01), is authorized with the following amendments:

On page 6, by striking out all of subsection 11.1. and inserting in lieu thereof a new subsection 11.1. to read as follows:

11.1. The Board may issue a temporary permit to practice optometry to an applicant who has graduated from an optometry school accredited by the Accreditation Council of Optometric Education or its successor. The applicant shall also meet the requirements of subsections 11.2-11.3. and pay the temporary permit fee required in the Board's rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5. The temporary permit may be issued before the applicant passes all sections of the prescribed exam administered by the National Board of Examiners in Optometry, its successor or equivalent. A certified copy of the applicant's accredited optometry school transcript indicating successful completion of the requirements for a doctorate degree in optometry must be submitted to qualify for a non-military temporary permit. The provisions of §14-1-18 of this rule establish alternative temporary permit requirements for members of the military and their spouses.;

On page 6, subdivision 11.2.1. by striking out the words "parts I and II of";

On page 6, subdivision 11.2.1. by striking out the words "registration for the exam National Board exam";

On page 7, by striking out all of subsection 11.3 and renumbering the remaining subsections.

And,

On page 9, subsection 16.1. by striking the words “if the spouse” and inserting in lieu thereof the word “and”.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Optometry (continuing education, 14 CSR 10), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Optometry (injectable pharmaceutical agents certificate, 14 CSR 11), is authorized with the following amendments:

On page 3, after section 7, by adding a new section 8 to read as follows:

“§14-11-8. Reporting.

8.1. The certificate holder shall notify the primary care physician or other health care provider as identified by the patient receiving the medication by injection and shall document in the patient’s record that the patient’s primary care provider was notified of an injection given to the patient. The notification shall include the diagnosis, treatment, any adverse effects of the injection, and the expected results of the injection. In no event shall the reporting be construed as permission or approval of an order for treatment by injection.

8.2. If the patient does not have a primary care provider or refuses to provide written permission to report the injection to his or her primary care provider, the certificate holder may provide a written statement to the patient regarding the injections he or she

received to give to his or her current primary care provider or any subsequent primary care provider.

8.3. The certificate holder shall maintain a logbook of all injections and submit it to the Board upon request. The logbook shall include:

8.3.a. The patient's initials, age, gender and race;

8.3.b. The purpose of the injection;

8.3.c. The name of the medication administered and the type and location of the injection;

8.3.d. The treatment guidelines which were followed and which must be compliant with the guidelines approved by the Board:

8.3.e. The name and certification or licensure level of any persons working in conjunction with the certificate holder to administer medication through injections; and

8.3.f. How the primary care provider was notified that the patient needed an injection.

8.4. The Board may require a certificate holder to supply the complete medical record for any of the patients listed in the logbook for review and may also request an audit of the certificate holder's full records to ensure compliance with injection certificate requirements.

8.5. If a patient has an adverse reaction to the injection, the certificate holder shall provide the Board with an incident report, within 5 business days, listing the details of the adverse reaction and the measures used to correct that reaction.

8.6. A certificate holder's reports containing patient Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) patient privacy requirements.”;

And,

Renumbering the following sections accordingly.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-8-6 of this code, modified by the West Virginia Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2023, relating to the West Virginia Board of Optometry (eyelid procedures, 14 CSR 14), is authorized with the following amendments:

On page 1, subsection 3.1, after the word ‘adnexa’ by adding the following: ‘that do not extend beyond the dermal layer of the skin or mucus membranes’;

On page 1, after section 3, by adding a new section 4 to read as follows:

“§14-14-4. Exclusions.

An optometrist may not perform:

4.1. Surgery related to removal of the eye from a living human being;

4.2. Surgery requiring full thickness incision or excision of the cornea or sclera other than paracentesis in an emergency situation requiring immediate reduction of the pressure inside the eye;

4.3. Penetrating keratoplasty (corneal transplant) or lamellar keratoplasty;

4.4. Surgery requiring incision of the iris or ciliary body;

4.5. Surgery of the eyelid for eyelid malignancies or mechanical repair of blepharochalasis, ptosis, or tarsorrhaphy;

4.6. Surgery of the bony orbit, including orbital implants;

4.7. Incisional or excisional surgery of the lacrimal system other than lacrimal probing or related procedures; or

4.8. Surgery requiring full thickness conjunctivoplasty.”

§64-9-16. West Virginia Board of Osteopathic Medicine.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-14-14 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the West Virginia Board of Osteopathic Medicine (licensing procedures for osteopathic physicians, 24 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-3E-3 of this code, modified by the West Virginia Board of Osteopathic Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the West Virginia Board of Osteopathic Medicine (osteopathic physician assistants, 24 CSR 02), is authorized.

§64-9-17. West Virginia Board of Pharmacy.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (licensure and practice of pharmacy, 15 CSR 01), is authorized with the following amendments:

On page 16, subdivision 12.3.1. by striking out the word “current” and inserting in lieu thereof 2023;

On page 14, subsection 9.4, by striking out 15 CSR 19 and inserting in lieu thereof 15CSR 20;

On page 16, subdivision 12.3.2. by striking out the word “current” and inserting in lieu thereof 2023;

And,

On page 19, subdivision 13.2.2. by striking out the word “current” and inserting in lieu thereof 2023;

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for continuing education for licensure for pharmacists, 15 CSR 03), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for registration of pharmacy technicians, 15 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (immunizations administered by pharmacists, pharmacy interns, and pharmacy technicians, 15 CSR 12), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for centralized prescription processing, 15 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-5-7 of this code, modified by the West Virginia Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 26, 2023, relating to the West Virginia Board of Pharmacy (regulations governing pharmacy permits, 15 CSR 15), is authorized.

(g) The legislative rule filed in the State Register on July 20, 2023, authorized under the authority of §30-5-7 of this code, relating to the West Virginia Board of Pharmacy (Board of Pharmacy rules for the substitution of biological pharmaceuticals, 15 CSR 17), is authorized.

§64-9-18. Board of Professional Surveyors.

The legislative rule filed in the State Register on July 31, 2023, authorized under the authority of §30-13A-6 of this code, modified by the Board of Professional Surveyors to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2023, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 01), is authorized.

§64-9-19. Board of Examiners of Psychologists.

(a) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Board of Examiners of Psychologists (disciplinary and complaint procedures for psychologists, 17 CSR 04), is authorized with the following amendments:

On page 2, section 5, subsection 6, after the word “shall” by inserting the following: “first determine whether the conduct alleged in the complaint, if true, would constitute a violation of the rules of the Board or otherwise falls within the jurisdiction of the Board. Upon completing that initial determination, the Board shall”;

On page 3, section 5, subsection 6, subdivision 2, after the word “Board” by inserting the words “and dismissed”;

On page 3, section 5, subsection 7, by striking out the word “The” and inserting in lieu thereof “If it determines that the complaint falls within its jurisdiction, the”;

On page 3, section 5, subsection 12, by striking out the words “unless the complaint is determined to fall within the provisions of sub-division 5.6.2. of this rule” and inserting in lieu thereof the words “initially determined pursuant to sub-section 5.6 of this rule to be within its jurisdiction”; and

On page 4, section 5, subsection 17, after the words “discretion to dismiss a complaint hereunder”, by inserting the words “or under subsection 5.6”.

(b) The legislative rule filed in the State Register on July 25, 2023, authorized under the authority of §30-21-6 of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 15, 2023, relating to the Board of Examiners of Psychologists (contested case hearing procedure, 17 CSR 05), is authorized.

§64-9-20. West Virginia Real Estate Commission.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, modified by the West Virginia Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2023, relating to the West Virginia Real Estate Commission (licensing real estate brokers, associate brokers, and salespersons and the conduct of brokerage business, 174 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, relating to the West Virginia Real Estate Commission (schedule of fees, 174 CSR 02), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §30-40-8 of this code, modified by the West Virginia Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 27, 2023, relating to the West Virginia Real Estate Commission (requirements for real estate

courses, course providers, and instructors, 174 CSR 03), is authorized.

§64-9-21. West Virginia Board of Registered Nurses.

(a) The legislative rule filed in the State Register on August 1, 2023, authorized under the authority of §30-7-4 of this code, modified by the West Virginia Board of Registered Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Registered Nurses (policies, standards and criteria for the evaluation, approval and national nursing accreditation of prelicensure nursing education programs, 19 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, modified by the West Virginia Board of Registered Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 16, 2023, relating to the West Virginia Board of Registered Nurses (requirements for registration and licensure and conduct constituting professional misconduct, 19 CSR 03), is authorized with the following amendments:

On page 2, paragraph 3.1.a.4. by striking out the word “that” and inserting in lieu thereof the word “this”;

On page 3, paragraph 3.1.b.5., by striking out the word “state” and inserting in lieu thereof the words “West Virginia”;

On page 4, paragraph 3.1.c.4., by striking out the word “state” and inserting in lieu thereof the words “West Virginia”;

And,

On page 6, subdivision 6.1.e., by striking out the word “state” and inserting in lieu thereof the words “West Virginia”;

(c) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code,

relating to the West Virginia Board of Registered Nurses (advanced practice registered nurse licensure requirements, 19 CSR 07), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2023, authorized under the authority of §30-7-4 of this code, relating to the West Virginia Board of Registered Nurses (fees for services rendered by the board, 19 CSR 12), is authorized.

§64-9-22. West Virginia Board of Respiratory Care.

The legislative rule filed in the State Register on June 8, 2023, authorized under the authority of §30-34-6a of this code, modified by the West Virginia Board of Respiratory Care to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 28, 2023, relating to the West Virginia Board of Respiratory Care (student temporary permit, 30 CSR 09), is authorized with the following amendment:

On page 2, subsection 3.2, after the word “review” by inserting the words “and approval”.

§64-9-23. Secretary of State.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 25, 2023, relating to the Secretary of State (guidelines for the use of nicknames and other designations on the ballot, 153 CSR 14), is authorized.

(b) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, relating to the Secretary of State (Combined Voter Registration and Driver Licensing Fund, 153 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §3-1A-6 of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the

State Register on October 25, 2023, relating to the Secretary of State (minimum standards for election administration, infrastructure, and security minimum standards and reserve funding, 153 CSR 55), is authorized.

§64-9-24. State Treasurer.

(a) The legislative rule filed in the State Register on July 28, 2023, authorized under the authority of §36-8-28 of this code, modified by the West Virginia State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2023, relating to the West Virginia State Treasurer (enforcement of the Uniform Unclaimed Property Act, 112 CSR 05), is authorized with the following amendments:

On page 1, line 6, in the name of the Series, following the words “PROPERTY ACT”, by adding the words “AND THE UNKNOWN AND UNLOCATABLE INTEREST OWNERS ACT”;

And,

On page 7, subsection 15.4, following the words “requirements of section”, by striking out the number “10” and inserting in lieu thereof the number “9.”

(b) The legislative rule filed in the State Register on July 13, 2023, authorized under the authority of §18-30A-6 of this code, modified by the West Virginia State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 2, 2023, relating to the West Virginia State Treasurer (Jumpstart Savings Program, 112 CSR 20), is authorized.



CHAPTER 182

(S. B. 687 - By Senators Woodrum and Barrett)

[Passed March 7, 2024; in effect 90 days from passage (June 5, 2024)]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §4-2-3, §4-2-4, §4-2-6, and §4-2-8 of the Code of West Virginia, 1931, as amended; to repeal §4-2-5 of said code; to amend and reenact §4-3-3c of said code; to amend and reenact §4-10-3, §4-10-6, §4-10-7, §4-10-9, and §4-10-10 of said code; and to repeal §4-10-8 of said code, all relating to the Legislative Auditor; establishing that auditor is responsible to Joint Committee on Government and Finance; clarifying that auditor may exercise powers at direction of Senate President or Speaker of the House of Delegates; restating authority of auditor to inspect properties, equipment, and records; providing for publication of post audit reports; prohibiting auditor from using external auditing entities to conduct audits except as directed by Senate President or Speaker; modifying obligations of auditor regarding budgetary matters; providing that committee has authority to hire employees to assist auditor in performance of obligations; clarifying hiring authority of committee; providing that department presentations are to be made at Senate President's or Speaker's direction; mandating that state agencies be reviewed within certain time period; eliminating requirement that agency and regulatory board reviews be conducted according to certain auditing standards; revising schedule of regulatory board reviews; and providing that agency and regulatory board reviews may be conducted more frequently than mandated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; COMPENSATION.

§4-2-3. Appointment of Legislative Auditor; responsibility to Joint Committee on Government and Finance.

There is hereby created the position of Legislative Auditor who shall be appointed by the committee to serve at its will and pleasure. The Legislative Auditor shall be solely responsible to the committee.

§4-2-4. Powers of Auditor; reports.

(a) The Legislative Auditor shall have the following powers, which he or she may exercise as directed by the President of the Senate or the Speaker of the House of Delegates:

(1) To compile fiscal information for the Senate and the House of Delegates;

(2) To make an audit and analysis of the state budget, revenues, and expenditures during and between sessions of the Legislature;

(3) To make post audits of the revenues and expenditures of the spending units of the state government;

(4) To report any misapplication of state funds or erroneous, extravagant, or unlawful expenditures by any spending unit; and

(5) To ascertain facts and make recommendations to the Legislature concerning post-audit findings, the revenues and expenditures of the state, and of the organization and functions of the state and its spending units.

(b) In the exercise of these powers, as directed by the President of the Senate or the Speaker of the House of Delegates, the Legislative Auditor shall have the authority, by such means as are necessary, to require any person holding office in the state government or employed by the state to allow the Legislative Auditor to inspect the properties, equipment, facilities, and records of the various spending units, either before or after estimates are

submitted, and before, during, and after sessions of the Legislature. Refusal by any person or the state government entity to allow such inspection shall be reported by the Legislative Auditor to the committee, the President of the Senate, or the Speaker of the House of Delegates.

(c) The Legislative Auditor may collect, and the spending unit shall pay, any or all of the costs associated with conducting the post audits from the spending unit being audited, when necessary and desirable. The Legislative Auditor shall render to the spending unit liable for the costs a statement of the costs as soon after the costs were incurred as practicable, and it is the duty of the spending unit to pay promptly in the manner that other claims and accounts are paid. All money received by the Legislative Auditor from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

(d) Upon completion of a post audit, the Legislative Auditor shall report his or her findings and recommendations to the Legislature's Post Audit Subcommittee and, after presentation, publish the report on the Post Audit Division website.

(e) The Legislative Auditor shall conduct all examinations and audits and may not use external auditing firms or entities to conduct them except as otherwise directed by the President of the Senate or the Speaker of the House of Delegates.

§4-2-5. Powers of Auditor.

[Repealed.]

§4-2-6. Preparation of budgets and reports.

The Legislative Auditor shall compile revenue and budgetary reports, in such form and with such itemization and other information as the committee shall prescribe, at least 30 days prior to any legislative session, and submit them to the committee with appropriate recommendations, together with such other findings and reports deemed necessary or required by the committee. The Legislative Auditor shall also report to the committee any

misapplication of state funds and any erroneous, extravagant, or unlawful expenditures by any spending unit, together with such other findings and reports as the committee shall require.

§4-2-8. Assistants and employees.

The Legislative Auditor may recommend that the committee employ such assistants or employees as the Legislative Auditor believes to be necessary for the efficient discharge of his or her tasks. The committee may, in its discretion, employ assistants and employees to aid the Legislative Auditor and fix their number and compensation.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-3c. Reorganization of joint legislative agencies.

(a) The Joint Committee on Government and Finance has the authority over and direction of joint legislative agencies, personnel, and services, including, but not limited to, the following:

(1) The Commission on Special Investigations provided for in §4-5-1 *et seq.* of this code;

(2) The West Virginia Legislative Claims Commission provided for in §14-2-1 *et seq.* and crime victims compensation provided for in §14-2A-1 *et seq.* of this code;

(3) The Legislative Auditor provided for in §4-2-1 *et seq.* of this code;

(4) The Legislative Rule-Making Review Committee provided for in §29A-3-1 *et seq.* of this code;

(5) The Legislative Reference Library provided for in §4-3-3 of this code;

(6) The Legislative Automated Systems Division;

(7) Legislative Services;

(8) Public information; and

(9) Joint services provided by one or more of the joint agencies set forth in this subsection. The following joint services are included:

(A) Bill drafting;

(B) Budget analysis;

(C) Duplicating;

(D) Financial, payroll, personnel, and purchasing for joint agencies and personnel;

(E) Fiscal analysis;

(F) Post audits, full performance evaluations, and preliminary performance reviews;

(G) Research; and

(H) Joint services to other joint legislative committees created and authorized by this code, to joint standing committees of the Senate and House of Delegates, to standing committees of the Senate and House of Delegates and to legislative interim committees.

(b) Notwithstanding any other provision of this chapter to the contrary, the Joint Committee on Government and Finance has the authority to reorganize and restructure the joint legislative agencies, personnel, and services as provided in subsection (a) of this section for the purposes of improving their efficiency and the service they provide to the Legislature and to improve the management thereof by the joint committee. To accomplish these purposes, the joint committee may employ and terminate personnel; create divisions as it determines necessary; and transfer and assign the joint agencies, personnel, and services to the divisions. The divisions, joint agencies, personnel, and services shall operate under the direction and policies of the joint committee: *Provided*, That nothing in this section shall be

construed to permit the joint committee to alter or redefine the powers, duties, and responsibilities vested in the Commission on Special Investigations pursuant to §4-5-1 *et seq.* of this code.

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(a) "Agency" or "state agency" means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity in the State of West Virginia.

(b) "Agency review" means a review performed on an agency at the direction of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee pursuant to the provisions of this article.

(c) "Committee" means the Joint Committee on Government Operations.

(d) "Compliance review" means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the committee, the joint standing committee, or the Joint Committee on Government and Finance.

(e) "Department" means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

(f) "Department presentation" means a presentation by a department pursuant to the provisions of this article made at the

direction of the President of the Senate or the Speaker of the House of Delegates.

(g) "Division" means the Performance Evaluation and Research Division, the Post Audit Division, or any division of the Legislative Auditor's Office.

(h) "Joint standing committee" means the Joint Standing Committee on Government Organization.

(i) "Privatize" means a contract to procure the services of a private vendor to provide a service that is similar to, or in lieu of, a service provided by a state agency.

(j) "Regulatory Board" means a board that regulates professions and occupations, created under the provisions of chapter 30 of this code.

(k) "Regulatory Board Review" means a review performed on a regulatory board pursuant to the provisions of this article.

§4-10-6. Department presentation; timing and scope.

(a) At the direction of the President of the Senate or the Speaker of the House of Delegates, and upon notification from the division, a department shall prepare and make a presentation to the joint standing committee and the committee. The purpose of the presentation is to inform the Legislature as to the programs, activities, and financial situation of the department and to update and amend any information previously presented to the joint standing committee or committee pursuant to this section. The presentation shall include:

(1) A departmental chart designating each agency under the purview of the department;

(2) An analysis of the department's internal performance measures and self-assessment systems; and

(3) For each agency under the purview of the department, the following:

- (A) The mission, goals, and functions of the agency;
- (B) The statutory or other legal authority under which the agency operates;
- (C) The number of employees of the agency for the immediate past 10 years;
- (D) The budget for the agency for the immediate past 10 years;
- (E) Any potential or actual loss of revenue due to operations, changes in law, or any other reason;
- (F) The extent to which the agency has operated in the public interest;
- (G) The extent to which the agency has complied with state personnel practices, including affirmative action requirements;
- (H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its rules and decisions on the effectiveness, economy, and availability of services that it has provided;
- (I) The efficiency with which public inquiries or complaints regarding the activities of the agency have been processed and resolved;
- (J) The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and
- (K) A recommendation as to whether the agency should be continued, consolidated, or terminated.

§4-10-7. Agency review.

(a) The division shall conduct agency reviews of one or more state agencies each year. An agency review shall be conducted of each state agency at least once every 15 years. An agency review

may be conducted more frequently than once in 15 years and may be conducted in the discretion, and at the direction, of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(b) The agency review may include, but is not limited to:

(1) An identification and description of the agency under review;

(2) The number of employees of the agency for the immediate past 10 years;

(3) The budget for the agency for the immediate past 10 years;

(4) Whether the agency is effectively and efficiently carrying out its statutory duties or exercising its legal authority;

(5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how these activities could be consolidated;

(6) A cost-benefit analysis, as described in subsection (d) of this section, on state services that are privatized or contemplated to be privatized;

(7) An assessment of the utilization of information technology systems within the agency, including interagency and intra-agency communications;

(8) An analysis of any issues raised by any presentation by the department under whose purview the agency falls made pursuant to the provisions of this article;

(9) An analysis of any other issues as the committee, the joint standing committee, the President of the Senate, or the Speaker of the House of Delegates may direct; and

(10) A recommendation as to whether the agency under review should be continued, consolidated, or terminated.

(c) An agency may be subject to a compliance review pursuant to the provisions of this article.

(d) A cost-benefit analysis authorized by this section may include:

(1) The tangible benefits of privatizing the service;

(2) Any legal impediments that may limit or prevent privatization of the service;

(3) The availability of multiple qualified and competitive private vendors; and

(4) A cost comparison, including total fixed and variable, direct and indirect, costs of the current governmental operation and the private vendor contract.

§4-10-8. Schedule of departments for agency review.

[Repealed.]

§4-10-9. Regulatory board review.

(a) The division shall conduct regulatory board reviews on each regulatory board to ascertain if there is a need for the continuation, consolidation, or termination of the regulatory board as one of its duties.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years. A regulatory board may be subject to a compliance review pursuant to the provisions of this article.

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within 12 years of the effective date of the act.

(d) The regulatory board review may include:

(1) Whether the board complies with the policies and provisions of chapter 30 of this code and other applicable laws and rules;

(2) Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

(3) Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased or decreased regulation;

(4) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

(5) Whether statutory changes are necessary to improve board operations to enhance the public interest;

(6) An analysis of any other issues the committee, the joint standing committee, the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.[‡]

(7) A recommendation as to whether the regulatory board under review should be continued, consolidated, or terminated.

§4-10-10. Regulatory board review schedule.

(a) A regulatory board review is required for all regulatory boards.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years.

(c) A regulatory board review may be conducted more frequently than once in 12 years and may be conducted in the discretion, and at the direction, of the President of the Senate or the Speaker of the House of Delegates.

[‡]**NOTE:** Language from the following portion of the House amendment to Engr. S.B. 687 was erroneously put in §4-10-9 (c) (6), instead of §4-10-10 (c). in the paper copy of the bill which was sent back to the Senate: *‘On page 11, section 4-10-10, line 26, after the word “Senate” by striking out the remainder of the sentence and inserting in lieu thereof the following words “, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.”’*; and the following language was deleted, *“or the Speaker of the House of Delegates may direct; and”*. The bill above reflects the enrolled bill presented to the Governor.

CHAPTER 183

(Com. Sub. for S. B. 632 - By Senators Trump, Deeds, and Rucker)

[Passed March 9, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §27-6A-12 of the Code of West Virginia, 1931, as amended, relating to continuing the study group on development of a strategic plan for a sequential intercept model to divert certain individuals away from the criminal justice system into treatment and to promote continuity of care and interventions; specifying individuals with brain injuries included among populations to be included in study; updating membership of the study group; continuing the study group; requiring supplemental and annual reporting; establishing a steering committee within the study group; and providing authority of steering committee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

***§27-6A-12. Development of a strategic plan for a sequential intercept model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities, and substance use disorders away from the criminal justice system into treatment and to promote continuity of care and interventions; directing submission of a report to the Legislature.**

(a) The Legislature finds that the state’s adult and juvenile forensic patient populations continue to increase and that the

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

placement of forensic patients at state health care facilities, diversion facilities, group homes, transitional living facilities, in the community, and other settings continues to rapidly escalate. The Legislature further finds that persons with mental illness, developmental disabilities, cognitive disabilities including, but not limited to, brain injuries, and/or substance use disorder may be overrepresented in the criminal justice system, and many of these people might not present a danger to the public if they could participate in a functioning community behavioral health continuum of care. The Legislature further finds that the increasing adult and juvenile forensic patient populations, the placement and treatment of adult and juvenile forensic patients, and the release of persons with mental illness, developmental disabilities, and other disabilities creates significant clinical, public safety, staffing, and fiscal needs and burdens for the judiciary, law enforcement, state health care facilities, correctional facilities, behavioral health professionals, hospitals, and the public. The Legislature further finds that there is a need for improved coordination among the Department of Human Services, the Department of Health Facilities, the Division of Corrections and Rehabilitation, and the Division of Rehabilitation Services to promote the identification, safe discharge, and effective community intervention and placement of persons who suffer from mental illness, a developmental disability, a cognitive disability including, but not limited to, a brain injury, and/or substance use disorder. The Legislature further finds that there is a need to develop functional standards and protocols for the identification, management, qualified assessment, and treatment of adult and juvenile forensic patients.

(b) The Chairman of the Dangerousness Assessment Advisory Board shall convene a multi-disciplinary study group of the following persons:

- (1) The Statewide Forensic Clinical Director;
- (2) The Statewide Forensic Coordinator;
- (3) The two forensic psychiatrists who are members of the Dangerousness Assessment Advisory Board;

(4) The two psychologists who are members of the Dangerousness Assessment Advisory Board;

(5) The Director of the Office of Drug Control Policy within the Department of Human Services;

(6) A designee of the Supreme Court of Appeals;

(7) A designee of the Bureau for Social Services within the Department of Human Services with experience in juvenile forensic matters;

(8) A designee of the Division of Corrections and Rehabilitation within the Department of Homeland Security;

(9) A designee of the Division of Rehabilitation Services within the Department of Commerce;

(10) A designee of the Prosecuting Attorneys Institute;

(11) A designee of the Public Defender Services;

(12) A designee of the West Virginia Behavioral Healthcare Providers Association who is a licensed clinician with forensic patient experience;

(13) A designee of the West Virginia Hospital Association;

(14) A designee of the West Virginia Housing Development Fund;

(15) A designee of Disability Rights of West Virginia;

(16) A designee of the West Virginia Sheriff's Association;

(17) A designee of the Juvenile Justice Commission;

(18) A designee of the West Virginia University Center for Excellence in Disabilities;

(19) A designee of the Department of Veterans Assistance;

(20) A designee of the Department of Health Facilities;

(21) A senator appointed by the President of the Senate; and

(22) A delegate appointed by the Speaker of the House.

(c) The purpose of the multi-disciplinary study group is to provide opinion, guidance, and informed objective expertise to the Legislature regarding each of the following areas:

(1) The development and implementation of a sequential intercept model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities including, but not limited to, brain injuries, and/or substance use disorders away from the criminal justice system and into community-based treatment or other settings where appropriate;

(2) The review and recommendation of standards and protocols for the evaluation, treatment, management, and stabilization of adult and juvenile forensic patients;

(3) A recommendation regarding standards and protocols to promote continuity of care and interventions for adult and juvenile forensic patients and inmates released from correctional facilities;

(4) The recommendation of a model to coordinate services and interventions among the Department of Human Services, the Department of Health Facilities, the Division of Corrections and Rehabilitation, the Division of Rehabilitation Services, behavioral healthcare providers, law enforcement, and the court system to facilitate the appropriate diversion, identification, evaluation, assessment, management, and placement of adults and juveniles who suffer from mental illness, a development disability, a cognitive disability including, but not limited to, a brain injury, and/or substance use disorder to ensure public safety and the effective clinical management of such persons;

(5) The identification of potential funding sources and the scope of resources needed for the implementation of the study group's recommendations; and

(6) Any other issues related to addressing the Legislature's findings.

(d) The provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code are inapplicable to the operation of the study group.

(e) The study group established in this section is hereby continued. The study group shall submit a supplemental report containing its findings and recommendations to the President of the Senate and the Speaker of the House of Delegates on or before November 30, 2024. Thereafter, the study group shall submit an annual report to the President of the Senate and the Speaker of the House of Delegates updating its findings and recommendations on topics specified by the Joint Standing Committee on the Judiciary, the Joint Standing Committee on Finance, the Joint Standing Committee on Health, or the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.

(f) Each member of the multi-disciplinary study group whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the study group. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition of the State Auditor.

(g) The study group steering committee comprised of the Chairman of the Dangerousness Assessment Advisory Board, the Statewide Forensic Clinical Director, and the Statewide Forensic Coordinator may:

(1) Enter into any contract for administrative support services as necessary to accomplish the purposes of this section: *Provided*, That such services may only be paid for through grant funding;

(2) Enter into a memorandum of understanding with and between any of the members of the study group as necessary to accomplish the purposes of this section; and

(3) Seek grant funding to accomplish the purposes of this section.

CHAPTER 184

**(S. B. 173 - By Senators Phillips, Tarr, Oliverio, Swope,
Roberts, Hamilton, Woodrum, and Stuart)**

[Passed March 7, 2024; in effect 90 days from passage (June 5, 2024)]

[Approved by the Governor on March 13, 2024.]

AN ACT to amend and reenact §17A-6A-3, §17A-6A-8a, §17A-6A-10, and §17A-6A9-18 of the Code of West Virginia, 1931, as amended, all relating generally to new motor vehicle dealers, distributors, wholesalers, manufacturers, factory branches, and distributor branches; defining terms; clarifying a manufacturer's obligations for warranty and recall reimbursement to a new motor vehicle dealer; restricting manufacturer and distributor right of first refusal; identifying and clarifying unlawful and prohibited practices; and clarifying statutory authority of dealer data systems vendor agreements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. NEW MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS, AND MANUFACTURERS.

§17A-6A-3. Definitions.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) "Dealer agreement" means the franchise, agreement, or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the operation and business of a new motor vehicle dealer,

including, but not limited to, the purchase, lease, or sale of new motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

(2) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a new motor vehicle dealer who is entitled to inherit the dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if a document is filed.

(3) "Distributor" means any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident, or nonresident, or who controls any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.

(4) "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) "Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering

for sale vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(6) "Factory representative" means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) "Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative and, in the case of a school bus, truck tractor, road tractor, or truck as defined in §17A-1-1 *et seq.* of this code, also means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains, or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch, or representative.

(9) "Motor vehicle" means that term as defined in §17A-1-1 of this code, including a motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of said section, but not including a farm tractor or farm equipment. The term "motor vehicle" also includes a school bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission, or rear axle manufactured for installation in a school bus, truck tractor, road tractor, or truck.

(10) "New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) "New motor vehicle dealer" or "dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging, or dealing in new motor vehicles, service of said vehicles, warranty work, and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) "The operation and business of a new motor vehicle dealer or dealership" includes selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing warranty and recall work for a motor vehicle: *Provided*, That the provisions of this subdivision do not apply to over the air updates.

(13) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

(14) "Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. "Proposed new motor vehicle dealer" does not include a person whose dealer agreement is being renewed or continued.

(15) "Relevant market area" means the area located within a 20 air mile radius around an existing same line-make new motor vehicle dealership: *Provided*, That a 15 mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute a written agreement, including a letter of intent, performance agreement, or commitment letter concerning the establishment of the proposed new motor vehicle dealership.

§17A-6A-8a. Compensation to dealers for service rendered.

(a) Every motor vehicle manufacturer, distributor, or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof, shall:

(1) Specify in writing to each of its dealers, the dealer's obligation for delivery, preparation, warranty, and factory recall services on its products;

(2) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof;

(3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid the dealer for parts, work, and service, including reasonable and adequate allowances for diagnostic time, including time communicating with the manufacturer, necessary for a qualified technician to perform the service, in connection with warranty and recall services and the time allowance for the performance of the diagnosis, work, and service. If a disagreement arises between the manufacturer, distributor, or wholesaler, factory branch or distributor branch, and the dealer about the time allowance for the performance of the diagnosis, work, or service, the dealer shall submit a written request for modification of the time allowance, which shall be presumed reasonable. A manufacturer, distributor, or wholesaler, factory branch, or distributor branch shall not unreasonably deny a written request submitted by a new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a request submitted by a dealer for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the manufacturer, distributor, or wholesaler, factory branch, or distributor branch to assess the merits of the request; and

(4) Provide compensation to a new motor vehicle dealer for assistance requested by a retail buyer or lessee whose vehicle was

subjected to an over-the-air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor, and performed at the dealership to satisfy the customer.

(b) In no event may:

(1) The schedule of compensation fail to compensate the dealers for the diagnosis, work, and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor, time, or rate, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

(2) Any manufacturer, distributor, or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

(3) Any manufacturer, distributor, or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

(c) It is a violation of this section for any manufacturer, distributor, wholesaler, or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs, or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

(d) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than 180 days before the submission and declaring the average percentage markup. A dealer may decide to submit a single set of repair orders for the purpose

of calculating both the labor rate and parts markup or submit separate sets of repair orders for a labor rate and parts markup calculation.

(e) The retail rate customarily charged by the dealer for labor rate shall be established using the same process as provided under subsection (d) of this section and declaring the average labor rate. The average labor rate shall be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate and parts markup rate are simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection (d) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time for a specific repair. The request shall not be unreasonably denied by the manufacturer.

(f) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for customer repairs;

(2) Parts sold at wholesale;

(3) Routine maintenance not covered under any retail customer warranty, including bulbs, batteries, fluids, filters, and belts not provided in the course of repairs;

(4) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

(5) Tires; and

(6) Vehicle reconditioning.

(g) The average of the parts markup rates and labor rate is presumed to be reasonable and goes into effect 30 days following

the manufacturer's approval. A manufacturer or distributor must approve or rebut the presumption by demonstrating that the submitted parts markup rate or labor rate is: (1) Fraudulent or inaccurate; (2) not established in accordance with this section; or (3) unreasonable in light of the practices of all other same line-make dealers in an economically similar area of the state offering the same line-make vehicles, not later than 30 days after the dealer's submission, or the dealer's submission shall be considered approved. If the average parts markup rate or average labor rate is disputed by the manufacturer or distributor, the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy of all calculations used by the manufacturer or distributor in determining the manufacturer or distributor's position. If the manufacturer's or distributor's objection is based on the accuracy or reasonableness of the dealer's rate submission, the manufacturer or distributor shall propose an adjustment of the average percentage parts markup or labor rate based on that rebuttal not later than 30 days after the dealer's submission. If the dealer does not agree with the manufacturer's proposed average percentage parts markup or labor rate, the dealer may file a civil action in the circuit court for the county in which it operates not later than 90 days after dealer's receipt of the written notice of rebuttal or adjustment by the manufacturer or distributor. In the event a civil action is filed, the manufacturer or distributor has the burden of proof to establish, by a preponderance of the evidence, that the dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light of the practices of all other same line-make dealers in an economically similar area of the state offering the same line-make vehicles.

(h) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the dealer's declaration of hourly labor rates and parts as stated in subsections (d), (e), and (f) of this section and may not obligate any dealer to engage in unduly burdensome or time-consuming documentation

of rates or parts, including obligating dealers to engage in transaction-by-transaction or part-by-part calculations.

(i) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections (d) and (e) of this section; however, the demand for the average parts markup may not be made within 12 months of the last parts markup declaration and the demand for the average labor rate may not be made within 12 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections (d) and (e) of this section.

(j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in §17A-1-1 of this code, with a gross vehicle weight in excess of 26,001 pounds, the manufacturer, distributor and/or original equipment manufacturer supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking area. The dealer shall be paid \$50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours the manufacturer, distributor, and/or original equipment manufacturer supplier makes the dealer stop working on a vehicle while the manufacturer, distributor, and/or original equipment manufacturer supplier decides how it wants the dealer to proceed with the repairs.

(k) All claims made by dealers pursuant to this section for compensation for delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after approval and shall be approved or disapproved by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. A claim which has been approved and paid may not be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs

were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim arose. Charge back may not be made until the dealer has had notice and an opportunity to support the claim in question. An otherwise valid reimbursement claim may not be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental failure to comply with a specific non-material claim processing requirement or administrative technicality, or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer has 30 days to respond to any audit by a manufacturer or distributor.

(l) Notwithstanding the terms of a dealer agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty, and recall obligations constitute the dealer's sole responsibility for product liability between the dealer and manufacturer. Except for a loss caused by the dealer's failure to adhere to the obligations or a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(m) When calculating the compensation that must be provided to a new motor vehicle dealer for labor and parts used to fulfill a warranty and recall obligations under this section, all of the following apply:

(1) The manufacturer shall use time allowances for the diagnosis and performance of the warranty and recall work and services that are reasonable and adequate for the work or services to be performed by a qualified technician.

(2) At the request of the dealer, the manufacturer shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation;

(3) If the manufacturer provided a part or component to the dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer shall provide to the dealer an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the manufacturer's price schedule by the retail parts markup percentage; and

(4) A manufacturer shall not assess penalties, surcharges, or similar costs to a dealer, transfer or shift any costs to a dealer, limit allocation of vehicles or parts to a dealer, or otherwise take retaliatory action against a dealer based on any dealer's exercise of its rights under this section. This section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the ordinary course of business.

§17A-6A-10. Prohibited practices.

(a) A manufacturer or distributor may not require any dealer in this state to do any of the following:

(1) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the dealer. This section does not prevent the manufacturer or distributor from requiring that dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer

identification, nondiagnostic computer equipment and displays, or other materials at the expense of the dealer;

(4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty, or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor, or any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(5) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance, and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

(6) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products: *Provided*, That the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer. Notwithstanding the terms of any dealer agreement, a manufacturer or distributor may not enforce any requirements, including facility or image requirements, that a dealer establish or maintain exclusive facilities, personnel, or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify such actions is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(7) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

(8) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this article or require any controversy between a dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this article prevents a dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment, or waiver of a trial by jury;

(9) Coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs, or other franchisor image elements that replace or substantially alter those improvements, signs, or franchisor image elements completed within the preceding 15 years that were required and approved by the manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other payments to a retail buyer, lessee, or dealer paid on individual new motor vehicle sales or leases under a program offered after the effective date of this subdivision that are available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchisor image elements required by and approved by the manufacturer, factory branch, distributor, or distributor branch, and completed within 15 years preceding the program, the dealer is determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that 15-year period: *Provided*, That the provisions of this subdivision apply to any dealer who obtains ownership,

either through a stock purchase, asset purchase or other means, of a new motor vehicle dealership which has met the requirements of this subdivision within the 15-year period set forth in this subdivision, unless the dealer selling the new motor vehicle dealership has signed an agreement with the manufacturer agreeing to dealer facility improvements or the installation of franchiser image elements prior to an agreement to transfer ownership to a subsequent dealer. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of the program, nor to a modification that is not a modification of a material term or condition of the program;

(10) Condition the award, sale, transfer, relocation, or renewal of a dealer agreement, or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation;

(11) Enter into a contractual requirement imposed by the manufacturer, distributor, or a captive finance source as follows:

(A) In this section, "captive finance source" means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated, or controlled by the manufacturer, factory branch, distributor or distributor branch.

(B) It is unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any dealer agreement, to require any of its dealers located in this state to agree to any terms, conditions, or requirements in subdivisions (1) through (10), inclusive, of this subsection in order for the dealer to sell to any captive finance source any retail installment contract,

loan, or lease of any new motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the retail buyer or lessee transaction incentive program payable to the retail buyer, lessee, or the dealer and offered by or through any captive finance source as to that incentive program.

(C) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(D) It is unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor; or

(12) Agree to any term or provision in the dealer agreement which gives a manufacturer or distributor the right to unilaterally amend the dealer agreement governing the operation and business of a dealer, including, but not limited to, the purchase, sale, lease, or service of new motor vehicles except as provided for in this article. That term or provision is considered null and void. Any amendment to a dealer agreement governing the purchase, sale, lease, or service of new motor vehicles must be agreed upon by both the manufacturer, factory branch, distributor, or distributor branch and the dealer at the time the dealer agreement is amended.

(b) A manufacturer or distributor may not do any of the following:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. A manufacturer or distributor may not penalize a dealer for an alleged failure to meet

sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(2) Refuse to offer to its same line-make dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate label or badge indicating an upgraded version of the same model regardless of the new motor vehicle's means of propulsion: *Provided*, That the dealer meets any reasonable sales, warranty service repair, and recall standards established by the manufacturer or distributor. This prohibition includes a new line make established by a manufacturer with a dealer agreement in this state, or a subsidiary thereof, or a company affiliated through ownership of the manufacturer, factory branch, distributor, or distributor branch of at least 25 percent of the equity of the company. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

(3) Require as a prerequisite to receiving a model or series of new motor vehicles, that a dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable facility or image remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

(4) Use new motor vehicles in transit but not yet in the dealer's physical possession in any sales effective or efficiency formula to the detriment of the dealer;

(5) Refuse to disclose to a dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within 30 days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

(6) Refuse to disclose to a dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the

dealer's marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a request;

(7) Increase prices of new motor vehicles which the dealer had ordered and then eventually delivered to the same retail buyer or lessee for whom the vehicle was ordered if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer which has been submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail buyer or lessee by the dealer. Any price reduction in excess of \$5 shall apply to all new motor vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(A) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(B) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(C) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(8) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

(9) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the dealer or the manufacturer or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the

manufacturer or distributor, unless the dealer gives his or her written consent;

(10) Deny a dealer the right to associate with another dealer for any lawful purpose;

(11) Establish, operate, or engage in the business of a new motor vehicle dealership. A manufacturer or distributor is not considered to have established, operated, or engaged in the business of a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period;

(B) Operating a preexisting dealership which is for sale at a reasonable price; or

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(12) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a new or used motor vehicle dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through dealers, unless the display is part of an automobile trade show that more than two motor vehicle manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

(13) A manufacturer or distributor may own an interest in a dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(A) The person from whom the manufacturer or distributor acquired the dealership was a dealer; and

(B) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(14) The 12-month period may be extended for an additional 12 months. Notice of any extension of the original 12-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within 20 air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original 12-month period. Any dealer receiving the notice may protest the proposed extension within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the dealer is located to determine whether good cause exists for the extension;

(15) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a dealer who:

(A) Has made a significant investment in the dealership, subject to loss;

(B) Has an ownership interest in the dealership; and

(C) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

(16) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

(17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the dealer on the forms generally used by the manufacturer or distributor for that purpose and containing the information required in the application. Failure to respond to the request within the 60 days is consent;

(18) Unfairly prevent a dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

(19) Audit any dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates, or other forms of sales incentive compensation more than 12 months after the claim for payment or reimbursement has been made by the dealer. A charge back may not be made until the dealer has had notice and an opportunity to support the claim in question within 30 days of receiving notice of the charge back. An otherwise valid reimbursement claim may not be denied once properly submitted in accordance with material and reasonable manufacturer guidelines unless the factory can show that the claim was false or fraudulent, or that the dealer failed to reasonably substantiate the claim consistent with the manufacturer's written, reasonable, and material guidelines. This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all documented copying, postage, and administrative and personnel costs reasonably incurred by the dealer during the audit. Any charges to a dealer as a result of the audit shall be separately billed to the dealer;

(20) Restrict or attempt to restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, or option to purchase;

(21) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a dealer;

(22) Make any material or unreasonable change to the dealer's area of responsibility without giving the dealer written notice, by certified mail of the change at least 60 days prior to the effective date of the change which shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a dealer's area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the dealer may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a dealer's area of responsibility unless the manufacturer shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, an alteration to a dealer's area of responsibility shall not become effective until a final determination by the court. If a dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the dealer's sales performance responsibilities;

(23) Fail to reimburse a dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any retail buyer or lessee who is having a motor vehicle serviced at the dealership if the provision of the loaner motor vehicle is required by the manufacturer;

(24) Compel a dealer, through its finance subsidiaries, to agree to unreasonable operating requirements, or to directly or indirectly terminate a dealer agreement through the actions of a finance subsidiary of the manufacturer. This subsection does not limit the right of a finance subsidiary to engage in business practices in

accordance with the usage of trade in retail or wholesale vehicle financing;

(25) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model, or quantity where the effect of the discrimination would substantially lessen competition;

(26) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer; or

(27) Require or coerce any dealer to sell, offer to sell, or sell exclusively an extended service contract, maintenance plan, or similar product, including gap or other products offered, endorsed, or sponsored by the manufacturer or distributor by the following means:

(A) By an act or statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

(B) By a contract made to the dealer on the condition that the dealer sells, offers to sell, or sells exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(C) By measuring the dealer's performance under the dealer agreement based on the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

(D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor: *Provided*, That nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a dealer who makes the voluntary decision to offer to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(E) By requiring a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch: *Provided*, That the approval may not be unreasonably withheld: *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the dealer's selected vendor: *Provided further*, That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

(c) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew, or discontinue any lease of the dealer's established place of business except for a material breach of the lease.

(d) Except as may otherwise be provided in this article, a manufacturer may not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail, buyer or lessee offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle to a retail buyer or lessee in this state, except through a dealer holding a franchise for the line-make covering the new motor vehicle. This subsection does not apply to manufacturer sales of new motor vehicles to charitable organizations, qualified vendors, or employees of the manufacturer.

(e) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer, or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a dealer agreement for the retail sale of any new

motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles that are covered by the dealer agreement if the vehicles, parts, and accessories are publicly advertised as being available for delivery or are actually being delivered.

(f) It is unlawful for any manufacturer, factory branch, distributor, or distributor branch, when providing a new motor vehicle to a dealer for offer, sale, or lease in this state to the public, to fail to provide to the dealer a written disclosure that may be provided to a potential retail buyer or lessee of the new motor vehicle of each accessory or function of the motor vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the retail buyer or lessee for the initiation, update change, or maintenance that is known at the time of sale. A manufacturer or distributor may comply with this subdivision by notifying the dealer that the information is available on a website or by other digital means. (g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act prejudicial against a new motor vehicle dealer arising from the retail price at which a dealer sells a new motor vehicle.

(h) Notwithstanding the terms of any dealer agreement, or the terms of any program or policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement with any dealer in this state and if the manufacturer or distributor permits retail customers the option of reserving the purchase or lease of a vehicle through a manufacturer or distributor reservation system:

(1) Fail to assign any retail vehicle reservation, or request to purchase, or lease received by the manufacturer or distributor from a resident of this state to the dealer authorized to sell that make and model which is designated by the retail buyer or lessee, or if none is designated, to its dealer authorized to sell that make and model located in closest proximity to the retail buyer or lessee's location: *Provided*, That if the retail buyer or lessee does not purchase or lease the vehicle from that dealer within 10 days of the new motor vehicle being received by the dealer, or if the retail buyer or lessee requests that the transaction be assigned to another dealer, then the

manufacturer or distributor may assign the transaction to another dealer authorized to sell that make and model;

(2) Prohibit or interfere with a dealer negotiating the final purchase price of the new motor vehicle with a retail buyer or lessee that has reserved the purchase or lease through a manufacturer or distributor reservation system;

(3) Prohibit or interfere with a dealer offering and negotiating directly with the customer retail buyer or lessee the terms of vehicle financing or leasing through all sources available to the dealer for the retail buyer or lessee that has reserved the purchase or lease of a new motor vehicle through a manufacturer or distributor reservation system;

(4) Prohibit or interfere with a dealer's ability to offer to sell or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection agreement, or any other vehicle-related products and services offered by the dealer with a retail buyer or lessee that has reserved to purchase or lease through a manufacturer or distributor reservation system: *Provided*, That a manufacturer, distributor, or captive finance source shall not be required to finance the product or service;

(5) Prohibit or interfere with a dealer directly negotiating the trade-in value the retail buyer or lessee will receive, or prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value negotiated with a retail buyer or lessee that has reserved to purchase or lease a new motor vehicle through the manufacturer or distributor reservation system;

(6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

(7) Nothing contained in this subdivision shall:

(A) Require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a dealer located in this state in order to satisfy a retail buyer or lessee's vehicle

reservation or request submitted directly to the manufacturer or distributor as provided in this section;

(B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision, the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle submitted directly by a retail buyer or lessee or a potential retail buyer or lessee to a manufacturer or distributor reservation system; or

(C) Apply to a reservation or request to purchase or lease a new motor vehicle through the manufacturer or distributor received from the retail buyer or lessee that is a resident of this state if the retail buyer or lessee designates a dealer outside of this state to be assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the retail buyer or lessee's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.

(i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any dealer in this state, offer new motor vehicles through a subscription directly to a retail buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering new motor vehicles through a subscription program through a dealer for sale or lease to a retail buyer or lessee.

(j) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a new motor vehicle to a retail buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering a financing program through a dealer which is available for retail buyers or lessees.

(k) A manufacturer may not coerce or require any dealer, whether by agreement, program, incentive provision, or provision for loss of incentive payments or other benefits, to amend its dealer agreement or to establish a dealer agreement under which the manufacturer:

(1) Maintains a website or other electronic or digital means of communication for negotiating prices or other binding terms of sale or lease of new motor vehicles directly with retail buyers or lessees, including, but not limited to, agreements between the manufacturer, factory branch, distributor, or distributor branch on prices or other substantive terms for the sale or leasing of new motor vehicles directly with retail buyers or lessees;

(2) Retains ownership of new motor vehicles until they are sold or leased to retail buyers or lessees; except that, a manufacturer or distributor may maintain a common supply of new motor vehicles to which it retains ownership until the new motor vehicles are sold to dealers pursuant to the manufacturer or distributor's allocation policies and procedures, and may maintain a common supply of new motor vehicles from which a dealer may buy vehicles for the dealer's inventory without having reached agreement for sale or lease of any new motor vehicle with a retail buyer or lessee if the manufacturer, factory branch, or distributor, or distributor branch does not otherwise allow its dealers to obtain stock inventory through the new motor vehicle allocation process and pursuant to the manufacturer or distributor's allocation policies and procedures;

(3) Consigns new motor vehicles to dealers for dealer inventory or for sale to a retail buyer or lessee;

(4) Reserves the right to negotiate binding terms of sale or lease directly with retail buyers or lessees of new motor vehicles; or

(5) Designates dealers to be only delivery agents for new motor vehicles, for which the binding terms of sale or lease are negotiated directly between the manufacturer and the retail buyer or lessee of the new motor vehicle.

§17A-6A-18. West Virginia law to apply.

Notwithstanding the terms, provisions, or requirements of any dealer agreement, contract, or other agreement of any kind between a dealer and a manufacturer or distributor captive finance source, dealer data systems vendor, or any subsidiary, affiliate, or partner of a manufacturer or distributor, or captive finance source or dealer data systems vendor, the provisions of this code apply to all such agreements and contracts listed in this section or governed by this article. Any provisions in the agreements and contracts which violate the terms of this section are null and void.

CHAPTER 185

(Com. Sub. for S. B. 429 - By Senators Woodrum and Deeds)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §17A-3-2 of the Code of West Virginia, 1931, as amended, relating to farm use vehicle tag placement and letter size.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer, and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

(1) Any vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders, or nonresidents or under a temporary registration permit issued by the division as authorized under this chapter;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner of the implement and which is not

operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the Commissioner of the Division of Highways from one point of the owner's land to another part of the owner's land, irrespective of whether or not the tracts adjoin: *Provided*, That the distance between the points may not exceed 35 miles, or for the purpose of taking it or other fixtures attached to the implement, to and from a repair shop for repairs. The exemption in this subdivision from registration and license requirements also applies to any vehicle described in this subsection or to any farm trailer owned by the owner or lessee of the farm on which the trailer is used, when the trailer is used by the owner of the trailer for the purpose of moving farm produce and livestock from the farm along a public highway for a distance not to exceed 35 miles to a storage house or packing plant, when the use is a seasonal operation:

(A) The exemptions contained in this section also apply to farm machinery, tractors, and mini-trucks: *Provided*, That the machinery, tractors, and mini-trucks may use the highways in going from one tract of land to another tract of land regardless of whether the land is owned by the same or different persons. For the purposes of this section, "mini-truck" means a foreign-manufactured import or domestic-manufactured vehicle designed primarily for off-road use and powered by an engine ranging in size from 550cc to 660cc and weighing approximately 1,800 pounds;

(B) Any vehicle exempted under this subsection from the requirements of annual registration certificate and license plates and fees for the registration certificate and license plate may not use the highways between sunset and sunrise unless the vehicle is classified as a Class A motor vehicle with a farm-use exemption under the provisions of §17A-10-1 of this code and has a valid and current inspection sticker as required by the provisions of §17C-16-1 *et seq.* of this code and is traveling from one tract of land to another over a distance of 35 miles or less;

(C) Any vehicle exempted under this section from the requirements of annual registration certificate and license plates may use the highways as provided in this section whether the

exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle required to be registered;

(D) Any vehicle used as an implement of husbandry exempt under this section shall have the words "farm use" in at least 10-inch letters affixed to both sides or to both front and back of the implement or in at least 2-inch letters on license plates affixed to both front and back of the implement. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm-use exemption certificate on the lower driver's side of the windshield:

(i) The farm-use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm-use exemption certificate to the applicant upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. Nothing in this section or any rule promulgated under the authority of chapter 29A of this code may be construed to require any applicant for a renewal of a farm use exemption certificate to appear personally before any assessor. The assessor shall charge a fee of \$2 for each certificate, which shall be retained by the assessor;

(ii) A farm-use exemption certificate shall not exempt the applicant from maintaining the security required by §17D-1-1 *et seq.* of this code on any vehicle being operated on the roads or highways of this state;

(iii) No person charged with the offense of operating a vehicle without a farm-use exemption certificate, if required under this section, may be convicted of the offense if he or she produces in court, or in the office of the arresting officer, a valid farm-use exemption certificate for the vehicle in question within five days;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(4) Any vehicle of a type subject to registration which is owned by the government of the United States;

(5) Any wrecked or disabled vehicle towed by a licensed wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles are exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but are subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles, utility terrain vehicles, and snowmobiles; and

(7) Any special mobile equipment as defined in §17A-1-1(r) of this code.

(b) Notwithstanding the provisions of subsection (a) of this section:

(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;

(2) House trailers may be registered and licensed; and

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

(c) The division shall title and register low-speed vehicles if the manufacturer's certificate of origin clearly identifies the vehicle as a low-speed vehicle. The division may not title or register homemade low-speed vehicles or retrofitted golf carts and such vehicles do not qualify as low-speed vehicles in this state. In addition to all other motor vehicle laws and regulations, except as specifically exempted below, low-speed vehicles are subject to the following restrictions and requirements:

(1) Low-speed vehicles shall only be operated on private roads and on public roads and streets within the corporate limits of a municipality where the speed limit is not more than 25 miles per hour;

(2) Notwithstanding any provisions in this code to the contrary, low-speed vehicles shall meet the requirements of 49 C.F.R. §571.500 (2003);

(3) In lieu of periodic inspection, the owner of a low-speed vehicle shall, upon initial application for registration and each renewal thereafter, certify under penalty of false swearing, that all lights, brakes, tires, and seat belts are in good working condition; and

(4) Any person operating a low-speed vehicle must hold a valid driver's license, not an instruction permit.

CHAPTER 186

(S. B. 827 - By Senators Woodrum, Jeffries, and Barrett)

[Passed March 6, 2024; in effect 90 days from passage (June 4, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §17-23-2 and §17-23-4 of the Code of West Virginia, 1931, as amended, relating generally to salvage yards; providing definition for regional distribution and dismantling center; and providing for specialized regional distribution and dismantling license in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. SALVAGE YARDS.

§17-23-2. Definitions.

As used in this article:

"Abandoned salvage yard" means any unlicensed salvage yard or any salvage yard that was previously licensed but upon which the license has not been renewed for more than one year.

"Commissioner" means the Commissioner of the West Virginia Division of Highways.

"Fence" means an enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects, or other appropriate means approved by the commissioner and located, placed, or maintained so as effectively to screen, at all times, salvage yards and the salvage therein contained from the view of persons passing upon the public roads of this state.

"Occupied private residence" means a private residence which is occupied for at least six months each year.

"Owner or operator" includes an individual, firm, partnership, association or corporation, or the plural thereof.

"Regional distribution and dismantling center" means a facility that removes usable vehicle parts and offers them for resale through a national supply network. The regional distribution and dismantling center (i) does not receive vehicles from individuals; (ii) removes useable parts and stores said parts in an onsite warehouse facility; (iii) removes and processes all fluids and tires from the vehicles; and, (iv) stores the remainder of the vehicle in the confines of the screened property prior to being rotated out of the inventory.

A regional distribution and dismantling center is not a salvage yard as defined in this section.

"Residential community" means an area wherein five or more occupied private residences are located within any 1,000-foot radius.

"Salvage" means old or scrap brass, copper, iron, steel, other ferrous or nonferrous materials, batteries, or rubber and any junked, dismantled or wrecked machinery, machines or motor vehicles or any parts of any junked, dismantled or wrecked machinery, machines or motor vehicles.

"Salvage yard" means any place which is maintained, operated or used for the storing, keeping, buying, selling, or processing of salvage, or for the operation and maintenance of a motor vehicle graveyard: *Provided*, That no salvage yard shall accept, store or process more than 100 waste tires unless it has all permits necessary to operate a monofill, waste tire processing facility or solid waste facility. Any salvage yard which currently has on its premises more than 100 waste tires not on a vehicle must establish a plan in conjunction with the Department of Environmental Protection for the proper disposal of the waste tires.

"Waste tire" means any continuous solid or pneumatic rubber covering designed to encircle the wheel of a vehicle but which has been discarded, abandoned, or is no longer suitable for its original,

intended purpose nor suitable for recapping, or other beneficial use, as defined in §22-15A-2 of this code, because of wear, damage or defect. A tire is no longer considered to be suitable for its original intended purpose when it fails to meet the minimum requirements to pass a West Virginia motor vehicle safety inspection. Used tires located at a commercial recapping facility or tire dealer for the purpose of being reused or recapped are not waste tires.

"Waste tire monofill or monofill" means an approved solid waste facility where waste tires not mixed with any other waste are placed for the purpose of long-term storage for eventual retrieval for marketing purposes.

"Waste tire processing facility" means a solid waste facility or manufacturer that accepts waste tires generated by sources other than the owner or operator of the facility for processing by such means as cryogenics, pyrolysis, pyroprocessing cutting, splitting, shredding, quartering, grinding or otherwise breaking down waste tires for the purposes of disposal, reuse, recycling or marketing.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

(a) On and after the effective date of this article: (1) No license may be issued to establish a salvage yard, or any part thereof, within 1,000 feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems: *Provided*, That this limitation may not apply to landfills established and maintained by the state or any county or municipality if such landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system; and (2) no license may be issued to establish a salvage yard, or any part thereof, within 500 feet of the nearest edge of the right-of-way of

any state local service road, unless the view thereof from such state local service road shall be effectively screened and obscured by fences: *Provided, however,* That this limitation may not apply to landfills established and maintained by the state or any county or municipality if the landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system; and (3) no license may be issued allowing a salvage yard within 1,000 feet of the nearest occupied private residence, unless waived by the owner of such residence, or within 5,000 feet of the nearest occupied private residence which is part of a residential community. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after April 1, 1988.

(b) The license of any salvage yard duly issued under the former provisions of this article, which salvage yard, or any part thereof, on the effective date of this article, is: (1) Within 1,000 feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems; or is (2) within 500 feet of the nearest edge of the right-of-way of any state local service road; or is (3) within 1,000 feet of the nearest occupied private residence or within 5,000 feet of the nearest occupied private residence which is part of a residential community, may be renewed only if the view of the said salvage yard, and all parts thereof, are effectively screened from the adjacent road by natural objects, plantings, fences or other appropriate means, or a waiver is obtained from the owner of an occupied private residence. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after April 1, 1988.

(c) Any salvage yard which, on the effective date of this article, is duly licensed under the former provisions of this article may be established or continue to be operated and maintained without screening by natural objects, plantings, fences or other appropriate means so long as any part of such salvage yard is: (1) Not located

within 1,000 feet of any road within the state road system designated and classified, or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for the purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems; or is (2) not located within 500 feet of the nearest edge of the right-of-way of any state local service road; or is (3) not located within 1,000 feet of the nearest residence or within 5,000 feet of the nearest occupied private residence which is part of a residential community. Notwithstanding any other provision of this section to the contrary, ownership of a salvage yard duly licensed under the former provisions of this article and continuously maintained and licensed since July 1, 1998, may be sold or otherwise transferred, and the salvage yard is eligible for relicensure and may continue to be operated under the same legal requirements that would have been applicable had the change in ownership not occurred.

(d) On or after July 1, 1984, any owner or operator establishing, operating or maintaining a salvage yard for which a license is required under the provisions of this article, is hereby required to first obtain an approval permit from the county planning commission, or if the county does not have a county planning commission, from an appropriate office or agency designated by the county commission, in which the salvage yard is located. The county planning commission, or designated agency or office, shall promulgate such reasonable rules including, but not limited to, determining the effect of the proposed salvage yard on residential, business or commercial property investment and values, establishing a quota for the number of salvage yards in the county, and the social, economic and environmental impact on community growth and development in utilities, health, education, recreation, safety, welfare and convenience, if any, before issuing such approval permit. These rules shall conform to guidelines established in rules promulgated by the commissioner. The fee for the approval permit shall be \$25, payable upon the filing of the application on forms to be designated and approved by the county planning commission or designated office or agency.

(e) Upon the granting of an approval permit by the county planning commission, the owner or operator shall then apply to the commissioner for a license to operate. The commissioner may issue a license to the applicant, but only after an approval permit has issued in the first instance and the location of the salvage yard is in compliance with the location requirements of §17-23-4 of this code. The approval permit requirement of this section does not apply to any owner or operator who has established, or is operating or maintaining, a salvage yard prior to July 1, 1984.

(f) A regional distribution and dismantling center may qualify for a specialized regional distribution and dismantling license from the Commissioner of the Division of Highways under this article provided that the regional distribution and dismantling center is not visible within 1,000 feet of the nearest edge of the right-of-way of an interstate highway or federal-aid primary highway and it obtains approval of, and is permitted by, the county commission as provided in this section.

CHAPTER 187

(S. B. 834 - By Senators Clements and Plymale)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §17A-6-18a of the Code of West Virginia, 1931, as amended, relating to adding a member to the Motor Vehicle Advisory Board; and specifying that one of the members shall be a representative of automobile auctions of primarily salvage vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-18a. Motor Vehicle Dealers Advisory Board.

(a) There is continued a Motor Vehicle Dealers Advisory Board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules, or policies regarding the motor vehicle industry; to advise the commissioner on setting documentary charges or similar charges motor vehicle dealers may charge consumers for documentary services in relation to securing a title, which such charges the commissioner is hereby granted authority to set; and to give the commissioner any further advice and assistance as he or she may, from time to time, require.

The board shall consist of 10 members and the Commissioner of Motor Vehicles, or his or her representative, who shall be an ex officio member. Two members shall represent new motor vehicle

dealers, with one of these two members representing dealers that sell less than 100 new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; two members shall represent automobile auctions, with one of these two members representing automobile auctions of primarily salvage vehicles; one member shall represent recreational dealers; one member shall represent the West Virginia Attorney General's office; and two members shall represent consumers. All of the representatives, except the Attorney General representative who shall be designated by the Attorney General, shall be appointed by the Governor with the advice and consent of the Senate, with no more than five representatives being from the same political party.

The terms of the board members shall be for three years. The Attorney General representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.

(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction, or a license service to revoke or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public's health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner is subject to challenge or rendered invalid on account of his or her failure to consult with the board.

(e) The appointed members shall serve without compensation; however, members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in legitimate board activities in accordance with the guidelines of the Travel Management Office of the Department of Administration or its successor agency.

CHAPTER 188

(H. B. 5019 - By Delegate Linville)

[By Request of the Division of Motor Vehicles]

[Passed February 15, 2024; in effect ninety days from passage.]

[Approved by the Governor on February 29, 2024.]

AN ACT to amend and reenact §17B-3-9 of the Code of West Virginia, 1931, as amended, relating to surrender and return of license not required for disqualifying or downgrading a driver's license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-9. Surrender and return of license not required.

The Division, upon disqualifying, downgrading, suspending or revoking a license, may not require that the license be surrendered to and be retained by the Division. The surrender of a license may not be a precondition to the commencement and tolling of any applicable period of suspension or revocation: *Provided*, That before the license may be reinstated, the licensee shall pay a fee of \$50, in addition to all other fees and charges, which shall be collected by the Division and deposited in a special revolving fund to be appropriated to the Division for use in the enforcement of the provisions of this section.

CHAPTER 189

(Com. Sub. for H. B. 5178 - By Delegate Hall)

[Passed March 6, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §17D-2A-6a of the Code of West Virginia, 1931, as amended, relating to allowing new and used motor vehicle dealerships in this state to access an online electronic insurance verification system to verify if prospective buyers have valid motor vehicle insurance; and correcting terminology and an incorrect reference to a national insurance commissioners association to the National Association of Insurance Commissioners.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-6a. Determining if required security is in effect.

(a) The commissioner may make a determination that the required security on a motor vehicle is not in effect based upon crash reports required under the provisions of §17C-4-1 *et seq.* of this code, reports or citations from law-enforcement agencies, citations or abstracts of conviction from courts, or from information from an online electronic insurance verification program.

(b) The commissioner is authorized to develop and implement an electronic insurance verification program based upon a model established by the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) to electronically verify evidence of insurance coverage with insurance companies.

(c) The commissioner may contract with a third-party vendor to act as his or her agent to develop the program, conduct the electronic verification process with insurance companies, and to operate the program.

(d) If developed and implemented by the commissioner, the online insurance verification program shall:

(1) Be able to verify, on an on-demand basis minus reasonable down time for system maintenance as agreed upon by the division or its agent and the insurance carrier, the liability insurance status as of the time of the inquiry or at other times not exceeding six months prior unless otherwise agreed upon by the division or its agent and the insurance carrier or via other similar electronic system that is consistent with insurance industry and IICMVA recommendations and the specifications and standards of the IICMVA model;

(2) Be able to make insurance verification inquiries to insurers by using multiple data elements for greater matching accuracy including National Association of Insurance Commissioners' (NAIC) code specific to each licensed insurance company, vehicle identification numbers, and policy number or other data elements as otherwise agreed to by the division or its agent and the insurer;

(3) Provide sufficient measures for the security and integrity of data including a requirement that the information obtained through the operation of the program be only used for the sole use of the Division of Motor Vehicles or its agent, law enforcement, new and used motor vehicle dealerships, and the judiciary to effectuate the provisions of this article; and

(4) Utilize open and agreed upon data and data transmission standards and standard SML extensible markup language schema.

(e) If the commissioner develops and implements an online insurance verification program, each insurer shall:

(1) Cooperate with the Division of Motor Vehicles or its agent in establishing and operating the program;

(2) Maintain the data necessary to verify the existence of mandatory liability insurance coverage provided to its customers pursuant to the required time period established for the online insurance verification program;

(3) Maintain the internet web service, pursuant to the requirements established under the online insurance verification program, through which online insurance verification can take place that includes the ability to respond to authorized inquiries on whether the vehicle is insured or the policy in effect on the requested date through the insurer's NAIC code, vehicle identification number, insurance policy number, or other data key or keys as otherwise agreed to by the division or its agent and the insurer;

(4) Provide security consistent with accepted insurance industry and United States motor vehicle agency standards pertinent to the transmission of personal data;

(5) Be immune from civil and administrative liability for good faith efforts to comply with the terms of the verification program; and

(6) As a condition of writing motor vehicle liability insurance in this state, insurance carriers shall cooperate with the division or its agent and the insurance commission in establishing and maintaining an insurance verification system. Nothing prohibits an insurer from using the services of a third-party vendor for facilitating the insurance verification program required by this section.

(f) If the commissioner develops and implements an online insurance verification program, the Division of Motor Vehicles or its agent, as applicable, shall:

(1) Consult and cooperate with insurers in establishing and operating the online insurance verification system;

(2) Designate and maintain a contact person for insurers during the establishment and implementation of the online insurance verification system;

(3) Conduct a pilot project to test the insurance verification system no less than 18 months prior to final implementation;

(4) Establish and maintain the systems necessary to make verification requests to insurers using the data elements that the Division of Motor Vehicles or its agent and the insurer have agreed upon and are necessary to receive accurate responses from insurers;

(5) For all information transmitted and received, implement and maintain strict system and data security measures consistent with applicable standards. Data secured via the verification system by either the division or its agent may not be shared by any person who accesses the verification system with any party other than those permitted by state or federal privacy laws;

(6) Be responsible for keeping all interested state agencies informed on the implementation status, functionality, and planned or unplanned service interruptions; and

(7) Provide alternative methods of reporting for small insurers writing less than 500 non-commercial motor vehicle policies in the state as determined by the Division of Motor Vehicles or its agent.

(g) Any information obtained by the division or its agent under the provisions of an electronic insurance system is for the sole use of the Division of Motor Vehicles or its agent, law enforcement, new and used motor vehicle dealerships, and the judiciary to effectuate the provisions of this article and is exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code and may not be considered a public record as defined in §29B-1-2 of this code.

(h) Not more than two years after the establishment of an online insurance verification program, the Division of Motor Vehicles, after consultation with insurers, shall report to the Legislature as to the costs of the program incurred by the division, insurers, and the public and the effectiveness of the program in reducing the number of uninsured motor vehicles.

(i) The online insurance verification system authorized in this section may be accessed by new and used motor vehicle dealerships in this state to verify if a prospective purchaser has valid motor vehicle insurance.

CHAPTER 190

**(H. B. 5213 - By Delegates Sheedy, Hillenbrand, Cooper,
Winzenreid, Griffith, and Heckert)**

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §17-3-14b, the Code of West Virginia, 1931, as amended, relating to providing for one free Gold Star Family license plate to a Gold Star spouse.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3. ORIGINAL AND RENEWAL OF
REGISTRATION; ISSUANCE OF CERTIFICATES OF
TITLE.**

§17A-3-14b. Special registration plates for military personnel.

(a) The division may continue to issue special plates for any plate class authorized by enactments of §17A-3-14 of this code prior to the year 2023 for active, retired, or honorably discharged military personnel, or the next of kin of a member of any branch of the armed services of the United States killed in combat. The division shall charge an initial application fee of \$10 for each special registration plate issued pursuant to this section, which is in addition to all other fees required by this chapter. A surviving spouse may continue to use his or her deceased spouse's military license plate until the surviving spouse dies, remarries, or does not renew the license plate.

(b) The applicant shall present documentation as determined by the commissioner as evidence of qualification for any plate authorized in this section.

(c) The division may issue a special registration plate pursuant to this section to any number of vehicles titled in the name of the applicant.

(d) If a new special plate as authorized in this section recognizes members of a military organization chartered by the United States Congress, the division may produce such plate upon receipt of a guarantee from the organization of a minimum of 100 applicants.

(e) A Gold star spouse shall be exempt from all registration fees otherwise required by the provisions of this chapter for the registration of one Gold Star Family license plate for personal use. For purposes of this section, a “Gold star spouse” means a widow (remarried or not) or widower (remarried or not) of a veteran who is eligible to receive a gold star lapel pin under 10 U.S.C. § 1126 (or its successor).

CHAPTER 191

(Com. Sub. for H. B. 5238 - By Delegate Linville)

[By Request of the Division of Motor Vehicles]

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to mandating that all courts provide adjudication records for traffic violations and certain other offenses of juvenile offenders to the Division of Motor Vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-3a. Graduated driver's license.

(a) A person under the age of 18 may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to §17C-5-2 and §17C-5A-2 of this code. Any person under the age of 17, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(c) *Level one instruction permit.* — An applicant who is 15 years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* — The division may not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by §17B-2-6 of this code, which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license, and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in §17B-2-7 of this code; and

(D) Pays a fee of \$7.50, which permits the applicant one attempt at the written knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under this section is valid until 30 days after the date the applicant attains the age of 18 and is not renewable: *Provided*, That for an applicant who is an active member of any branch of the United States military, a level one instruction permit issued under the provisions of this section is valid until 180 days after the date the applicant attains the age of 18. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the

driver examination, and who has not committed any offense which requires the suspension, revocation, or cancellation of the instruction permit, may reapply for a new instruction permit under §17B-2-6 of this code. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days. However, after the expiration of 90 days, the person may retest if otherwise eligible. A holder of a level one instruction permit who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) The permit holder is under the direct supervision of a licensed driver, 21 years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;

(C) All occupants use safety belts in accordance with §17C-15-49 of this code;

(D) The permit holder is operating the vehicle without any measurable blood alcohol content, in accordance with §17C-5-2(h) of this code; and

(E) The permit holder maintains current school enrollment and is making satisfactory academic progress or otherwise shows

compliance with §18-8-11 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(d) *Level two intermediate driver's license.* — An applicant 16 years of age or older, meeting all other requirements of this code, may be issued a level two intermediate driver's license.

(1) *Eligibility.* — The division may not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in §17B-2-6 of this code;

(B) Has held the level one instruction permit conviction-free for the 180 days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the State Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving, certified by a parent or legal guardian or other responsible adult over the age of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph may be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

(F) Pays a fee of \$7.50 for one attempt. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under

the provisions of this section expires 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first. A holder of a level two intermediate driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10 p.m.;

(B) The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10 p.m. and 5 a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants of the vehicle use safety belts in accordance with §17C-15-49 of this code;

(D) For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than 20 years old, unless these passengers are family members of the licensee;

(E) The licensee operates a vehicle without any measurable blood alcohol content in accordance with §17C-5-2(h) of this code;

(F) The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(G) Upon the first conviction for a moving traffic violation or a violation of §17B-2-3a(d)(2) of this code of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under §17B-2-3a(d)(2)(G) of this code; and

(H) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke or suspend the licensee's privilege to operate a motor vehicle for the applicable statutory period or until the licensee's 18th birthday, whichever is longer, unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of 18 years and if otherwise eligible, may reapply for an instruction permit, then a driver's license in accordance with §17B-2-5, §17B-2-6 and §17B-2-7 of this code.

(e) *Level three, full Class E license.* — The level three license is valid until 30 days after the date the licensee attains his or her 21st birthday. A holder of a level three driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle unless the use of the wireless

communication device is for contacting a 9-1-1 system. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

- (1) Has reached the age of 17 years;
 - (2) Presents a completed application as prescribed by §17B-2-6 of this code;
 - (3) Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;
 - (4) Has completed any driver improvement program required under §17B-2-3a(d)(2)(G) of this code; and
 - (5) Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code.
- (f) A person violating the provisions of the terms and conditions of a level one instruction permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense, be fined \$50; and for a third or subsequent offense be fined \$75.
- (g) All adjudications of delinquency or convictions of any type in a juvenile proceeding which involve a traffic offense, a violation of any provision of this section, or an order in furtherance of §49-4-713 or §49-4-715 of this code shall be forwarded to the Commissioner of the Division of Motor Vehicles notwithstanding §49-5-101 of this code.

CHAPTER 192

(Com. Sub. for H. B. 5317 - By Delegate Linville)

**[By the Request of the Department of Homeland Security
and West Virginia State Police]**

[Passed March 9, 2024; in effect from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §17C-16-4 of the Code of West Virginia, 1931, as amended, revising the statute to make it permissive for commercial motor vehicles registered in this state subject to the federal motor carrier safety administration rules and regulations to pass an annual inspection of all safety equipment to be consistent with the federal motor carrier safety regulations; providing for a schedule of and payment of appropriate fees; and adding a definition for the term "Commercial motor vehicle."

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. INSPECTION OF VEHICLES.

§17C-16-4. Superintendent of the West Virginia State Police to require periodic inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.

(a) The Superintendent of the West Virginia State Police shall require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected once every two years; and that an official certificate of inspection and approval be obtained for each vehicle: *Provided*, That commercial motor vehicles which are subject to the federal motor carrier safety administration rules and regulations should be inspected at least once annually to meet the

requirements of federal motor carrier safety regulations which require a commercial motor vehicle registered in this state to pass an annual inspection of all safety equipment. The inspections shall be made and the certificates obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the superintendent.

The superintendent may make necessary rules for the administration and enforcement of this section and may designate any period or periods during which owners of any vehicles, subject to this section, shall display upon the vehicles certificates of inspection and approval or shall produce the certificates upon demand of any officer or employee of the State Police designated by the superintendent or any police or peace officer when authorized by the superintendent.

(b) The superintendent may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which the resident owner of a vehicle which was not in this state during the time an inspection was required must obtain a certificate.

(c) At the request of the superintendent, the Commissioner of the Division of Motor Vehicles may suspend the registration of any vehicle which the superintendent determines is in such an unsafe condition that it constitutes a menace to safety, or which after notice and demand is not equipped as required in this chapter, or for which the vehicle's owner has not obtained the required certificate.

(d) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected a Class A farm use motor vehicle exempt from annual registration certificate and licensing as provided in §17A-3-2 of this code. If the Class A farm use motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle.

(e) (1) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected on an annual basis

any commercial motor vehicle which is subject to the federal motor carrier safety administration rules and regulations. If the commercial motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle and the validity period of that inspection will be for one year, expiring at the end of the month one year after the inspection: *Provided*, That, notwithstanding the provisions of §17C-16-5, a charge of \$3 per sticker shall be charged to the inspection station, and the funds received shall be deposited in the State Treasury and credited to the account of the State Police for application in the administration and enforcement of the provisions of this article and for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles. For inspections provided pursuant to this subsection, the total charge, including the cost of the sticker, shall not exceed \$14.

(2) For purposes of this section, "Commercial motor vehicle" is defined as any vehicle registered in this state used on a highway, in interstate commerce, that: (1) has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW) of 10,001 pounds or more, whichever is greater; (2) is designed to transport more than eight (8) passengers (including the driver) for compensation; (3) is designed to transport 16 or more people, including the driver, and is not used to transport passengers for compensation; or, (4) is transporting hazardous materials in quantities requiring the vehicle to be placarded.

CHAPTER 193

**(S. B. 148 - By Senators Hamilton, Boley, Deeds, Oliverio,
Phillips, Roberts, Rucker, Swope, Tarr, Woodrum, Trump,
and Grady)**

[Passed March 6, 2024; in effect 90 days from passage (June 4, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §20-2-33 of the Code of West Virginia, 1931, as amended, relating to establishing an auto-renewal program for wildlife licenses; and authorizing the director to assess discounts to fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

(a) The director may appoint, in addition to the clerk of the county commission, agents to issue licenses under the provisions of this article to serve the convenience of the public. Each person appointed shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director, conditioned upon the faithful performance of his or her obligation to issue licenses only in conformity with the provisions of this article and to account for all license fees received by him or her. The form of the bond shall be prescribed by the Attorney General. No person, other than those designated as issuing agents by the director, may sell licenses or buy licenses for the purpose of resale.

(b) Except when a license is purchased from a state official, every person making application for a license shall pay, in addition

to the license fee prescribed in this article, an additional fee of \$3 to any county official issuing the license and all fees collected by county officials must be paid by them into the general fund of the county treasury or, in the case of an agent issuing the license, an additional fee of \$3 as compensation: *Provided*, That only one issuing fee of \$3 may be collected by county officials or authorized agents, respectively, for issuing two or more licenses at the same time for use by the same person or for issuing combination resident statewide hunting, trapping and fishing licenses: *Provided, however*, That a person with a lifetime license or a person who has paid the original additional fee of \$3 to a county official or issuing agent for a license shall only be charged an additional fee of \$1 as additional compensation when subsequently purchasing an additional license from a county official or issuing agent: *Provided further*, That licenses may be issued electronically in a manner prescribed by the director and persons purchasing electronically issued licenses may be assessed, in addition to the license fee prescribed in this article, an electronic issuance fee to be prescribed by the director: *And provided further*, That, notwithstanding any provision of this code to the contrary, an electronic issuance fee of at least \$2 shall be assessed on each electronic licensing system transaction, except as provided in subsection (e) of this section. The electronic issuance fee shall be dedicated to the administration and maintenance of the electronic license system. The director may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code related to the license issuing fees authorized by this section.

(c) In lieu of the license issuance fee prescribed in subsection (b) of this section, the director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code governing the application for and issuance of licenses by telephone and other electronic methods.

(d) The director may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code governing the management of issuing agents.

(e) The director may establish an auto-renewal program through which purchasers of eligible wildlife licenses, stamps, and

permits under the jurisdiction of the division may select to enroll in the automatic renewal of the same selection of licenses, stamps, and permits in subsequent years. Eligible licenses, stamps, and permits renewed through this program will not be assessed the electronic license fee referenced in subsection (b) of this section: *Provided*, That the fee is paid when the original eligible license, stamp, or permit was purchased in the electronic license system and enrollment in the auto-renewal program accompanied the sale.

(1) Licenses, stamps, and permits purchased through this program may qualify for discounts on fees established at the discretion of the director.

(2) The director may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code.

CHAPTER 194

(S. B. 606 - By Senators Nelson, Deeds, Hunt, and Hamilton)

[Passed February 16, 2024; in effect 90 days from passage (May 16, 2024)]
[Approved by the Governor on February 28, 2024.]

AN ACT to amend and reenact §20-18-8, §20-18-20, §20-18-25, and §20-18-26 of the Code of West Virginia, 1931, as amended, all relating to the Natural Resources Police Officers Retirement System; permitting the employer contribution to be set by the board; clarifying payment upon death of member with less than 10 years of contributing service; and clarifying surviving spouse benefits when the member dies from duty related or non-duty related cause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. WEST VIRGINIA DIVISION OF NATURAL RESOURCES POLICE OFFICERS RETIREMENT SYSTEM.

§20-18-8. Members' contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to nine and one-half percent of his or her monthly salary.

(b) An amount equal to an additional percentage of the monthly salary of each member shall be paid to the fund by the employer as annually reviewed and actuarially set by the board.

(c) If the board finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member or employer contributions or

both. The sums withheld each pay date shall be paid to the fund no later than 15 days following the end of the pay date.

(d) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code shall make an additional contribution to the fund of nine and one-half percent of his or her monthly salary earned from any additional employment which requires the Natural Resources Police Officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code. An additional employer contribution shall be paid to the fund by the concurrent employer for which the member is employed in an amount determined by the board. If the board finds that the benefits provided by this article can be funded with a lesser contribution, then the board shall reduce the required member, or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

§20-18-20. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member of this plan who ceases employment in covered employment and active participation in this plan, and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment

unless following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a Natural Resources Police Officer, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service in covered employment as if no refund had been made. The repayment authorized by this subsection shall be made in a lump sum within 60 months of the Natural Resources Police Officer's reemployment in covered employment or if later, within 60 months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to §20-18-6(b) of this code may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of non-Natural Resources Police Officer service which were withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

(d) Any member of this plan who: (1) Was employed as a Natural Resource Police Officer prior to the effective date of this article; and (2) was not employed as a Natural Resource Police Officer on the effective date of this article; and (3) thereafter becomes reemployed in covered employment, may not receive any credited service for any previously withdrawn accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment unless, following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a Natural Resources Police Officer, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit for his or her former service in covered employment as if no refund

had been made. The repayment required by this subsection shall be made in a lump sum within 60 months of the Natural Resource Police Officers reemployment in covered employment.

(e) If a member dies from any cause other than those specified in §20-18-25 of this code and does not have 10 or more years of contributory service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

(f) Every member who completes 120 months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(g) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

§20-18-25. Awards and benefits to surviving spouse – when member dies in performance of duty, etc.

(a) The surviving spouse of any member who dies by reason of injury, illness, or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a Natural Resources Police Officer, or the surviving spouse of a member who dies from any cause while receiving benefits pursuant to §20-18-21 of this code, is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (i) Two thirds of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint

and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §20-18-27, and §20-18-28 of this code, are in lieu of receipt of any other benefits under this article for the spouse, or any other person, or under the provisions of any other state retirement system based upon the member's covered employment.

§20-18-26. Awards and benefits to surviving spouse – when member dies from nonservice-connected causes.

(a) In any case where a member who has been a contributing member for at least 10 years dies prior to retirement from any cause other than those specified in §20-18-25 of this code, and not due to vicious habits, intemperance, or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) In any case where a retirant who had been a contributing member for at least 10 years, had not obtained the age of 60, and was receiving benefits pursuant to §20-18-22 of this code dies and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime a sum equal to the greater of: (i) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the retirant dies after meeting normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(c) Benefits for a surviving spouse received under §20-18-27 and §20-18-28 of this code, are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.

CHAPTER 195

(H. B. 5696 - By Delegate Howell)

[Passed March 8, 2024; in effect ninety days from passage.]

[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §20-17B-2 of the Code of West Virginia, 1931, as amended, relating to lead member county of the Upper Ohio Valley Trail Network Recreation Authority.

Be it enacted by the Legislature of West Virginia:

§20-17B-2. Creation of Upper Ohio Valley Trail Network Recreation Authority and establishment of recreation area.

(a) There is hereby created the Upper Ohio Valley Trail Network Recreation Authority consisting of representatives from all counties in the northern panhandle – Hancock, Brooke, Ohio, and Marshall – and Ohio River valley counties to include Wetzel, Tyler, Pleasants, Wood, Jackson, Mason, and Cabell, organized pursuant to the provisions of §20-17-1 *et seq.* of this code. This authority is authorized to establish an Upper Ohio Valley Trail Network Recreation Area within the jurisdictions of those counties and the authority shall be subject to the powers, duties, immunities, and restrictions provided in §20-17-1 *et seq.* of this code. Visitors and participants in recreational activities within the trail network shall, in similar respects, be subject to the user requirements and prohibitions of §20-17-7 of this code.

(b) Notwithstanding subsection (a) of this section, an adjacent county may join the Upper Ohio Valley Trail Network Recreation Authority pursuant to the procedures set forth in §20-17-3(b) of this code.

(c) Notwithstanding subsection (a) of this section, the Upper Ohio Valley Trail Network Recreation Authority may merge with

another multicounty trail network authority, pursuant to the procedures set forth in §20-17-3(c) of this code.

(d) Notwithstanding §20-17A-4 of this code, Wood County shall serve as the lead member of the Upper Ohio Valley Trail Network Recreation Authority for the purposes of establishing the Upper Ohio Valley Trail Network Recreation Authority trail network and coordinating with the Mountaineer Trail Network Recreation Authority. Upon completion of establishment of linkages with the Mountaineer Trail Network Recreation Authority, the Upper Ohio Valley Trail Network Recreation Authority shall continue to administer and manage its own trail system.

(e) The Upper Ohio Valley Trail Network Recreation Authority may set goals of connecting to the Mountaineer Trail Network and any other trails in adjacent neighboring states that can be feasibly connected.