

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 4281**

(By Delegates Ellem, Miley, Wooton, Hamilton,  
D. Poling, C. Miller, Williams, Border and Hunt)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to repeal §27-1A-12 of the Code of West Virginia, 1931, as amended; to repeal §27-2-1a and §27-2-1b of said code; to amend and reenact §9-4C-1 and §9-4C-5 of said code; to amend and reenact §9-5-11c of said code; to amend and reenact §11-27-10 and §11-27-11 of said code; to amend and reenact §16-1-4 of said code; to amend and reenact §16-2D-2 and §16-2D-5 of said code; to amend and reenact §16-5F-2 of said code; to amend and reenact §16-5O-2 of said code; to amend and reenact §16-22-1 and §16-22-2 of said code; to amend and reenact §16-29A-3 of said code; to amend and reenact §16-30-7 and §16-30-24 of said code; to amend and reenact §27-1-3, §27-1-6, §27-1-7 and §27-1-9; to amend and reenact §27-1A-1, §27-1A-4 and §27-1A-6 of said code; to amend and reenact §27-2-1 of said code; to amend and reenact §27-2A-1 of said code; to amend and reenact §27-5-9 of said code; to amend and reenact §27-9-1 of said code; to amend and reenact §27-12-1 of said code; to amend and

reenact §29-15-1, §29-15-5 and §29-15-6 of said code; to amend and reenact §44A-1-1 and §44A-1-2 of said code; and to amend and reenact §49-4A-6 of said code, all relating to updating code references relating to intellectually disabled persons; replacing the term "mentally retarded" with "intellectually disabled" or "individuals with an intellectual disability"; renaming an intermediate care facility for the mentally retarded (ICF-MR) to an intermediate care facility for individuals with an intellectual disability (ICF-ID); altering definitions of terms; providing that previous terminology will control in certain situations; clarifying the powers and duties of the Secretary of the Department of Health and Human Resources; and deleting obsolete references.

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

That §27-1A-12 of the Code of West Virginia, 1931, as amended, be repealed; that §27-2-1a and §27-2-1b of said code be repealed; that §9-4C-1 and §9-4C-5 of said code be amended and reenacted; that §9-5-11c of said code be amended and reenacted; that §11-27-10 and §11-27-11 of said code be amended and reenacted; that §16-1-4 of said code be amended and reenacted; that §16-2D-2 and §16-2D-5 of said code be amended and reenacted; that §16-5F-2 of said code be emended and reenacted; that §16-50-2 of said code be amended and reenacted; that §16-22-1 and §16-22-2 of said code be amended and reenacted; that

§16-29A-3 of said code be amended and reenacted; that §16-30-7 and §16-30-24 of said code be amended and reenacted; that §27-1-3, §27-1-6, §27-1-7 and §27-1-9 of said code be amended and reenacted; that §27-1A-1, §27-1A-4 and §27-1A-6 of said code be amended and reenacted; that §27-2-1 of said code be amended and reenacted; that §27-2A-1 of said code be amended and reenacted; that §27-5-9 of said code be amended and reenacted; that §27-9-1 of said code be amended and reenacted; that §27-12-1 of said code be amended and reenacted; that §29-15-1, §29-15-5 and §29-15-6 of said code be amended and reenacted; that §44A-1-1 and §44A-1-2 of said code be amended and reenacted; and that §49-4A-6 be amended and reenacted, all to read as follows:

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

### **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 Health and Human Resources.

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

**§9-4C-5. Facility providers' medicaid enhancement board.**

(a) The outpatient hospital medicaid enhancement board created by this section shall cease to exist on the effective date of this article.

(b) There is hereby continued the facility providers' medicaid enhancement board to consist of seven members. In order to carry out the purpose of this article, the board shall represent ambulatory surgical centers, inpatient hospital service providers, outpatient hospital service providers, nursing facility service providers and intermediate care facility for individuals with an intellectual disability service providers.

(c) The board shall consist of one representative from each of the aforementioned classes of health care providers, one lay person and the secretary, or his or her designee, who shall serve as an ex officio, nonvoting member. The governor shall make all appointments within thirty days after the effective date of this article.

(d) After initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, shall be made in the same manner as the initial appointment, and the terms of all members shall expire on the first day of July, one thousand nine hundred ninety-six.

**ARTICLE 5. MISCELLANEOUS PROVISIONS.**

**§9-5-11c. Right of the Department of Health and Human Resources  
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 of Health and Human Resources, 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 of Health and Human Resources, 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 of Health and Human Resources 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.

## **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

### **§9-6-1. Definitions.**

The following words and terms, when used in this article, shall have the same meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

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

(2) "Abuse" means the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident;

(3) "Neglect" means: (A) The failure to provide the necessities of life to an incapacitated adult or facility resident with intent to coerce or physically harm the incapacitated adult or resident; and (B) the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or resident;

(4) "Incapacitated adult" means any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health;

(5) "Emergency" or "emergency situation" means a situation

or set of circumstances which presents a substantial and immediate risk of death or serious injury to an incapacitated adult;

(6) "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, medical power of attorney representative, trustee or other duly appointed person;

(7) "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 articles five-c, five-d, five-e or five-h, chapter sixteen of this code;

(8) "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 for Senior Services and meets the qualifications set forth in section seven, article five-l, chapter sixteen of this code;

(9) "Facility resident" means an individual living in a nursing home or other facility, as that term is defined in subdivision (7) of this section;

(10) "Responsible family member" means a member of a resident's family who has undertaken primary responsibility for

the care of the resident and who has established a working relationship with the nursing home or other facility in which the resident resides. For purposes of this article, a responsible family member may include someone other than the resident's legal representative;

(11) "State long-term care ombudsman" means an individual who meets the qualifications of section five, article five-1, chapter sixteen of this code and who is employed by the State Bureau for Senior Services to implement the state long-term care ombudsman program;

(12) "Secretary" means the Secretary of the Department of Health and Human Resources.

## **CHAPTER 11. TAXATION.**

### **ARTICLE 27. HEALTH CARE PROVIDER TAXES.**

#### **§11-27-10. Imposition of tax on providers of intermediate care facility services for individuals with an intellectual disability.**

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of providing intermediate care facility services for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section is five and one-half percent of

the gross receipts derived by the taxpayer from furnishing intermediate care facility services in this state to individuals with an intellectual disability.

(c) *Definitions.* --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for intermediate care facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided,* That accrual basis providers are allowed to reduce gross receipts by their contractual allowances, to the extent those allowances are included therein, and by bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Intermediate care facility services for individuals with an intellectual disability" means those services that are intermediate care facility services for individuals with an intellectual disability for purposes of Section 1903(w) of the Social Security Act.

(d) *Effective date.* -- The tax imposed by this section applies to gross receipts received or receivable by providers

after May 31, 1993.

**§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.**

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care related tax: *Provided*, That hospitals which provide nursing facility services may adjust nursing facility rates to the extent necessary to compensate for the tax without first obtaining approval from the health care authority: *Provided*, however, That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment is exempt from prospective review by the health care authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The health care authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for

a rate increase exempt from prospective review is subject to the penalties imposed under article twenty-nine-b, chapter sixteen of the code.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for individuals with an intellectual disability. This rate shall be increased to five and ninety-five one hundredths percent of the gross receipts received or receivable by providers of nursing facility services after June 30, 2004 and shall again be decreased to five and one-half percent of the gross receipts received or receivable by providers of nursing services after October 31, 2007.

(c) *Definitions.* --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided*, That accrual basis providers are allowed to reduce gross receipts by their bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Nursing facility services" means those services that are nursing facility services for purposes of Section 1903(w) of the Social Security Act.

(d) *Effective date.* -- The tax imposed by this section applies to gross receipts received or receivable by providers after May 31, 1993.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.**

#### **§16-1-4. Proposal of rules by the secretary.**

The secretary may propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, postmortem examinations, mental health and intellectual disability centers and any other areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation of:

(a) Land usage endangering the public health: *Provided,* That no rules may be promulgated or enforced restricting the subdivision or development of any parcel of land within which the individual tracts, lots or parcels exceed two acres each in total surface area and which individual tracts, lots or parcels have an average frontage of not less than one hundred fifty feet

even though the total surface area of the tract, lot or parcel equals or exceeds two acres in total surface area, and which tracts are sold, leased or utilized only as single-family dwelling units. Notwithstanding the provisions of this subsection, nothing in this section may be construed to abate the authority of the department to: (1) Restrict the subdivision or development of a tract for any more intense or higher density occupancy than a single-family dwelling unit; (2) propose or enforce rules applicable to single-family dwelling units for single-family dwelling unit sanitary sewerage disposal systems; or (3) restrict any subdivision or development which might endanger the public health, the sanitary condition of streams or sources of water supply;

(b) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption and places where trades or industries are conducted;

(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or

privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned;

(d) Safe drinking water, including:

(1) The maximum contaminant levels to which all public water systems must conform in order to prevent adverse effects on the health of individuals and, if appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. The rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level that would adversely affect the health of the consumer;

(2) The minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and rules promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems rules; and

(3) The requirements covering the production and distribution of bottled drinking water and may establish requirements governing the taste, odor, appearance and other

consumer acceptability parameters of drinking water;

(e) Food and drug standards, including cleanliness, proscription of additives, proscription of sale and other requirements in accordance with article seven of this chapter as are necessary to protect the health of the citizens of this state;

(f) The training and examination requirements for emergency medical service attendants and emergency medical care technician-paramedics; the designation of the health care facilities, health care services and the industries and occupations in the state that must have emergency medical service attendants and emergency medical care technician-paramedics employed and the availability, communications and equipment requirements with respect to emergency medical service attendants and to emergency medical care technician-paramedics: *Provided*, That any regulation of emergency medical service attendants and emergency medical care technician-paramedics may not exceed the provisions of article four-c of this chapter;

(g) The health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. For purposes of this article, "bed and breakfast inn" means an establishment providing sleeping accommodations and, at a minimum, a breakfast for a fee: *Provided*, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or

commercial food service facility: *Provided, however,* That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees and permit fees;

(i) The collection of data on health status, the health system and the costs of health care;

(j) Opioid treatment programs duly licensed and operating under the requirements of chapter twenty-seven of this code. The health care authority shall develop new certificate of need standards, pursuant to the provisions of article two-d of this chapter, that are specific for opioid treatment program facilities. No applications for a certificate of need for opioid treatment programs shall be approved by the health care authority as of the effective date of the 2007 amendments to this subsection. The secretary shall promulgate revised emergency rules to govern licensed programs: *Provided, That* there is a moratorium on the licensure of new opioid treatment programs that do not have a certificate of need as of the effective date of the 2007 amendments to this subsection, which

shall continue until the Legislature determines that there is a necessity for additional opioid treatment facilities in West Virginia. The secretary shall file revised emergency rules with the Secretary of State to regulate opioid programs in compliance with subsections (1) through (9), inclusive, of this section: *Provided, however,* That any opioid treatment program facility that has received a certificate of need pursuant to article two-d, of this chapter by the health care authority shall be permitted to proceed to license and operate the facility. All existing opioid treatment programs shall be in compliance within one hundred eighty days of the effective date of the revised emergency rules as required herein. The revised emergency rules shall provide at a minimum:

(1) That the initial assessment prior to admission for entry into the opioid treatment program shall include an initial drug test to determine whether an individual is either opioid addicted or presently receiving methadone for an opioid addiction from another opioid treatment program. The patient may be admitted to the program if there is a positive test for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all other criteria set forth in the rule for admission into an opioid treatment program are met: *Provided,* That admission to the program may be allowed to the following groups with a high risk of relapse without the necessity of a positive test or the presence of objective

symptoms: Pregnant women with a history of opioid abuse, prisoners or parolees recently released from correctional facilities, former clinic patients who have successfully completed treatment but who believe themselves to be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

(2) That within seven days of the admission of a patient, the opioid treatment program shall complete an initial assessment and an initial plan of care. Subsequently, the opioid treatment program shall develop a treatment plan of care by the thirtieth day after admission and attach to the patient's chart no later than five days after such plan is developed. The treatment plan is to reflect that detoxification is an option for treatment and supported by the program.

(3) That each opioid treatment program shall report and provide statistics to the Department of Health and Human Resources at least semiannually which includes the total number of patients; the number of patients who have been continually receiving methadone treatment in excess of two years, including the total number of months of treatment for each such patient; the state residency of each patient; the number of patients discharged from the program, including the total months in the treatment program prior to discharge and whether the discharge was for:

(A) Termination or disqualification;

(B) Completion of a program of detoxification;

(C) Voluntary withdrawal prior to completion of all requirements of detoxification as determined by the opioid treatment program; or

(D) An unexplained reason.

(4) That random drug testing of patients be conducted during the course of treatment. For purposes of these rules, random drug testing shall mean that each patient of an opioid treatment program facility has a statistically equal chance of being selected for testing at random and at unscheduled times. Any refusal to participate in a random drug test shall be considered a positive test: *Provided*, That nothing contained in this section or the legislative rules promulgated in conformity herewith will preclude any opioid treatment program from administering such additional drug tests as determined necessary by the opioid treatment program.

(5) That all random drug tests conducted by an opioid treatment program shall, at a minimum, test for the following:

(A) Opiates, including oxycodone at common levels of dosing;

(B) Methadone and any other medication used by the program as an intervention;

(C) Benzodiazepine including diazepam, lorazepam, clonazepam and alprazolam;

(D) Cocaine;

(E) Methamphetamine or amphetamine; and

(F) Other drugs determined by community standards, regional variation or clinical indication.

A positive test is a test that results in the presence of any drug or substance listed in this schedule and any other drug or substance prohibited by the opioid treatment program;

(6) That a positive drug test result after the first six months in an opioid treatment program shall result in the following:

(A) Upon the first positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling to the patient, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take home methadone privilege for a minimum of thirty days; and

(B) Upon a second positive drug test result within six months of a previous positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of sixty days; and

(3) Provide mandatory documented treatment team meetings with the patient.

(C) Upon a third positive drug test result within a period of six months the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of one hundred twenty days; and

(3) Provide mandatory and documented treatment team meetings with the patient which will include, at a minimum: The need for continuing treatment; a discussion of other treatment alternatives; and the execution of a contract with the patient advising the patient of discharge for continued positive drug tests.

(D) Upon a fourth positive drug test within a six-month period, the patient shall be immediately discharged from the opioid treatment program or, at the option of the patient, shall immediately be provided the opportunity to participate in a twenty-one day detoxification plan, followed by immediate discharge from the opioid treatment program.

(7) That the opioid treatment program must report and provide statistics to the Department of Health and Human Resources demonstrating compliance with the random drug test rules including confirmation that:

(A) The random drug tests were truly random in regard to both the patients tested and to the times random drug tests were administered by lottery or some other objective standard so as not to prejudice or protect any particular patient.

(B) The total number and the number of positive results; and

(C) The number of expulsions from the program.

(8) That all opioid treatment facilities be open for business seven days per week: *Provided*, That the opioid treatment center may be closed for eight holidays and two training days per year.

(9) That the Office of Health Facility Licensure and Certification develop policies and procedures in conjunction with the Board of Pharmacy that will allow access to the Prescription Drug Registry maintained by the Board of Pharmacy before administration of methadone or other treatment in an opioid treatment program, after any positive drug test, and at each ninety-day treatment review to ensure the patient is not seeking prescription medication from multiple sources.

(k) The secretary shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the distribution of state

aid to local health departments and basic public health services funds.

(1) The rule shall include the following provisions:

(A) Base allocation amount for each county;

(B) Establishment and administration of an emergency fund of no more than two percent of the total annual funds of which unused amounts are to be distributed back to local boards of health at the end of each fiscal year;

(C) A calculation of funds utilized for state support of local health departments;

(D) Distribution of remaining funds on a per capita weighted population approach which factors coefficients for poverty, health status, population density and health department interventions for each county and a coefficient which encourages counties to merge in the provision of public health services;

(E) A hold-harmless provision to provide that each local health department receives no less in state support for a period of three years beginning in the 2009 budget year.

(2) The Legislature finds that an emergency exists and, therefore, the secretary shall file an emergency rule to implement the provisions of this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is subject to the prior approval of the Legislative Oversight Commission on Health and Human Resources Accountability prior to filing with the

Secretary of State.

(1) Other health-related matters which the department is authorized to supervise and for which the rule-making authority has not been otherwise assigned.

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-2. Definitions.**

Definitions of words and terms defined in articles five-f and twenty-nine-b of this chapter are incorporated in this section unless this section has different definitions.

As used in this article, unless otherwise indicated by the context:

(a) "Affected person" means:

- (1) The applicant;
- (2) An agency or organization representing consumers;
- (3) Any individual residing within the geographic area served or to be served by the applicant;
- (4) Any individual who regularly uses the health care facilities within that geographic area;
- (5) The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;
- (6) The health care facilities which, before receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

(7) Third-party payors who reimburse health care facilities similar to those proposed for services;

(8) Any agency that establishes rates for health care facilities similar to those proposed; or

(9) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a free-standing facility that provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. For purposes of this definition, a free-standing facility is not located on the campus of an existing health care facility. This definition does not include any facility engaged solely in the provision of lithotripsy services or the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: *Provided*, That this exemption from review may not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: *Provided, however*, That this exemption from review may not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) "Ambulatory surgical facility" means a free-standing facility that provides surgical treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing facility is not physically attached to a health

care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: *Provided*, That this exemption from review may not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: *Provided, however*, That this exemption from review may not be construed to include health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located; and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide the new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "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.

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

(g) "Capital expenditure" means:

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

(A) (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

(B) (i) Exceeds the expenditure minimum; or (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;

(2) The donation of equipment or facilities to a health care facility, which if acquired directly by that facility would be subject to review;

(3) 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

(4) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the

expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; 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.

(h) "Expenditure minimum" means \$2,700,000 for the calendar year 2009. The state agency shall adjust the expenditure minimum annually and publish an update of the amount on or before December 31 of each year. The expenditure minimum adjustment shall be based on the DRI inflation index published in the *Global Insight DRI/WEFA Health Care Cost Review*, or its successor or appropriate replacement index. This amount shall include the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting and other services essential to the acquisition, improvement, expansion or replacement of any plant or equipment.

(i) "Health", used as a term, includes physical and mental health.

(j) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health care services, whether a for-profit or nonprofit entity and

whether or not licensed, or required to be licensed, in whole or in part, and includes, but is not limited to, hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health maintenance organizations; and community mental health and intellectual disability facilities. For purposes of this definition, "community mental health and intellectual disability facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability or drug or alcohol addiction.

(k) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical, remedial or behavioral health care, treatment or confinement.

(l) "Health maintenance organization" means a public or private organization which:

(1) Is required to have a certificate of authority to operate in this state pursuant to section three, article twenty-five-a, chapter thirty-three of this code; or

(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage;

(B) Is compensated except for copayments for the provision of the basic health care services listed in paragraph (A) of this subdivision to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians' services: (I) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(m) "Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(n) "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: Home health aide services, other therapeutic services, physical therapy, speech therapy,

occupational therapy, nutritional services or medical social services to persons in their place of residence on a part-time or intermittent basis.

(o) "Hospice agency" means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in the persons' temporary or permanent residences by using an interdisciplinary team, including, at a minimum, persons qualified to perform nursing services; social work services; the general practice of medicine or osteopathy; and pastoral or spiritual counseling.

(p) "Hospital" means a facility licensed as such pursuant to the provisions of article five-b of this chapter, 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 and includes psychiatric and tuberculosis hospitals.

(q) "Intermediate care facility" means an institution that provides health-related services to individuals with mental or physical 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.

(r) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health

care facility or by a person proposing a new institutional health service which contains the information required by the state agency in rules adopted pursuant to section eight of this article.

(s) "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 \$2,700,000 in the calendar year 2009. The state agency shall adjust the dollar amount specified in this subsection annually and publish an update of the amount on or before December 31 of each year. The adjustment of the dollar amount shall be based on the DRI inflation index published in the *Global Insight DRI/WEFA Health Care Cost Review* or its successor or appropriate replacement index. 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.

(t) "Medically underserved population" means the population of an area designated by the state agency as having a shortage of personal health services. The state agency may consider unusual local conditions that are a barrier to accessibility or availability of health services. The designation shall be in rules adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U.S.C. §254.

(u) "New institutional health service" means any service as described in section three of this article.

(v) "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 preventive, diagnostic, treatment or rehabilitative services offered by the health care facility. This includes, but is not limited to, chapels, gift shops, news stands, computer and information technology systems, educational, conference and meeting facilities, but excluding medical school facilities, student housing, dining areas, administration and volunteer offices, modernization of structural components, boiler repair or

replacement, vehicle maintenance and storage facilities, parking facilities, mechanical systems for heating, ventilation systems, air conditioning systems and loading docks.

(w) "Offer", when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means to provide, specified health services.

(x) "Person" means an individual, trust, estate, partnership, committee, corporation, 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.

(y) "Physician" means a doctor of medicine or osteopathy legally authorized to practice by the state.

(z) "Proposed new institutional health service" means any service as described in section three of this article.

(aa) "Psychiatric hospital" means an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(bb) "Rehabilitation facility" means an inpatient facility operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent

professional supervision.

(cc) "Review agency" means an agency of the state, designated by the Governor as the agency for the review of state agency decisions.

(dd) "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.

(ee) "State agency" means the Health Care Authority created, established and continued pursuant to article twenty-nine-b of this chapter.

(ff) "State health plan" means the document approved by the Governor after preparation by the former statewide health coordinating council or that document as approved by the Governor after amendment by the former health care planning council or the state agency.

(gg) "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 as swing beds between acute care and long-term care categories: *Provided*, That a decrease in bed capacity in response to federal rural health initiatives is excluded from this definition.

(hh) "Substantial change to the health services" of a health care facility means: (1) 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 twelve-month period before the month in which the service is first offered; or (2) the termination of a health service offered by or on behalf of the facility: *Provided, That* "substantial change to the health services" does not include the providing of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(ii) "To develop", when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation in relation to the offering of such a service.

**§16-2D-5. Powers and duties of state agency.**

(a) The state agency shall administer the certificate of need program as provided by this article.

(b) The state agency is responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards. The state agency shall review the state health plan, including the certificate of need standards and make any necessary amendments and modifications. The state agency shall also review the cost effectiveness of the

certificate of need program. The state agency may form task forces to assist it in addressing these issues. The task forces shall be composed of representatives of consumers, business, providers, payers and state agencies.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of the services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of the services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application,

the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved: *Provided, That* any fee charged pursuant to this subsection may not exceed a dollar amount to be established by procedural rule. The state agency shall evaluate and amend any procedural rule promulgated prior to the amendments to this subsection made during the 2009 regular session of the Legislature. The fees charged shall be deposited into a special fund known as the Certificate of Need Program Fund to be expended for the purposes of this article.

(g) A hospital, nursing home or other health care facility may not add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: *Provided, That* hospitals eligible under the provisions of section four-a of this article and subsection (i) of this section may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, a certificate of need may not be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health

care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section shall incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. Extensions may not be granted beyond the twelve-month period. The state agency shall establish a task force or utilize an existing task force to study the need for additional nursing facility beds in this state. The study shall include a review of the current moratorium on the development of nursing facility beds; the exemption for the conversion of acute care beds to skilled nursing facility beds; the development of a methodology to assess the need for additional nursing facility beds; and certification of new beds both by Medicare and Medicaid. The task force shall be composed of representatives of consumers, business, providers, payers and government agencies.

(h) No additional intermediate care facility for individuals with an intellectual disability(ICF/ ID) beds may be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County Circuit Court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981).

(i) Notwithstanding the provisions of subsection (g) of

this section and further notwithstanding the provisions of subsection (b), section three of this article, an existing acute care hospital may apply to the Health Care Authority for a certificate of need to convert acute care beds to skilled nursing beds: *Provided*, That the proposed skilled nursing beds are Medicare-certified only: *Provided*, however, That any hospital which converts acute care beds to Medicare-certified only skilled nursing beds shall not bill for any Medicaid reimbursement for any converted beds. In converting beds, the hospital shall convert a minimum of one acute care bed into one Medicare-certified only skilled nursing bed. The Health Care Authority may require a hospital to convert up to and including three acute care beds for each Medicare-certified only skilled nursing bed: *Provided further*, That a hospital designated or provisionally designated by the state agency as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care hospital is located in a county without a certified freestanding nursing facility and the hospital may bill for Medicaid reimbursement for the converted beds: *And provided further*, That if the hospital rejects the designation as a rural primary care hospital, then the hospital may not bill for Medicaid reimbursement. The Health Care Authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (b), section three of this article for which purposes an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital shall demonstrate a need for the project.

(4) The hospital shall use existing space for the Medicare-certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital shall notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence. Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an

authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the Health Care Authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare-certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare-certified only may be developed pursuant to this subsection. The state health plan is not applicable to projects submitted under this subsection. The Health Care Authority shall adopt rules to implement this subsection which shall include a requirement that:

(A) The one hundred eighty beds are to be distributed on a statewide basis;

(B) There be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(C) The unit developed by the retirement life care center meets all federal and state licensing certification and operational requirements applicable to nursing homes;

(D) The retirement center demonstrates a need for the project;

(E) The retirement center offers personal care, home health services and other lower levels of care to its residents; and

(F) The retirement center demonstrates both short- and long-term financial feasibility.

(2) Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(k) The state agency may order a moratorium upon the offering or development of a new institutional health service when criteria and guidelines for evaluating the need for the new institutional health service have not yet been adopted or are obsolete. The state agency may also order a moratorium on the offering or development of a health service, notwithstanding the provisions of subdivision (5), subsection (b), section three of this article, when it determines that the proliferation of the service may cause an adverse impact on the cost of health care or the health status of the public. A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section six of this article.

(1) (1) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes

amendments or modifications to the certificate of need standards, it shall file with the Secretary of State, for publication in the State Register, a notice of proposed action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(2) When amending and modifying the certificate of need standards, the state agency shall identify relevant criteria contained in section six of this article or rules adopted pursuant to section eight of this article and apply those relevant criteria to the proposed new institutional health service in a manner that promotes the public policy goals and legislative findings contained in section one of this article. In doing so, the state agency may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the state agency's own developed expertise in health planning, data accumulated by the state agency or other local, state or federal agency or organization and any other source deemed relevant to the

certificate of need standards proposed for amendment or modification.

(3) All proposed amendments and modifications to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the Governor. Within thirty days of receiving the proposed amendments or modifications, the Governor shall either approve or disapprove all or part of the amendments and modifications and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the Governor may be revised and resubmitted.

(4) The certificate of need standards adopted pursuant to this section which are applicable to the provisions of this article are not subject to article three, chapter twenty-nine-a of this code. The state agency shall follow the provisions set forth in this subsection for giving notice to the public of its actions, holding hearings or receiving comments on the certificate of need standards. The certificate of need standards in effect on November 29, 2005, and all prior versions promulgated and adopted in accordance with the provisions of this section are and have been in full force and effect from each of their respective dates of approval by the Governor.

(m) The state agency may exempt from or expedite rate

review, certificate of need and annual assessment requirements and issue grants and loans to financially vulnerable health care facilities located in underserved areas that the state agency and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health care services.

## **ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.**

### **§16-5F-2. Definitions.**

As used in this article:

(1) "Annual report" means an annual financial report for the covered facility's or related organization's fiscal year prepared by an accountant or the covered facility's or related organization's Auditor.

(2) "Board" means the West Virginia Health Care Authority.

(3) "Covered facility" means any hospital, skilled nursing facility, kidney disease treatment center, including a free-standing hemodialysis unit; intermediate care facility; ambulatory health care facility; ambulatory surgical facility; home health agency; hospice agency; rehabilitation facility; health maintenance organization; 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 board 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.

(4) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a covered 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" shall mean brothers and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

(5) "Rates" means all rates, fees or charges imposed by any covered facility for health care services.

(6) "Records" includes accounts, books, charts, contracts, documents, files, maps, papers, profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or stored.

## **ARTICLE 50. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.**

### **§16-50-2. Definitions.**

As used in this article, unless a different meaning appears from the context, the following definitions apply:

(a) "Administration of medication" means:

(1) Assisting a person in the ingestion, application or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or authorized practitioner, or as written on the prescription label; and

(2) Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken: *Provided*, That for purposes of this article, "administration" does not include judgment, evaluation, assessments, injections of medication, monitoring of medication or self-administration of medications, including prescription drugs and self-injection of medication by the resident.

(b) "Authorizing agency" means the department's Office of Health Facility Licensure and Certification.

(c) "Department" means the Department of Health and Human Resources.

(d) "Facility" means an, ICF/ID a personal care home, residential board and care home, behavioral health group home, private residence in which health care services are provided under the supervision of a registered nurse or an adult family care home that is licensed by or approved by the department.

(e) "Facility staff member" means an individual employed by a facility but does not include a health care professional

acting within the scope of a professional license or certificate.

(f) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist, registered nurse, practical nurse, registered nurse practitioner, physician's assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.

(g) "ICF-ID" means an intermediate care facility for individuals with an intellectual disability which is certified by the department.

(h) "Medication" means a drug, as defined in section one hundred one, article one, chapter sixty-a of this code, which has been prescribed by a duly authorized health care professional to be ingested through the mouth, applied to the outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

(i) "Registered professional nurse" means a person who holds a valid license pursuant to article seven, chapter thirty of this code.

(j) "Resident" means a resident of a facility.

(k) "Secretary" means the Secretary of the Department of Health and Human Resources or his or her designee.

(l) "Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by a physician, in opening and accessing prepackaged drug containers, accurately

identifying and taking the correct dosage of the drugs as ordered by the physician, at the correct time and under the correct circumstances.

(m) "Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

**ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA,  
GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN  
OTHER DISEASES IN NEWBORN CHILDREN.**

**§16-22-1. Findings.**

The Legislature finds that phenylketonuria, galactosemia, hypothyroidism, and certain other diseases are usually associated with intellectual disability or other severe health hazards. Laboratory tests are readily available to aid in the detection of these diseases and hazards to the health of those suffering from these diseases may be lessened or prevented by early detection and treatment. Damage from these diseases, if untreated in the early months of life, is usually rapid and not appreciably affected by treatment.

**§16-22-2. Program to combat intellectual disability or other severe health hazards; rules; facilities for making tests.**

The state Bureau of Public Health is authorized to establish and carry out a program designed to combat intellectual disability or other severe health hazards in our state's population

due to phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state Public Health Commissioner, and may adopt reasonable rules and regulations necessary to carry out such a program. The Bureau of Public Health shall establish and maintain facilities at its state hygienic laboratory for testing specimens for the detection of phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state Public Health Commissioner. Tests shall be made by such laboratory of specimens upon request by physicians, hospital medical personnel and other individuals attending newborn infants. The state Bureau of Public Health is authorized to establish additional laboratories throughout the state to perform tests for the detection of phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the state Public Health Commissioner.

#### **ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.**

##### **§16-29A-3. Definitions.**

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

(1) "Authority" means the West Virginia Hospital Finance Authority created by section four of this article, the duties, powers, responsibilities and functions of which are specified in this article;

(2) "Board" means the West Virginia Hospital Finance Board created by section four of this article, which shall manage and control the authority;

(3) "Bond" means a revenue bond issued by the authority to effect the purposes of this article;

(4) "Construction" means and includes new construction, reconstruction, enlargement, improvement and providing

furnishings or equipment;

(5) "Direct provider of health care" means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician's assistant or an organization comprised of these health professionals or employing these health professionals;

(6) "Hospital" means a corporation, association, institution or establishment for the care of those who require medical treatment, which may be a public or private corporation or association, or state-owned or operated establishment and specifically includes nursing homes which are licensed under chapter sixteen of this code or those facilities certified under the Social Security Act as intermediate care facilities for individuals with an intellectual disability;

(7) "Hospital facilities" means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses', doctors' or interns' residences; administration buildings; facilities for research directly involved with hospital care; maintenance, storage or utility facilities; parking lots and garages; and all necessary, useful or related equipment, furnishings and appurtenances and all lands necessary or convenient as a site for the foregoing and specifically includes any capital improvements to any of the

foregoing. "Hospital facilities" specifically includes office facilities not less than eighty percent of which are intended for lease to direct providers of health care and which are geographically or functionally related to one or more other hospital facilities, if the authority determines that the financing of the office facilities is necessary to accomplish the purposes of this article;

(8) "Hospital loan" means a loan made by the authority to a hospital and specifically includes financings by the authority for hospital facilities pursuant to lease-purchase agreements, installment sale or other similar agreements;

(9) "Note" means a short-term promise to pay a specified amount of money, payable and secured as provided pursuant to this article and issued by the authority to effect the purposes of this article;

(10) "Project costs" means the total of the reasonable or necessary costs incurred for carrying out the works and undertakings for the acquisition or construction of hospital facilities under this article. "Project costs" includes, but is not limited to, all of the following costs: The costs of acquisition or construction of the hospital facilities; studies and surveys; plans, specifications, architectural and engineering services; legal, organization, marketing or other special services; financing, acquisition, demolition, construction, equipping and site development of new and

rehabilitated buildings; rehabilitation, reconstruction, repair or remodeling of existing buildings; interest and carrying charges during construction and before full earnings are achieved and operating expenses before full earnings are achieved or a period of one year following the completion of construction, whichever occurs first; and a reasonable reserve for payment of principal of and interest on bonds or notes of the authority. "Project costs" shall also include reimbursement of a hospital for the foregoing costs expended by a hospital from its own funds or from money borrowed by the hospital for such purposes before issuance and delivery of bonds or notes by the authority for the purpose of providing funds to pay the project costs. "Project costs" also specifically includes the refinancing of any existing debt of a hospital necessary in order to permit the hospital to borrow from the authority and give adequate security for the hospital loan. The determination of the authority with respect to the necessity of refinancing and adequate security for a hospital loan is conclusive;

(11) "Revenue" means any money or thing of value collected by, or paid to, the authority as principal of or interest, charges or other fees on hospital loans or any other collections on hospital loans made by the authority to hospitals to finance, in whole or in part, the acquisition or construction of any hospital facilities or other money or property which is received and may be expended for or pledged as revenues pursuant to this

article;

(12) "Veterans skilled nursing facility" means a skilled nursing care facility constructed and operated to serve the needs of veterans of the Armed Forces of the United States who are citizens of this state.

**ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

**§16-30-7. Determination of incapacity.**

(a) For the purposes of this article, a person may not be presumed to be incapacitated merely by reason of advanced age or disability. With respect to a person who has a diagnosis of mental illness or intellectual disability, such a diagnosis is not a presumption that the person is incapacitated. A determination that a person is incapacitated shall be made by the attending physician, a qualified physician, a qualified psychologist or an advanced nurse practitioner who has personally examined the person.

(b) The determination of incapacity shall be recorded contemporaneously in the person's medical record by the attending physician, a qualified physician, advanced nurse practitioner or a qualified psychologist. The recording shall state the basis for the determination of incapacity, including the cause, nature and expected duration of the person's incapacity, if these are known.

(c) If the person is conscious, the attending physician shall inform the person that he or she has been determined to be

incapacitated and that a medical power of attorney representative or surrogate decisionmaker may be making decisions regarding life-prolonging intervention or mental health treatment for the person.

**§16-30-24. Need for a second opinion regarding incapacity for persons with psychiatric mental illness, intellectual disability or addiction.**

For persons with psychiatric mental illness, intellectual disability or addiction who have been determined by their attending physician or a qualified physician to be incapacitated, a second opinion by a qualified physician or qualified psychologist that the person is incapacitated is required before the attending physician is authorized to select a surrogate. The requirement for a second opinion does not apply in those instances in which the medical treatment to be rendered is not for the person's psychiatric mental illness.

**CHAPTER 27. MENTALLY ILL PERSONS.**

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§27-1-3. Intellectual disability.**

"Intellectual disability" means significantly subaverage intellectual functioning which manifests itself in a person during his or her developmental period and which is characterized by his or her inadequacy in adaptive behavior. Notwithstanding any provision to the contrary, if any service provision or reimbursement is affected by the changes in terminology adopted in the 2010 Regular Session of the Legislature, the terms "intellectual disability" or "individuals with an intellectual disability" shall assume their previous terminology. It is not the intent of the

Legislature to expand the class of individuals affected by this terminology change.

**§27-1-6. State hospital.**

"State hospital" means any hospital, center or institution, or part of any hospital, center or institution, established, maintained and operated by the Department of Health, or by the Department of Health in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, intellectually disabled or addicted. The terms "hospital" and "state hospital" exclude correctional and regional jail facilities.

**§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 and Human Resources 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.

**§27-1-9. Mental health facility.**

"Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, intellectually disabled or addicted which is operated, or licensed to operate, by the Department of Health and Human Resources and includes state hospitals as defined in section six of this article. The term also includes veterans administration hospitals, but does not include any regional jail, juvenile or adult correctional facility, or juvenile detention facility.

**ARTICLE 1A. DEPARTMENT OF HEALTH.**

**§27-1A-1. Statement of policy.**

The purpose of this article is to improve the administration of the state hospitals, raise the standards of treatment of the mentally ill and intellectually disabled in the state hospitals, encourage the further development of outpatient and diagnostic clinics, establish better research and training programs, and promote the development of mental health.

**§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 and Human Resources 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 and Human Resources 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 and Human Resources is hereby 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 is hereby established in the Department of Mental Health. 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:

(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 and Human Resources.

## **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 heretofore 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 and Human Resources. 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 section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered

employee. The Secretary of the Department of Health and Human Resources 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 and Human Resources. 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 and Human Resources.

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 Secretary of the Department of Health and Human Resources.

**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 Health and Human Resources is authorized and 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 Health and Human Resources may by rules prescribe: *Provided*, That nothing contained herein may be construed to allow the Department of Health and Human Resources 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 Health and Human Resources or operated, maintained and controlled by local nonprofit organizations and licensed according to rules promulgated by the Secretary of the Department of Health and Human Resources. 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 Health and Human Resources if the comprehensive mental health or intellectual disability center or facility is operated by the Department of Health and Human Resources; 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 Health and Human Resources. The secretary of that department 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 Health and Human Resources 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 Health and Human Resources prescribes by regulation.

## **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

### **§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 and Human Resources 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.

## **ARTICLE 9. LICENSING OF HOSPITALS.**

### **§27-9-1. License from director of health; regulations.**

No hospital, center or institution, or part of any hospital, center or institution, to provide inpatient, outpatient or other service designed to contribute to the care and treatment of the mentally ill or intellectually disabled, or prevention of such disorders, may be established, maintained or operated by any political subdivision or by any person, persons, association or corporation unless a license therefor is first obtained from the Secretary of the Department of Health and Human Resources. The application for such license shall be accompanied by a plan of the premises to be occupied, and such other data and facts as the commissioner may require. The secretary may make such terms and regulations in regard to the conduct of any licensed hospital, center or institution, or part of any licensed hospital, center or institution, as he or she thinks proper and necessary. The secretary, or any person authorized by the secretary has authority to investigate and inspect any licensed hospital, center or institution, or part of any licensed hospital, center or institution; and the secretary may revoke the license of any hospital, center or institution, or part of any hospital, center or institution, for good cause after reasonable notice to the superintendent or

other person in charge of the hospital, center or institution.

## **ARTICLE 12. OFFENSES.**

### **§27-12-1. Malicious making of medical certificate or complaint as to mental condition.**

Any physician who signs a certificate respecting the mental condition of any person without having made the examination as provided by this chapter, or makes any statement in any such certificate maliciously for the purpose of having such person declared mentally ill, intellectually disabled or an inebriate, and any person who maliciously makes application to any circuit court or mental hygiene commission for the purpose of having another person declared mentally ill, intellectually disabled, or an inebriate, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding \$500, or imprisoned not exceeding one year, or both fined and imprisoned at the discretion of the court.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **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 subsection (f), section one, article two, chapter five-f of this code, the commission created by this section is now incorporated into and administered as part of the Department of Health and Human Resources. All references to the

commission in this article shall be construed to mean the Department of Health and Human Resources.

**§29-15-5. Purposes.**

The Department of Health and Human Resources 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 Health and Human Resources 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.

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND  
CONSERVATORSHIP ACT.**

**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.**

**§44A-1-1. Short title and legislative findings.**

This chapter is known and may be cited as the "West Virginia Guardianship and Conservatorship Act."

The Legislature finds that section six, article eight of the Constitution of the State of West Virginia gives it the discretionary authority to pass legislation which "...provides that all matters of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlements of their accounts..." be under the exclusive jurisdiction of circuit courts. The Legislature further finds and declares that the use of the word "all" does not require an interpretation that the Legislature must place every aspect of

such matters with circuit courts, but, that because of the discretionary authority given, the Legislature may transfer, from time to time, only those matters which it believes would be better served under the jurisdiction of circuit courts.

The Legislature further finds and declares that legal proceedings requiring a tribunal to determine whether persons should be appointed to manage the personal or financial affairs of individuals deemed mentally incompetent, intellectually disabled, mentally handicapped or missing involve considerations of constitutionally protected rights which can best be resolved within the circuit courts of this state.

**§44A-1-2. Determinations and appointments under prior law.**

(a) Any person determined to be "mentally incompetent", an "intellectually disabled" or "mentally handicapped" and for such reason deemed to be in need of a guardian or committee pursuant to any order entered and in effect before the effective date of this chapter is deemed to be a "protected person" within the meaning of this chapter, after its effective date, unless any such determination be revoked or otherwise modified.

(b) Any person heretofore appointed to serve as a committee for an incompetent person and any person appointed to serve as a guardian for an individual with an intellectual disability or for a mentally handicapped person, is, as of the effective date of this chapter, deemed to be: (1) A guardian, within the meaning of this chapter, if the order appointing such person

provides that the person so appointed has responsibility only for the personal affairs of a mentally incompetent, intellectually disabled or mentally handicapped person; (2) a conservator, within the meaning of this chapter, if the order appointing such person provides that the person so appointed had responsibility only for managing the estate and financial affairs of a mentally incompetent intellectually disabled or mentally handicapped person; or (3) a guardian and a conservator, within the meaning of this chapter, if the order appointing such person does not set forth limitations of responsibility for both the personal affairs and the financial affairs of a mentally incompetent intellectually disabled, or mentally handicapped person.

(c) After the effective date of this chapter, the circuit courts have exclusive jurisdiction of all matters involving determinations of mental incompetency, intellectual disability or mental handicap, including the jurisdiction of any proceedings pending as of that effective date. All orders entered before the effective date of this chapter in those cases shall remain in full force and effect until terminated, revoked or modified as provided herein.

(d) All persons heretofore appointed to serve as a committee or as a guardian retain their authority, powers and duties in that capacity, except to the extent that their authority, powers and duties as guardian or conservator under

the provisions of this chapter are more specifically enumerated, in which event the committee or guardian has the authority, powers and duties so enumerated.

Wherever in the Constitution, the Code of West Virginia, acts of the Legislature or elsewhere in law a reference is made to a committee for an incompetent person, such reference shall be read, construed and understood to mean guardian and/or conservator as defined in this chapter.

(e) The provisions of this chapter providing for the presentation of reports by guardians and the presentation of accountings by conservators may not be retroactively applied, and applicable law in effect before the effective date of this chapter controls as to any reports or accountings to be made or filed for any period before the effective date of this chapter.

(f) As used in this section, "prior law" refers to article eleven, chapter twenty-seven of this code, relating to the appointment of committees for mentally incompetent persons, and to article ten-a, chapter forty-four, relating to the appointment of guardians for individuals with an intellectual disability and mentally handicapped persons, as those articles were in effect before the effective date of this chapter.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 4A. WEST VIRGINIA FAMILY SUPPORT PROGRAM.**

#### **§49-4A-6. Regional and state family support councils.**

(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 Health and Human Resources 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 Planning Council, the state Protection and Advocacy Agency, the University Affiliated Center for Developmental Disabilities, the Office of Special Education, the Association of Community Mental Health/ Intellectual Disability Programs 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 such 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.