WEST VIRGINIA CODE CHAPTER 16B ARTICLE 3

WV Legislature

§16B-3-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof shall establish, conduct, or maintain in the State of West Virginia any ambulatory health care facility, ambulatory surgical facility, freestanding or operated in connection with a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor in the manner hereinafter *Provided,* That only one license shall be required for any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof who operates any combination of an ambulatory health care facility, ambulatory surgical facility, hospital, extended care facility operated in connection with a hospital, or more than one thereof, at the same location. Ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with a hospital operated by the federal government shall be exempt from the provisions of this article.

A hospital or extended care facility operated in connection with a hospital, within the meaning of this article, shall mean any institution, place, building, or agency in which an accommodation of five or more beds is maintained, furnished, or offered for the hospitalization of the sick or injured: *Provided,* That nothing contained in this article shall apply to nursing homes, rest homes, personal care facilities, homes for the aged, extended care facilities not operated in connection with a hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or other similar places that furnish to their guests only board and room, or either of them: *Provided, however,* That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the premises a hospital or extended care facility operated in connection with a hospital, within the meaning of this article. "Hospital" shall include state hospitals as defined by §27-1-6 of this code.

An "ambulatory health care facility" shall include any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care provider.

"Ambulatory surgical facility" means a facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

"Director" means the director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Inspector General" means the Inspector General of the Office of the Inspector General as

described in §16B-2-1 of this code, or his or her designee.

"Office of Health Facilities Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

The Inspector General designates the director of the Office of the Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation, or control in any manner of: (1) Private offices of physicians, dentists, or other practitioners of the healing arts; or (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: *Provided,* That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours.

Nothing in this article shall authorize any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.

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§16B-3-2. Hospitals and institutions to obtain license; qualifications of applicant.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof may continue to operate an existing ambulatory health care facility, ambulatory surgical facility, hospital, or extended care facility operated in connection with a hospital, or open an ambulatory health care facility, ambulatory surgical facility, a hospital or extended care facility operated in connection with a hospital, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided. Licenses shall be issued for a particular number by type of beds and/or type of services. Any change in the number by type of bed and/or type of services shall require the issuance of a new license.

Before a license shall be issued under this article, the person applying, if an individual, shall submit evidence satisfactory to the Office of Health Facility Licensure and Certification that he or she is not less than 18 years of age, of reputable and responsible character, and otherwise qualified. In the event the applicant is an association, corporation, or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge.

Every applicant shall, in addition, submit satisfactory evidence of his or her ability to comply with the minimum standards and with all rules and regulations lawfully promulgated. Every applicant shall further submit satisfactory evidence that he or she has implemented the paternity program created pursuant to §16B-3-13 of this code.

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§16B-3-3. Application for license.

Any person, partnership, association, or corporation, or any state or local governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the state Office of Health Facility Licensure and Certification a verified application stating the name of the applicant, and if the applicant is an individual, his or her age, the type of institution to be operated, the location thereof, the name of the person in charge thereof, and such other information as the Office of Health Facility Licensure and Certification may require. An application on behalf of a corporation, association, or governmental unit shall be made by any two officers thereof or by its managing agents and shall contain like information. The application shall be on a form prescribed, prepared, and furnished by the Office of Health Facility Licensure and Certification.

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§16B-3-4. License fees.

(a) The application of any person, partnership, association, corporation, or any state or local government unit for a license to operate a hospital or extended care facility operated in connection with a hospital, shall be accompanied by a fee to be determined by the number of beds available for patients, according to the following schedule of fees:

(1) Those with five beds but less than 50 beds shall pay a fee of $500;

(2) Those with 50 beds or more and less than 100 beds shall pay a fee of $750;

(3) Those with 100 beds or more and less than 200 beds shall pay a fee of $1,000; and (4) those with 200 beds or more shall pay a fee of $1,250.

(b) The director may annually adjust the licensure fees for inflation based upon the consumer price index.

(c) The application of any person, partnership, association, corporation, or local governmental unit for a license to operate an ambulatory health care facility or ambulatory surgical facility shall be accompanied by a reasonable fee to be determined by the director, based on the number of patients served by the facility.

(d) No such fee shall be refunded.

(e) All licenses issued under this article shall expire on June 30 following their issuance, shall be on a form prescribed by the Office of Health Facility Licensure and Certification, shall not be described in the application, shall be posted in a conspicuous place on the licensed premises, and may be renewed from year to year upon application, investigation, and payment of the license fee, as in the case of the procurement of an original license: *Provided,* That any such license in effect on June 30 of any year, for which timely application for renewal, together with payment of the proper fee, has been made to the Office of Health Facility Licensure and Certification in conformance with the provisions of this article and, the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until: (a) June 30 next following the expiration date of such license, (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs: *Provided, however,* That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director.

(f) All fees received by the Office of Health Facility Licensure and Certification under the provisions of this article shall be deposited in accordance with §16-1-13 of this code.

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§16B-3-5. Inspection.

Every building, institution, or establishment for which a license has been issued shall be inspected periodically by a duly appointed representative of the Office of Health Facility Licensure and Certification under rules and regulations to be promulgated by the Inspector General. Inspection reports shall be prepared on forms prescribed by the Office of Health Facility Licensure and Certification. Institutions licensed hereunder shall in no way be exempt from being inspected or licensed under the laws of this state relative to hotels, restaurants, lodginghouses, boardinghouses, and places of refreshment.

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§16B-3-5a. Accreditation reports accepted for periodic license inspection.

Notwithstanding any other provision of this article, a periodic license inspection shall not be conducted by the Office of Health Facility Licensure and Certification for a hospital if the hospital has applied for and received an exemption from that requirement: *Provided*, That no exemption granted diminishes the right of the Office of Health Facility Licensure and Certification to conduct complaint inspections.

The Office of Health Facility Licensure and Certification shall grant an exemption from a periodic license inspection during the year following accreditation if a hospital applies by submitting evidence of its accreditation by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association, or any accrediting organization approved by the Centers for Medicare and Medicaid Services, and submits a complete copy of the accrediting organization's accreditation report.

If the accreditation of a hospital is for a period longer than one year, the Office of Health Facility Licensure and Certification may conduct at least one license inspection of the hospital after the first year of accreditation and before the accreditation has expired and may conduct additional license inspections if needed. Hospitals receiving a three-year accreditation shall conduct annual self-evaluations using the current year accreditation manual for hospitals unless the Office of Health Facility Licensure and Certification informs the hospital that the hospital will be inspected by the Office of Health Facility Licensure and Certification. Hospitals are not required to conduct self-evaluations for any calendar year during which they are inspected by the Office of Health Facility Licensure and Certification. These self-evaluations shall be completed and placed on file in the hospital by March 31 of each year. Hospitals shall make the results of the self-evaluation available to the Office of Health Facility Licensure and Certification upon requested.

Accreditation reports filed with the Office of Health Facility Licensure and Certification shall be treated as confidential in accordance with §16B-3-10 of this code.

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§16B-3-6. Office of Health Facility Licensure and Certification to issue licenses; suspension or revocation.

The Office of Health Facility Licensure and Certification is hereby authorized to issue licenses for the operation of ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with hospitals which are found to comply with the provisions of this article and with all regulations lawfully promulgated by the Inspector General.

The Office of Health Facility Licensure and Certification is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:

(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto;

(2) Knowingly permitting, aiding, or abetting the commission of any illegal act in such institution;

(3) Conduct or practices detrimental to the health or safety of the patients and employees of such institution; or

(4) Operation of beds or services not specified in the license.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time, and place set for the hearing on the complaint, which date shall not be less than 30 days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the Office of Health Facility Licensure and Certification if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of §29A-5-1 of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

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§16B-3-7. Judicial review.

Any applicant or licensee who is dissatisfied with the decision of the Office of Health Facility Licensure and Certification as a result of the hearing provided in §16B-3-6 of this code may, within thirty days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

The Board of Review shall promptly certify and file in the court the transcript of the hearings on which its decision is based.

Findings of fact by the Office of Health Facility Licensure and Certification shall be considered as prima facie correct, but the court may remand the case to the Office of Health Facility Licensure and Certification for the taking of further evidence. The Office of Health Facility Licensure and Certification may thereupon make new or modified findings of fact which shall likewise be considered as prima facie correct. All evidence in the case shall be confidential until the final order is issued by the court, which order shall be made public.

The court shall have the power to affirm, modify, or reverse the decision of the Office of Health Facility Licensure and Certification and either the applicant or licensee or the Office of the Inspector General may appeal from the court's decision to the Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

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§16B-3-8. Inspector General to establish standards; director enforces.

The Inspector General shall have the power to promulgate rules and regulations in accordance with the provisions of §29-1-1 *et seq*. of this code and the director shall have the power to enforce such rules and regulations, as the Inspector General may establish, not in conflict with any provision of this article, as it finds necessary, or in the public interest, in order to protect patients in institutions required to be licensed under this article from detrimental practices and conditions, or to ensure adequate provision for their accommodations and care. No rule or regulation or standard of the Inspector General shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein: *Provided,* That such school or system of practice is recognized by the laws of this state.

The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

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§16B-3-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

Any hospital, or other similar institution, required to be licensed under this article, upon request, shall supply to any patient who has received services from the hospital, whether on an inpatient or outpatient basis, one itemized statement which describes with specificity the exact service or medication for which a charge is assessed to the patient at the institution, at no additional cost to the patient. In the event of the death of any such patient, a relative or guardian may make such request and shall receive such statement at no additional cost.

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§16B-3-10. Information not to be disclosed; exception.

Information received by the Office of Health Facility Licensure and Certification under the provisions of this article shall be confidential and shall not be publicly disclosed except in a proceeding involving the question of the issuance or revocation of a license.

WV Legislature

§16B-3-11. Violations; penalties.

Any person, partnership, association, or corporation, and any state or local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing, or operating an ambulatory health care facility, ambulatory surgical facility, a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor as herein provided, or violating any provision of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by imprisonment in the county jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than $500, with imprisonment in the county jail for a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

WV Legislature

§16B-3-12. Injunction; severability.

Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or state or any local governmental unit, or any division, department, board, or agency thereof, to restrain or prevent the establishment, conduct, management, or operation of any ambulatory health care facility, ambulatory surgical facility, hospital, or extended care facility operated in connection with a hospital without first obtaining a license therefor in the manner hereinbefore provided.

If any part of this article shall be declared unconstitutional, such declaration shall not affect any other part thereof.

WV Legislature

§16B-3-13. Hospital-based paternity program.

(a) Every public and private hospital licensed pursuant to §16B-3-2 of this code and every birthing center licensed pursuant to §16B-20-1 *et seq*. of this code, that provides obstetrical services in West Virginia, shall participate in the hospital-based paternity program.

(b) The Bureau for Child Support Enforcement as described in §48-18-101 of this code shall provide all public and private hospitals and all birthing centers providing obstetric services in this state with:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of §16-5-10 of this code; and

(3) The telephone number for the Bureau for Child Support Enforcement that a parent may call for further information regarding the establishment of paternity.

(c) Prior to the discharge from any facility included in this section of any mother who has given birth to a live infant, the administrator, or his or her assignee, shall ensure that the following materials are provided to any unmarried woman and any person holding himself or herself to be the natural father of the child:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of §16-5-10 of this code; and

(3) The telephone number for the Bureau for Child Support Enforcement that a parent may call for further information regarding the establishment of paternity.

(d) The Bureau for Child Support Enforcement shall notify the Office of Health Facility Licensure and Certification of any failure of any hospital or birthing center to conform with the requirements of this section.

(e) Any hospital or birthing center described in this article should provide the information detailed in subsection (c) of this section at any time when such facility is providing obstetrical services.

WV Legislature

§16B-3-14. Rural Emergency Hospital Act.

(a) Definitions – As used in this section:

(1) "Critical Access Hospital" means a hospital that has been deemed eligible and received designation as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS).

(2) "Rural Emergency Hospital" means a facility that:

(A) Was a critical access hospital;

(B) Does not provide acute care inpatient services; and

(C) Provides, at a minimum, rural emergency hospital services.

(3) "Rural Emergency Hospital Services" means emergency department services and observation care furnished by a rural emergency hospital that does not exceed an annual per patient average of 24 hours in such rural emergency hospital.

(4) "Staffed Emergency Department" means an emergency department of a rural emergency hospital that meets the following requirements:

(A) The emergency department is staffed 24 hours a day, seven days a week; and

(B) A licensed physician, advanced practice registered nurse, clinical nurse specialist, or physician assistant is available to furnish rural emergency hospital services in the facility 24 hours a day.

(b) A hospital located in an urban area (Metropolitan Statistical Areas (MSA) county), can be considered rural for the purposes of a designation as a critical access hospital pursuant to U.S.C. §1395i-4(c)(2) if it meets the following criteria:

(1) Is enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;

(2) Provides emergency health care services to indigent patients;

(3) Maintains 24-hour emergency services; and

(4) Is located in a county that has a rural population of 50 percent or greater as determined by the most recent United States decennial census.

(c) A critical access hospital may apply to be licensed as a rural emergency hospital if:

(1) It has been designated as a critical access hospital for at least one year; and

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(2) It is designated as a critical access hospital at the time of application for licensure as a rural emergency hospital.

(d) In addition to the requirements of subsection (c) of this section, rural emergency hospital shall, at a minimum:

(1) Provide rural emergency hospital services through a staffed emergency department;

(2) Treat all patients regardless of insurance status; and

(3) Have in effect a transfer agreement with a Level I or Level II trauma center.

(e) A rural emergency hospital may:

(1) With respect to services furnished on an outpatient basis, provide other medical and health services as specified by the Inspector General through rulemaking; and

(2) Include a unit of a facility that is a distinct part licensed as a skilled nursing facility to furnish post-hospital extended care services.

(f) The Inspector General shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this section.

WV Legislature

§16B-3-15. Hospital visitation.

(a) A public or private hospital licensed pursuant to the provisions of §16B-3-2 of this code is required to permit patient visitation privileges for nonrelatives unless otherwise requested by the patient or legal designee. For purposes of this section, the term "legal designee" means and includes those persons 18 years of age or older, and appointed by the patient to make health care decisions for the patient pursuant to the provisions of §16-30-6 of this code.

(b) It is the intent of the Legislature that this section facilitate a patient's visitation with nonrelative individuals, and may not, in any way, restrict or limit allowable uses and disclosures of protected health information pursuant to the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d-2 and the accompanying regulations in 45 CFR 164.500.

(c) No provision of this section may be construed to prevent a hospital from otherwise restricting visitation privileges in order to prevent harm to the patient or disruption to the facility.

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§16B-3-16. Public notice regarding the closure of a licensed health care facility or hospital.

(a) Any hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility, freestanding or operated in connection with a hospital licensed in the State of West Virginia under this article that intends to terminate operations, shall provide at least three weeks' notice of such intent to the public prior to the actual termination of operations. Pursuant to the provisions of §59-3-1 et seq. of this code, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located, and a notice shall be published on the facility's web page within the same time frame. The first publication of the Class III legal advertisement shall occur at least three weeks prior to the date the hospital or facility intends to terminate operations. The Class III legal advertisement shall include, but is not limited to, a statement, along with the specific or proximate date, that the hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility, freestanding or operated in connection with a hospital, intends to terminate operations, and where medical records, including, but not limited to, all imaging studies may be obtained.

(b) Upon closure, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located informing the public where medical records, including, but not limited to, all imaging studies may be obtained. This notice shall include contact information. A notice shall also be placed on the facility web page.

(c) The hospital or facility shall respond to requests for medical records made pursuant to the publication requirements in this section within 30 days.

(d) A notification of any change in location of the patient’s medical records shall be published in a newspaper of general circulation as set forth in subsection (a) of this section. The confidentiality of the medical records shall be maintained during storage.

(e) If the facility fails to produce the requested records within 30 days, a penalty of $25 per day may be assessed by a court with jurisdiction.

(f) This section is effective retroactively to September 1, 2019, and continues in effect thereafter. The applicable penalties are only effective for requests for medical records made after the effective date of passage of this section.

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§16B-3-17. Healthcare-associated infection reporting.

(a) As used in this section, the following words mean:

(1) "Centers for Disease Control and Prevention" or "CDC" means the United States Department of Health and Human Services Centers for Disease Control and Prevention;

(2) "National Healthcare Safety Network" or "NHSN" means the secure Internet-based data collection surveillance system managed by the Division of Healthcare Quality Promotion at the CDC, created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

(3) "Hospital" means hospital as that term is defined in §16-29B-3(b)(8) of this code.

(4) "Healthcare-associated infection" means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent that was not present or incubating at the time of admission to a hospital.

(5) "Physician" means a person licensed to practice medicine by either the Board of Medicine or the board of osteopathy.

(6) "Nurse" means a person licensed in West Virginia as a registered professional nurse in accordance with §30-7-1 *et seq*. of this code.

(b) The Secretary of the Department of Health is hereby directed to create an Infection Control Advisory Panel whose duty is to provide guidance and oversight in implementing this section. The advisory panel shall consist of the following members:

(1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital or medical school, who are active members of the Society for Health Care Epidemiology of America and who have demonstrated an interest in infection control;

(2) One physician who maintains active privileges to practice in at least one West Virginia hospital;

(3) Three infection control practitioners, two of whom are nurses, each certified by the Certification Board of Infection Control and Epidemiology, and each working in the area of infection control. Rural and urban practice must be represented;

(4) A statistician with an advanced degree in medical statistics;

(5) A microbiologist with an advanced degree in clinical microbiology;

(6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau for Public Health or a designee; and

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(7) The director of the Office of Health Facility Licensure and Certification, or his or her designee.

(c) The advisory panel shall:

(1) Provide guidance to hospitals in their collection of healthcare-associated infections;

(2) Provide evidence-based practices in the control and prevention of healthcare associated infections;

(3) Establish reasonable goals to reduce the number of healthcare-associated infections;

(4) Develop plans for analyzing infection-related data from hospitals;

(5) Develop healthcare-associated advisories for hospital distribution;

(6) Review and recommend to the Secretary of the Department of Health the manner in which the reporting is made available to the public to assure that the public understands the meaning of the report; and

(7) Other duties as identified by the Secretary of the Department of Health.

(d) Hospitals shall report information on healthcare-associated infections in the manner prescribed by the CDC National Healthcare Safety Network (NHSN). The reporting standard prescribed by the CDC National Healthcare Safety Network (NHSN) shall be the reporting system of the hospitals in West Virginia.

(e) Hospitals who fail to report information on healthcare associated infections in the manner and time frame required by the Secretary of the Department of Health shall be fined the sum of $5,000 for each such failure.

(f) The Infection Control Advisory Panel shall provide the results of the collection and analysis of all hospital data to the Secretary of the Department of Health for public availability and the Bureau for Public Health for consideration in their hospital oversight and epidemiology and disease surveillance responsibilities in West Virginia.

(g) Data collected and reported pursuant to this act may not be considered to establish standards of care for any purposes of civil litigation in West Virginia.

(h) The Secretary of the Department of Health shall require that all hospitals implement and initiate this reporting requirement.

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§16B-3-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

(a) A hospital, as that term is defined in §16B-3-1 *et seq*. of this code, shall be recognized by the Office of Emergency Medical Services as a comprehensive stroke center (CSC), thrombectomy-capable stroke center (TSC), primary stroke center (PSC), or an acute stroke-ready hospital (ASRH), upon submitting verification of certification as granted by the American Heart Association, the joint commission, or other nationally recognized organization to the Office of Emergency Medical Services. A hospital shall immediately notify the Office of Emergency Medical Services of any change in its certification status.

(b) The Office of Emergency Medical Services shall gain access to, and utilize, a nationally recognized stroke database that compiles information and statistics on stroke care that align with the stroke consensus metrics developed and approved by the American Heart Association and the American Stroke Association, for the purpose of improving stroke care and access across the State of West Virginia. The Office of Emergency Medical Services shall, upon request, provide the data accessed and utilized relating to comprehensive stroke centers, thrombectomy-capable stroke centers, primary stroke centers, and acute stroke-ready hospitals to the advisory committee in §16B-3-18(d) of this code.

(c) The Office of Emergency Medical Services shall provide annually, by June 1, a list of all hospitals recognized pursuant to the provisions of §16-3-18(a) of this code to the medical director of each licensed emergency medical services agency in this state. This list shall be maintained by the Office of Emergency Medical Services and shall be updated annually on its website.

(d) The Secretary of the Department of Health shall continue a stroke advisory committee which shall function as an advisory body to the secretary and report no less than biannually at regularly scheduled meetings. Its functions shall include:

(1) Increasing stroke awareness;

(2) Promoting stroke prevention and health policy recommendations relating to stroke care;

(3) Advising the Office of Emergency Medical Services on the development of stroke networks;

(4) Utilizing stroke care data to provide recommendations to the Office of Emergency Medical Services to improve stroke care throughout the state;

(5) Identifying and making recommendations to overcome barriers relating to stroke care; and

(6) Review and make recommendations to the State Medical Director of the Office of Emergency Medical Services regarding prehospital care protocols including:

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(A) The assessment, treatment, and transport of stroke patients by licensed emergency medical services agencies; and

(B) Plans for the triage and transport, within specified time frames of onset symptoms, of acute stroke patients to the nearest comprehensive stroke center, thrombectomy-capable stroke center, primary stroke center, or acute stroke-ready hospital.

(e) The advisory committee as set forth §16B-3-18(d) of this code shall consist of no more than 14 members. Membership of the advisory committee shall include:

(1) A representative of the Department of Health;

(2) A representative of an association with the primary purpose of promoting better heart health;

(3) A registered emergency medical technician;

(4) Either an administrator or physician representing a critical access hospital;

(5) Either an administrator or physician representing a teaching or academic hospital;

(6) A representative of an association with the primary purpose of representing the interests of all hospitals throughout the state; and

(7) A clinical and administrative representative of hospitals from each level of stroke center certification by a national certifying body (CSC, TSC, PSC, and ASRH).

(f) Of the members first appointed, three shall be appointed for a term of one year, three shall be appointed for a term of two years, and the remaining members shall be appointed for a term of three years. The terms of subsequent appointees shall be three years. Members may be reappointed for additional terms.

(g) Nothing in this section may permit the Office of Emergency Medical Services to conduct inspections of hospitals in relation to recognition as a stroke center as set forth in this section: *Provided*, That nothing in this section may preclude inspections of hospitals by the Office of Emergency Medical Services which are otherwise authorized by this code.

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§16B-3-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability and when immune from liability.

(a) The governing board of a hospital licensed under §16B-3-2 of this code may establish a hospital police department and appoint qualified individuals to serve as hospital police officers upon any premises owned or leased by the hospital and under the jurisdiction of the governing board, subject to the conditions and restrictions established in this section.

(1) A person who fulfills the certification requirements for law-enforcement officers under §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

(2) A retired police officer may qualify for appointment as a hospital police officer if he or she meets the certification requirements under §30-29-5 of this code.

(3) Before performing duties as a hospital police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 *et seq*. of this code; and

(B) Posting an official bond as required by §6-2-1 *et seq*. of this code.

(b) A hospital police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5 of this code.

(c) It is the duty of a hospital police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board and its affiliated properties; and

(2) On any street, road, or thoroughfare, except controlled access highways, immediately adjacent to or passing through the premises under the jurisdiction of the governing board, to which the officer is assigned by the chief executive officer or his or her designee: *Provided*, That a hospital police officer may only enforce the provisions of §17C-1-1 *et seq*. of this code upon request of a local law-enforcement agency.

(A) For the purposes of this subdivision, the hospital police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 *et seq*. of this code;

(B) The hospital police officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The hospital police officer is subject to all the requirements and responsibilities of a law-enforcement officer;

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(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on such hospital premises;

(E) Hospital police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state or political subdivision when:

(i) Traffic is generated as a result of activities or events conducted or sponsored by the hospital; and

(ii) The assistance has been requested by the local law-enforcement agency;

(F) Hospital police officers may assist a local law-enforcement agency in any location under the agency’s jurisdiction at the specific request of the agency; and

(G) Hospital police officers shall enforce the general policies and procedures of the hospital as established by the chief executive officer or his or her designee.

(d) The salary of a hospital police officer is paid by the employing hospital's governing board. The hospital shall furnish each hospital police officer with a firearm and an official uniform to be worn while on duty. The hospital shall furnish, and require each officer while on duty to wear, a shield with the appropriate inscription and to carry credentials certifying the person’s identity and authority as a hospital police officer.

(e) The governing board of the employing hospital may at its pleasure revoke the authority of any hospital police officer and such officers serve at the will and pleasure of the governing board. The chief executive officer of the hospital or his or her designee shall report the termination of employment of a hospital police officer by filing a notice to that effect in the office of the clerk of each county in which the hospital police officer's oath of office was filed.

(f) For the purpose of hospital police officers appointed and established in this section, the civil service provisions of §8-14-1 *et seq*. of this code and the investigation and interrogation provisions of §8-14A-1 *et seq*. of this code shall not apply.

(g) A hospital police officer shall not be subject to civil or criminal liability unless one of the following applies:

(1) His or her acts or omissions were manifestly outside the scope of employment or official responsibilities;

(2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or

(3) Liability is expressly imposed upon the hospital police officer by any other provision of this code.

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(h) A hospital police officer shall be trained in crisis de-escalation techniques consistent with the goals and objectives of this section: *Provided*, That within 180 days of beginning work as a hospital police officer, the employing hospital shall provide crisis management training to a hospital police officer through a program approved by the Law-Enforcement Professional Standards Subcommittee established by §30-29-2 of this code.

(i) A hospital with a police department is immune from liability if a loss or claim results from civil disobedience, riot, insurrection, or rebellion.

(j) Nothing in this section may be construed as creating a duty of a governing board of a hospital to establish a hospital police department.

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§16B-3-20. Patient safety and transparency.

(a) As used in this section:

"Acuity-based patient classification system" means a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design, implement, and evaluate the patient's nursing care plan consistent with professional standards of care. The acuity system criteria shall take into consideration the patient care services provided by registered nurses, licensed practical nurses, and other health care personnel.

"Competency" means those observable and measurable knowledge, skills, abilities and personal attributes, as determined by the facility, that demonstrate a nurse's ability to safely perform expected nursing duties of a unit.

"Direct-care registered nurse" means a registered nurse, who is a member of the facility's staff, has no management role or responsibility, and accepts direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

"Facility" means a hospital, licensed pursuant to the provisions of this article, a licensed private or state-owned and operated general acute-care hospital, an acute psychiatric hospital, or any acute-care unit within a state operated facility.

"Nursing care" means care which falls within the scope of practice, as provided §30-7-1 *et seq*. of this code.

"Orientation" means the process that the facility develops to provide initial training and information to clinical staff relative to job responsibilities and the organization's mission and goals.

"Unit" means those areas of the hospital organization not considered departments which provide specialized patient care.

"Unit Nurse Staffing Committee" means a committee made up of facility employees which includes a minimum of 51 percent of direct-care registered nurses who regularly provide direct nursing care to patients on the unit of the facility for which the nurse staffing plan is developed.

(b) The Legislature finds that to better improve the quality and efficiency of health care and to better facilitate planning for future states of emergency in West Virginia, a comprehensive system for nurses should be established to create staffing plans to ensure facilities are adequately staffed to handle the daily workload that may accompany a state of emergency. Further, the Legislature finds that nurses in West Virginia fall under the definition of "critical infrastructure," and by establishing a comprehensive staffing plan, West Virginia

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will be better equipped to deal with employment and staffing issues associated with higher acuity treatment in facilities. Additionally, the Legislature finds that based upon the nature of the acuity-based patient classification system it relies upon confidential patient information to generate a staffing plan model and therefore both the classification system and the staffing plan are considered confidential records as defined in §30-3C-3 of this code and are therefore not subject to discovery in any civil action or administrative proceeding.

(c) A facility shall:

(1) Develop, by July 1, 2024, an acuity-based patient classification system to be used to establish the staffing plan to be used for each unit;

(2) Direct each unit nurse staffing committee to annually review the facility's current acuity-based patient classification system and submit recommendations to the facility for changes based on current standards of practice; and

(3) Provide orientation, competency validation, education, and training programs in accordance with a nationally-recognized accrediting body recognized by the Centers for Medicare and Medicaid Services or in accordance with the Office of Health Facility Licensure and Certification. The orientation shall include providing for orientation of registered nursing staff to assigned clinical practice areas.

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§16B-3-21. Smoke evacuation system required for certain surgical procedures.

(a) As used in this section:

(1) "Energy generating device" means any tool that performs a surgical function using heat, laser, electricity, or another form of energy;

(2) "Smoke evacuation system" means smoke evacuators, laser plume evacuators, or local exhaust ventilators that effectively capture and neutralize surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and

(3) "Surgical smoke" means the by-product, including surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and other lung-damaging dust, that results from contact with tissue by an energy generating device.

(b) On or before January 1, 2025, in order to protect operating room nurses, operating room personnel, and patients from the hazards of surgical smoke, the Office of the Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code requiring a health care facility licensed under this chapter that utilizes energy generating devices to use a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(c) Any health facility acting by or through its agents or employees that violates subsection (b) of this section shall be punished by a fine of not less than $1,000 nor more than $5,000 for each violation.

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