WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Committee Substitute for
SENATE BILL NO. 320

(By Mr.)

PASSED March 12, 1983
In Effect Passage
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-nine-b, all relating to legislative findings, definitions; freeze on hospital rates and cap on revenues, penalty, notice; creation of the West Virginia health care cost review authority within the department of health; qualifications, oath, chairman, terms, vacancies, compensation; advisory council; staff; powers generally, budget, funding; annual report; jurisdiction, authority designated as state's health planning agency and to assume certificate of need functions as of July one, one thousand nine hundred eighty-four; hearings; administrative procedures applicable; examiner; subpoena power; review of final orders; injunctions and mandamus; refusal to comply; start-up period; uniform system of accounts and financing, reporting; annual reporting by hospitals; rate-setting powers; commencement of review activities; determination of rates; procedure for initial rate schedules; adjustments and revisions; incentives; utilization review and quality assurance; powers with respect to insurance policies; public disclosure; exemptions from antitrust laws; criminal penalties for violations; effective date and termination date.
Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-nine-b, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

§ 16-29B-1. Legislative findings: purpose.

1 The Legislature hereby finds and declares that the health and welfare of the citizens of this state is being threatened by unreasonable increases in the cost of acute care hospital services. In order to alleviate this threat, information on hospital cost must be gathered, a system of cost control must be developed and an entity of state government must be given authority to ensure the containment of acute care hospital costs. Therefore, the purpose of this article is to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate acute care hospital services.

§ 16-29B-2. Short title.

This article may be cited as the "West Virginia Health Care Cost Review Authority."

§ 16-29B-3. Definitions.

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

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

(b) "Class of purchaser" means a group of potential hospital patients with common characteristics affecting the way in which their hospital care is financed. Examples of classes of purchasers are medical beneficiaries, welfare recipients, subscribers of corporations established and operated pursuant to article twenty-four, chapter thirty-
three of this code, members of health maintenance organizations and other groups as defined by the board;

(c) "Board" means the three member board of directors of the West Virginia health care cost review authority, an autonomous division within the state department of health;

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

(e) "Hospital" means a facility subject to licensure as such under the provisions of article five-b of this chapter and any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, and does not include state mental health facilities or state long-term care facilities;

(f) "Person" means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, estate or political subdivision or instrumentality thereof;

(g) "Purchaser" means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a hospital, but does not include third party payors;

(h) "Rates" means all value given or money payable to hospitals for health care services, including fees, charges and cost reimbursements;

(i) "Records" means accounts, books and other data related to health care costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and in-
formation, the disclosure of which would be an invasion
of privacy; and

(j) "Third party payor" means any natural person,
person, corporation or government entity responsible for
payment of patient care services rendered by hospitals.

§16-29B-4. Freeze on rates, cap on revenues; penalty; notice.

All rates for hospital services provided on the first day
of February, one thousand nine hundred eighty-three,
shall remain the same for such services on and after that
date except as adjustments are provided in this article.
Until such time as the board created in section five of
this article establishes the initial rate schedule for a hospi-
tal pursuant to the provisions of section twenty-one, said
hospital's gross patient revenues as most recently re-
ported to the department of health pursuant to article
five-f of this chapter shall not increase by more than
twelve percent per annum. Any hospital altering its
payor mix by increasing or decreasing the proportion
of medicare, medicaid or charity care patients during this
period shall have its allowed twelve percent per annum
increased or decreased in proportion to the change in
its patient mix.

Any hospital whose gross patient revenues exceed
those allowed as set forth in this section shall pay back
the excess to the board. Within thirty days of passage
of this article, the health department shall notify each
hospital of the provisions of this section: Provided, That
prior to the first day of July, one thousand nine hundred
eighty-four, or until such earlier time as the board may
determine, the director of the state department of health
shall be empowered to approve temporary rate increases
for hospitals subject to the provisions of this article, in
accordance with the provisions of section twenty-one,
subsection (c) of this article. The board shall have
authority to develop rules and regulations to administer
the provisions of this section.
§16-29B-5. Establishment of the West Virginia Health Care Cost Review Authority; creation of the board, qualifications, terms, oath, compensation and expenses of members; vacancies, appointment of chairman, and meetings of the board.

There is created within the department of health an autonomous division, the “West Virginia Health Care Cost Review Authority,” hereinafter referred to as the board.

(a) The board shall consist of three members, appointed by the governor, with the advice and consent of the Senate. The board members shall be citizens and residents of this state. No more than two of said board members may be members of the same political party. One board member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields and one board member shall be a consumer of health services with a demonstrated interest in health care issues.

(b) Each board member shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution of the state of West Virginia, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the board members to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the board. The governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. The governor shall appoint three board members, one for a term of two years, one for a term of four years and one for a term of six years, with all the terms beginning on the effective date of this article. All future appointments shall be for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only. No board member shall serve more than two consecutive six-year terms.

(c) No person while in the employ of, or holding any...
official relation to, any hospital subject to the provisions of this article, or who has any pecuniary interest therein, may serve as a member of the board or as an employee thereof. Nor may any such board member be a candidate for or hold public office or be a member of any political committee while acting as such board member; nor may any board member or employee of said board receive anything of value, either directly or indirectly from any hospital subject to the provisions of this article. Should any of the board members become a candidate for any public office or for membership on any political committee, the governor shall remove said board member from the board and shall appoint a new board member to fill the vacancy created. No board member may accept employment with any hospital subject to the jurisdiction of the board within two years after said board member ceases to be a board member.

(d) The concurrent judgment of two of the board members when in session as the board shall be deemed the action of the board. A vacancy in the board shall not affect the right or duty of the remaining board members to function as a board.

(e) The annual salary of the chairman of the board shall be forty thousand dollars. The annual salary of the other board members shall be thirty-six thousand, five hundred dollars.

§16-29B-6. Advisory council.

There is created the West Virginia health care cost review council, hereinafter referred to as the council.

(a) The council shall be composed of twelve members. Five members shall serve in an ex officio capacity and have no vote, and those members being the director of health, the commissioner of welfare, the commissioner of insurance, the chairman of the public employees insurance board, and the director of the division of vocational rehabilitation, or their respective designated representatives. The seven voting members shall be appointed by the governor, with the advice and consent of the Senate, and shall be selected as follows: One representative of
the health insurance industry, one administrator of a large hospital, one administrator of a small hospital, and four members who are consumers of health services. When selecting the members who are consumers of health services, in addition to other factors, consideration shall be given to constituencies of organized labor, major purchasers of health insurance and senior citizens.

(b) No more than four of the voting members of the council may belong to the same political party, and no more than two may reside in the same congressional district. Selection of all voting members of the council shall be made with due diligence to ensure membership thereon by persons representing all cultural, demographic, and ethnic segments of the population of this state. Members of the council shall be appointed for terms of three years each, except that of the voting members first appointed, three members shall be appointed for terms of one year, two members for terms of two years, and two members for terms of three years. Members shall be eligible for reappointment for a second three-year term. Vacancies shall be filled in the same manner as the original appointments, for the duration of the unexpired term. The board shall appoint a chairman of the council who shall serve at the will and pleasure of the board.

(c) The presence of a majority of the voting members of the council shall constitute a quorum for the transaction of business. The council shall elect from among its voting members a vice-chairman and such other officers as it shall deem necessary. The council shall meet no less than four times during the calendar year, and additional meetings shall be held upon a call of the chairman or a majority of the voting members, or the board.

(d) The council shall serve as an advisory body to the board on the development of health care cost containment policy, strategies and methods, and shall review and from time to time make recommendations in regard thereto and on state-of-the-art concepts in health care policy at the national, state and local level and their application to the deliberations of the board. The coun-
cil shall serve as a conduit for the collection and transmission of information to the board regarding the consequences of board policy upon health care cost containment and upon hospitals that are subject to the provisions of this article. The council shall serve as a means for coordinating health care cost containment policy among departments of state government. The council shall review decisions of the board and make public comments thereon as it sees fit.

(e) In order to assist with the council's deliberations, board's staff shall gather information on cost containment efforts, including, but not limited to, the provision of alternative delivery systems, prospective payment systems, alternative rate-making methods, and programs of consumer education. The council shall pay particular attention to the economic and health status impact of such efforts on purchasers or classes of purchasers, particularly the elderly and those on low or fixed incomes.

(f) Board staff shall further gather information on state-of-the-art advances in medical technology, the cost effectiveness of such advances and their impact on health care advances in hospital and health care management practices, and any other state-of-the-art concepts relating to health care cost containment, health care improvement or other issues the council finds relevant and directs staff to investigate. The board staff shall prepare and keep a register of such information and update it on an annual basis.

(g) The board shall consider any recommendations of the council regarding additions or modifications to the board's rate setting and cost containment responsibilities as well as other responsibilities under the board's purview.

(h) The council shall make its own report to the board, the governor and the Legislature within thirty days of the close of each fiscal year. This report shall include summaries of all meetings of the council, any public comments on board decisions, together with any suggestions and policy recommendations.

(i) Council members shall be reimbursed from the
board fund for sums necessary to carry out its responsibilities and for reasonable travel expenses to attend council meetings.

§16-29B-7. Staff.

(a) The board may employ such persons as may be necessary to effect the provisions of this article. The board shall set the respective salaries or compensations of all staff. Any person employed by the board other than on a part-time basis shall devote full time to the performance of his or her duties as such employee during the regular working hours of the board.

(b) The board shall appoint general counsel, who shall act as legal counsel to the board. The general counsel shall serve at the will and pleasure of the board.

(1) The general counsel may act to bring and to defend actions on behalf of the board in the courts of the state and in federal courts.

(2) In all adjudicative matters before the board, the general counsel shall advise the board. The staff shall represent itself in all such actions before the board.

(c) The board may contract with third parties, including state agencies, for any services that may be necessary to perform the duties imposed upon it by this article where such contractual agreements will promote economy, avoid duplication of effort or make the best use of available expertise.

§16-29B-8. Powers generally; budget expenses of the board.

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, rules and regulations in accordance with article three, chapter twenty-nine-a of this code;

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of services in hospitals subject to the provisions of this article and may subpoena witnesses,
papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the state of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board, and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;

(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building board and subject to the approval of the Legislature;

(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and

(6) Exercise, subject to limitations or restrictions here-in imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.

(b) The board shall annually prepare a budget for the next fiscal year for submission to the governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff.

(c) Each hospital subject to the provisions of this
article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital's obligation. The amount of such fee shall be determined by the board except that in no case shall a hospital's obligation exceed one tenth of one percent of its gross revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the state treasury and kept as a special revolving fund, designated "health care cost review fund," with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.

(d) During the board's start-up period, before the first day of July, one thousand nine hundred eighty-four, each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the gross revenues of each hospital as reported under the provisions of article five-f, chapter sixteen of this code. Within sixty days of passage of this article, the department of health shall notify each hospital of the amount of such fee, which in no case shall exceed one tenth of one percent of the gross revenue of each hospital, the total amount of which fees shall not in any event exceed five hundred thousand dollars during said start-up period. Such fees shall be paid into the aforementioned special fund in two equal installments, the first of which shall be paid on the first day of April, one thousand nine hundred eighty-three, the second of which shall be paid on the first day of January, one thousand nine hundred eighty-four.

(e) Each hospital's assessment shall be treated as an allowable expense of the board.

(f) The board is empowered to withhold rate approvals of any such fees remain unpaid.
§16-29B-9. Annual report.
1 The board shall, within thirty days of the close of the
2 fiscal year, or from time to time as requested by the
3 Legislature, prepare and transmit to the governor and
4 the Legislature a report of its operations and activities
5 for the preceding fiscal year. This report shall include
6 summaries of all reports made by the hospitals subject to
7 this article, together with facts, suggestions and policy
8 recommendations the board considers necessary. The
9 board shall, after rate review and determination in ac-
10 cordance with the provisions of this article, include such
11 rate schedules in its annual report or other reports as
12 may be requested by the Legislature.

§16-29B-10. Jurisdiction of the board.
1 (a) Notwithstanding any other provisions of state law,
2 after the first day of July, one thousand nine hundred
3 eighty-four, the jurisdiction of the board as to rates for
4 health services care shall extend to all hospitals as de-
5 fined herein doing business in the state of West Virginia
6 (with the exception of hospitals owned and operated by
7 the federal government).

(b) Those costs or charges associated with individual
9 health care providers or health care provider groups
10 providing inpatient or outpatient services under a con-
11 tractual agreement with hospitals (excluding simple ad-
12 mitting privileges) shall be under the jurisdiction of the
13 board. The jurisdiction of the board shall not extend to
14 the regulation of rates of private health care providers
15 or health care groups providing inpatient or outpatient
16 services under a contractual agreement with hospitals
17 when the provision of such service is outside the hospital
18 setting, and shall not extend to the regulation of rates
19 of all other private health care providers practicing out-
20 side the hospital setting: Provided, That such practice
21 outside of the hospital setting is not found to be an
22 evasion of the purposes of this article.

§16-29B-11. Designation of board as the state's health planning
agency.
1 (a) On and after the first day of July, one thousand
nine hundred eighty-four, notwithstanding any provision
of this code to the contrary, the board shall be the state's
health planning and development agency, as provided
by section 1521 of the United States Public Health Services
Act, as amended, and it shall carry out and perform all
the functions set forth in section 1523 of that act, includ­ing
review and approval or disapproval of capital ex­
penditures for health care facilities or services as de­
lineated in article two-d of this chapter.

(b) On and after the first day of July, one thousand
nine hundred eighty-four, the board shall serve as the
planning agency designated in the agreement between
the state and the secretary of the department of health
and human services pursuant to Title 42, United States
Code section 1320a-1 (1976), as amended, in which the
use of federal funds for capital expenditures is limited to
those projects approved by the planning agency.

(c) This article does not affect proceedings that were
begun or rights or powers enforceable under the pro­
visions of article two-d of this chapter at any time before
the first day of July, one thousand nine hundred eighty­
four.

§16-29B-12. Hearings; administrative procedures act applic­
able; hearings examiner; subpoenas.

(a) The board may conduct such hearings as it deems
necessary for the performance of its functions and shall
hold hearings when required by the provisions of this
chapter or upon a written demand therefor by a person
aggrieved by any act or failure to act by the board or by
any rule, regulation or order of the board. All hearings
of the board shall be announced in a timely manner and
shall be open to the public except as may be necessary
 to conduct business of an executive nature.

(b) All pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern the
hearing and administrative procedures in connection with
and following the hearing except as specifically stated
to the contrary in this article.
(c) Any hearing may be conducted by members of the board or by a hearing examiner appointed for such purpose. Any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served pursuant to the time, fee and enforcement specifications in section one, article five, chapter twenty-nine-a of this code.

(d) Notwithstanding any other provision of state law, when a hospital alleges that a factual determination made by the board is incorrect, the burden of proof shall be on the hospital to demonstrate that such determination is, in light of the total record, not supported by substantial evidence. The burden of proof remains with the hospital in all cases.

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

(f) Any interested individual, group or organization shall be recognized as affected parties upon written request from the individual, group or organization. Affected parties shall have the right to bring relevant evidence before the board and testify thereon. Affected parties shall have equal access to records, testimony and evidence before the board, and shall have equal access to the expertise of the board's staff. The board shall have authority to develop rules and regulations to administer provisions of this section.

(g) The decision of the board is final unless reversed, vacated or modified upon judicial review thereof, in accordance with the provisions of section thirteen of this chapter.


(a) A final decision of the board and the record upon
which it was made shall, upon request of any affected
duty of the Board to hear appeals under the provisions of
the governor to hear appeals under the provisions of
Article two-d of this chapter. To be effective, such re-
quest must be received within thirty days after the date
upon which all parties received notice of the board
decision, and the hearing shall commence within thirty
days of receipt of the request.

(b) For the purpose of administrative reviews of board
decisions, the review agency shall conduct its proceed-
ings in conformance with the West Virginia rules of civil
procedure for trial courts of record and the local rules
for use in the civil courts of Kanawha County and shall
review appeals in accordance with the provisions gov-
erning the judicial review of contested administrative
cases in section four, article five, chapter twenty-nine-a
of this code, notwithstanding the exceptions of section
five, article five, chapter twenty-nine-a of this code.

(c) The decision of the review agency shall be made
in writing within forty-five days after the conclusion of
such hearing.

(d) The written findings of the review agency shall
be sent to all affected parties, and shall be made avail-
able by the commission to others upon request.

(e) The decision of the review agency shall be con-
sidered the final decision of the board; however, the re-
view agency may remand the matter to the board for
further action or consideration.

(f) Upon the entry of a final decision by the review
agency, any affected party may within thirty days after
the date upon which all affected parties receive notice
of the decision of the review agency, appeal said decision
in the circuit court of Kanawha County. The decision
of the review agency shall be reviewed by that circuit
court in accordance with the provisions of the judicial
review of administrative decisions contained in section
four, article five, chapter twenty-nine-a of this code.

§16-29B-14. Injunction; mandamus.

1. The board may compel obedience to its lawful orders

by injunction or mandamus or other proper proceedings
in the name of the state in any circuit court having jurisdic-
tion of the parties or of the subject matter, or the
supreme court of appeals direct, and such proceeding,
shall be determined in an expeditious manner.

§16-29B-15. Refusal to comply.

(a) Whenever a hospital fails or refuses to furnish to
the board any records or information requested under
the provisions of this article or otherwise fails or refuses
to comply with the requirements of this article or any
reasonable rule and regulation promulgated by the board
under the provisions of this article, the board may make
and enter an order of enforcement and serve a copy
thereof on the hospital in question by certified mail, re-
turn receipt requested.

(b) The hospital shall be granted a hearing on the
order of enforcement if, within twenty days after receipt
of a copy thereof, it files with the board a written demand
for hearing. A demand for hearing shall operate auto-
matically to stay or suspend the execution of the order of
enforcement, with the exception of orders relating to rate
increases.

(c) Upon receipt of a written demand for a hearing,
the board shall set a time and place therefor, not less
than ten and no more than thirty days thereafter. Any
scheduled hearing may be continued by the board upon
motion for good cause shown by the hospital demanding
the hearing.

§16-29B-16. Start-up period.

(a) The department of health shall cooperate to the
fullest extent possible and transfer all data, records, re-
ports, analyses and summaries filed, collected or devel-
oped by the department of health pursuant to article
five-f of this chapter, upon request of the board. With
the approval of the board the department of health shall
expend out of any funds available for the purpose such
moneys as are necessary for the use of its staff by the
board during the start-up period, and the department of
health shall be reimbursed by the board for any such
expenses so incurred. During the lifetime of the board
the functions and responsibilities set forth in article five-f
of this chapter shall be performed by the board, and
whenever in this code reference is made to said article
five-f, said reference shall be deemed to mean reference
to the board.

(b) The board shall then compile all other relevant
financial and accounting data in order to have available
the statistical information necessary to properly con-
duct rate review and approval. Such data shall include
necessary operating expenses, appropriate expenses in-
curred for rendering services to patients who cannot or
do not pay, all properly incurred interest charges, and
reasonable depreciation expenses based on the expected
useful life of the property and equipment involved. The
board shall also obtain from each hospital a current rate
schedule as well as any subsequent amendments or
modifications of that schedule as it may require.

(c) Prior to the commencement of review activities,
the board may examine rate-making methods used by
other regulatory agencies in the state and hospital rate-
making agencies in other states before adopting a method
or methods for determining rates for the hospitals sub-
ject to this article.

(d) Upon appointment, the board shall enter into
negotiations with the health care financing administra-
tion within the United States department of health and
human services to seek approval and assurances from,
and enter into agreements with the United States depart-
ment of health and human services so that the afore-
mentioned federal agency and affected state agencies al-
low reimbursement to hospitals subject to the provisions
of this article in accordance with rates approved by the
board. The absence of such approval and assurances
from, and agreements with the health care financing
administration within the department of health and
human services shall not diminish the authority of the
board to set rates of payment for other payors.

(e) On or before June one, one thousand nine hundred
eighty-four, the board shall submit its application for
purposes of entering into an agreement with the secretary
of the department of health and human services so that
the aforementioned federal agency agrees to allow pay-
ment for services provided by hospitals subject to the
provisions of this article in accordance with rates ap-
proved by the board. If such agreement is not obtained
by the board from the department of health and human
services on or before December one, one thousand
nine hundred eighty-four, then the board, its functions,
this article, and all rules and regulations promulgated
thereunder shall terminate, and be void and of no further
effect.

(f) No later than the first day of June, one thousand
nine hundred eighty-three, every hospital shall provide
to the board a full and complete verified statement of
services offered as of the first day of February, one
thousand nine hundred eighty-three, together with a
verified statement of rates in effect as of the first day of
February, one thousand nine hundred eighty-three, for
such services.

§16-29B-17. Uniform system of accounts and financing; re-
porting.

(a) The board shall develop and specify a uniform sys-
tem of accounting and financial reporting, including cost
allocation methods by which hospitals shall record their
revenues, income, expenses, capital outlay, assets, lia-
bilities and units of service. The development and speci-
fication process aforementioned shall be conducted in
manner determined by the board to be most efficient for
that purpose notwithstanding the provisions of chapter
twenty-nine-a of this code. Each hospital shall adopt this
uniform system for the purpose of reporting costs and
revenues to the board effective for the fiscal year be-
ning on or after twelve months from the effective
date of this article.

(b) The board may provide for modification in the
accounting and reporting system in order to correctly
reflect differences in the scope or type of services and
financial structures of the various categories, sizes and
types of hospitals and in a manner consistent with the purposes of this article.

(c) The board may provide technical assistance to those hospitals which request it and which evidence sufficient need for assistance in the establishment of a data collection system to the extent that funds are available to the board for this purpose.

(d) The board shall, after consultation with health care providers, purchasers, classes of purchasers and third-party payors, adopt a mandatory form for reporting to the board, at its request, medical diagnosis, treatment and other services rendered to each purchaser by health care providers subject to the provisions of this article.

(e) Following public hearing, the board shall establish a program to minimize the administrative burden on hospitals by eliminating unnecessary duplication of financial and operational reports; and to the extent possible, notwithstanding any other law, coordinate reviews, reports, and inspections performed by federal, state, local and private agencies.

§16-29B-18. Hospital annual financial reporting.

1. (a) It shall be the duty of every hospital which comes under the jurisdiction of this article to file with the board the following financial statements or reports in a form and at intervals specified by the commission, but at least annually:

1. (1) A balance sheet detailing the assets, liabilities, and net worth of the hospital for its preceding fiscal year;

1. (2) A statement of income and expenses for the preceding fiscal year;

1. (3) A statement of services rendered and services available; and

1. (4) Such other reports as the board may prescribe.

Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.
(b) The annual financial statements filed pursuant to this section shall be prepared in accordance with the system of accounting and reporting adopted under section seventeen of this article. The board may require attestations from responsible officials of the hospital that such reports have to the best of their knowledge been prepared truthfully and in accordance with the prescribed system of accounting and reporting.

(c) All reports filed under any provisions of this article, except personal medical information personally identifiable to a purchaser, shall be open to public inspection and shall be available for examination at the offices of the board during regular business hours.

(d) Whenever a further investigation is deemed necessary or desirable to verify the accuracy of any information set forth in any statement, schedule or report filed by a hospital under the provisions of this section, the board may require a full or partial audit of the records of the hospital.

§16-29B-19. Rate-setting powers generally.

(a) The board shall have power: (1) To initiate reviews and investigations of hospital rates and establish and approve such rates; (2) to initiate reviews and investigations of hospital rates for specific services and the component factors which determine such rates; (3) to initiate reviews and investigations of hospital budgets and the specific components of such budgets; and (4) to approve or disapprove hospital rates and budgets taking into consideration the criteria set forth in section twenty of this article.

The board shall commence reviews no sooner than twelve months and no later than fifteen months after the effective date of this article.

(b) In the interest of promoting the most efficient and effective use of hospital service, the board may adopt and approve alternative methods of rate determination. The board may also adopt methods of charges and payments of an experimental nature which are in the public interest and consistent with the purpose of this article.
§16-29B-20. Rate determination.

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

(1) The costs of the hospital's services are reasonably related to the services provided and the rates are reasonably related to the costs;

(2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or regulations conflict with this requirement. Equity among classes of purchasers may be achieved by considering demonstrated differences in the financial requirements of hospitals resulting from service, coverage and payment characteristics of a class of purchasers. The provision for differentials in rates among classes of purchasers should be carried out in the context of each hospital's total financial requirements for the efficient provision of necessary services. The board shall institute a study of objective methods of computing the percentage differential to be utilized for all hospitals in determining appropriate projected gross revenues under subsection (b) of this section. Such study shall include a review and determination of the relevant and justifiable economic factors which can be considered in setting such differential. The differential shall be allowed for only those activities and programs which result in quantifiable savings to the hospital with respect to patient care costs, bad debts, free care or working capital, or reductions in the payments of other payors. Each component utilized in determining the differential shall be individually quantified so that the differential shall equal the value assigned to each component. The board shall consider such matters as coverage to individual subscribers, the elderly and small groups, payment practices, savings in hospital administrative costs, cost containment programs and working capital. The study shall also provide for a method of annual recomputation of the differential and
triaennial recomputation of all other components. The board may contract with any person or entity to assist the board in the discharge of its duties as herein stated. Whoever obstructs any person or entity conducting a study authorized under the provisions of this section shall be deemed to be in violation of this article and shall be subject to any appropriate actions, including injunctive relief, as may be necessary for the enforcement of this section;

(3) The rates of payment for medicaid are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated hospitals subject to the provisions of this article. The rates shall take into account the situation of hospitals which serve disproportionate numbers of low income patients and assure that individuals eligible for medicaid have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality;

(4) The rates are equitable in comparison to prevailing rates for similar services in similar hospitals as determined by the commission.

(b) In the interest of promoting efficient and appropriate utilization of hospital services the board shall review and make findings on the appropriateness of projected gross revenues for a hospital as such revenues relate to charges for services and anticipated incidence of service. The board shall further render a decision as to the amount of net revenue over expenditures that is appropriate for the effective operation of the hospital.

(c) When applying the criteria set forth above, the board shall consider all relevant factors including, but not limited to, the following: The economic factors in the hospital's area; the hospital's efforts to share services; the hospital's efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not
otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and, income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and income from foundations and restricted funds whether or not so associated.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article shall not be subject to review unless the board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low. Said exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the commission. “Nonsupervisory personnel”, for the purposes of this section, means but is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for new services and capital projects subject to article two-d of this chapter shall not be allowed by the board if such costs were incurred subsequent to the eight day of July, one thousand nine hundred seventy-seven, unless they were exempt from review or approved by the state planning development agency prior to the first day of July, one thousand nine hundred eighty-four, pursuant to the provisions of article two-d of this chapter.

(f) The board shall consult with relevant licensing agencies and may require them to provide written findings with regard to their statutory functions and information obtained by them in the pursuit of those functions. Any licensing agency empowered to suggest or mandate changes in buildings or operations of hospitals, shall give notice to the board together with any findings.

(g) Rates shall be set by the board in advance of the year during which they apply except for the procedure set forth in subsection (c), section twenty-one of this article and shall not be adjusted for costs actually incurred.

(h) All determinations, orders and decisions of the
board with respect to rates and revenues shall be prospective in nature.

(i) No hospital may charge for services at rates in excess of those established in accordance with the requirements of and procedures set forth in this article.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and revisions of rate schedules.

(a) The board shall propose the initial schedule of rates and shall notify the affected hospital and community by registered mail and announcement in the local media respectively. Any hospital may contest its proposed rate schedule by written notice to the board within twenty days after receipt of the proposed schedule. The board shall, in a contested proceeding, issue a final order with regard to the initial schedule of rates within ninety days after the board first submits the proposed initial schedule. If no notice of contest is filed, the proposed rates shall go into effect sixty days from the date first proposed.

(b) After the issuance of the order establishing the initial rate schedule, no hospital subject to this article may change or amend its schedule of rates except in accordance with the following procedures:

(1) Any request for a change in rate schedules or other changes must be filed in writing to the board with such supporting data as the hospital seeking to change its rates considers appropriate, in the form prescribed by the board. Upon receipt of notice, the board, if it considers necessary, may hold a public hearing on the proposed change. Such hearings shall be held no later than forty-five days after receipt of the notice. The review of the proposed change may not exceed an overall period of one hundred eighty days from the date of filing to the date of the board's order. If the board fails to complete its review of the proposed change within the time period specified for the review, the proposed change shall be deemed to have been approved by the board. Any proposed change shall go into effect upon the date specified in the order;
(2) Each hospital shall establish, in a written report which shall be incorporated into each proposed rate application, that it has thoroughly investigated and considered:

(A) The economic and social impact of any proposed rate increase, or service decrease, on hospital cost containment and upon health care purchasers, including classes of purchasers, such as the elderly and low and fixed income persons;

(B) State-of-the-art advances in health care cost containment, hospital management and rate design, as alternatives to or in mitigation of any rate increase, or service decrease, which report shall describe the state-of-the-art advances considered and shall contain specific findings as to each consideration, including the reasons for adoption or rejection of each;

(C) Implementation of cost control systems, including the elimination of unnecessary or duplicative facilities and services, promotion of alternative forms of care, and other cost control mechanisms;

(D) Initiatives to create alternative delivery systems; and

(E) Efforts to encourage third-party payors, including, but not limited to, insurers, health service, care, and maintenance organizations, to control costs, including a combination of education, persuasion, financial incentives and disincentives to control costs;

(3) In the event the board modifies the request of a hospital for a change in its rates so that the hospital obtains only a partial increase in its rate schedule, the hospital shall have the right to accept the benefits of the partial increase in rates and charge its purchasers accordingly without in any way adversely affecting or waiving its right to appeal that portion of the decision and order of the board which denied the remainder of the requested rate increase.

(c) Whether before or after the issuance of the order establishing the initial rate schedule for a hospital subject to the provisions of this article, the board, or the
director of the state department of health as stated in section four of this article, shall have the discretionary authority to allow a temporary change in a hospital's rates which may be effective immediately upon filing and in advance of review procedures when it has been determined that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. When considering such temporary rate change requests, the board or the director shall extend preference to hospitals demonstrating immediate risk of insolvency, or demonstrating substantial financial hardship, to maintain accreditation or for emergency repairs which in the discretion of the board or the director justifies temporary rate changes prior to commencement of or full review of said rate changes by the board as set forth in this article. The board or the director when considering requests for temporary rate changes shall consider:

(1) The financial burden imposed upon purchasers or classes of purchasers by such change;

(2) Whether such change is in the public interest;

(3) Other factors determined to be relevant to the merits of a temporary rate change request.

The board or the director shall make public its findings concerning a temporary rate change request.

The board shall develop standards and criteria in order to assure that any temporary rate change is in the public interest and necessary to prevent harm to the public interest and to prevent insolvency or to relieve undue financial hardship. For temporary rate setting and review functions performed by the director of the state department of health pursuant to the provisions of this article, the board shall reimburse said department for all reasonable and necessary expenses incurred by the department in fulfillment of its responsibilities, duties, and functions hereunder, until such time as the board assumes such responsibilities, duties, and functions unto itself pursuant to the provisions of this article.
(4) When any change affecting an increase in rates goes into effect before a final order is entered in the proceedings, for whatever reasons, where it deems it necessary and practicable, the board may order the hospital to keep a detailed and accurate account of all amounts received by reason of the increase in rates and the purchasers and third-party payors from whom such amounts were received. At the conclusion of any hearing, appeal or other proceeding, the board may order the hospital to refund with interest to each affected purchaser and/or third-party payor any part of the increase in rates that may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital shall, under appropriate terms and conditions determined by the board, charge over and amortize by means of a temporary decrease in rates whatever income is realized from that portion of the increase in rates which was subsequently held to be excessive or unreasonable;

(5) The board, upon a determination that a hospital has overcharged purchasers or charged purchasers at rates not approved by the board or charged rates which were subsequently held to be excessive or unreasonable, may prescribe rebates to purchasers and third-party payors in effect by the aggregate total of the overcharge; and

(d) The board may open a proceeding against any hospital at any time with regard to compliance with rates approved and the efficiency and effectiveness of the care being rendered in the hospital.

§16-29B-22. Incentives.
1 The board shall be required to allow, as an incentive to the efficient management and operation of hospitals covered by this act, that if said hospitals are more efficient than anticipated, they shall retain a portion of the resulting savings and if less efficient shall bear the resulting deficits.

§16-29B-23. Utilization review and quality assurance.
1 (a) In order to avoid unnecessary or inappropriate utilization of hospital services and to ensure high quality
hospital care, the board shall establish a utilization review and quality assurance program. The board shall coordinate this program with utilization review and peer review programs presently established in state agencies, hospital services and health service corporations, hospitals or other organizations.

(b) With the assistance of the above-mentioned entities, and after public hearings, the board shall develop a plan for the review, on a sampling basis, of the necessity of admissions, length of stay and quality of care rendered at said hospitals.

(c) The board shall monitor identified problem areas and shall impose such sanctions and provide such incentives as necessary to ensure high quality and appropriate services and utilization in hospitals under the jurisdiction of this article.

§16-29B-24. Powers with respect to insurance policies and health organizations.

(a) With respect to any policy of accident or health insurance, including, but not limited to, those insurance policies covered by articles fifteen, sixteen and sixteen-a, chapter thirty-three of this code, and with respect to any health service, care, or maintenance organization, or similar health-related organizations, including, but not limited to, those covered by articles twenty-four, twenty-five and twenty-five-a, chapter thirty-three of this code, the board shall:

1. Be considered for all purposes a directly affected party before the insurance commissioner for purposes of any application, hearing, or appeal on insurance matters;

2. Review requests for, and make comments on, proposed rate increases or coverage decreases submitted to the insurance commissioner with respect to the reasonableness of the request and impact on health care cost containment;

3. Comment on the advisability, reasonableness, and impact on health care cost containment of any other
matter coming before the insurance commissioner or any other governmental agency or body.

(b) On or before the date of filing with the insurance commissioner of any rate, including any proposed increase or decrease thereof, and any coverage matter, including any proposed increase or decrease thereof, each company or organization, described in paragraph (a) above, shall notify the board of such filing, by copy thereof or notice form, as the commission directs.

(c) Each company or organization, described in paragraph (a) above, shall establish, in a written report which shall be incorporated into each proposed rate application, that it has thoroughly investigated and considered:

(1) The economic and social impact of any proposed rate increase, or coverage decrease, on health care cost containment and upon health care purchasers, including classes of purchasers, such as the elderly and low and fixed income persons;

(2) State-of-the-art advances in insurance and health care management and rate design as alternatives to or in mitigation of any rate increase, or coverage decrease, which report shall describe the state-of-the-art advances considered and shall contain specific findings as to each consideration, including the reasons for adoption or rejection of each;

(3) Implementation of cost control systems, including a combination of education, persuasion, financial incentives and disincentives to control costs;

(4) Initiatives to create alternative delivery systems;

(5) Efforts to encourage health care providers to control costs, including the elimination of unnecessary or duplicative facilities and services, promotion of alternative forms of care, and other cost control mechanisms.

§16-29B-25. Public disclosure.

From time to time, the board shall engage in or carry out analyses and studies relating to health care costs,
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3 the financial status of any hospital subject to the provi-
4 sions of this article or any other appropriate related mat-
5 ters, and it shall be empowered to publish and disseminate
6 any information which would be useful to members of
7 the general public in making informed choices about
8 hospitals.

§16-29B-26. Exemptions from state antitrust laws.

1 Actions of the board shall be exempt from antitrust
2 action as provided in section five, article eighteen, chapter
3 forty-seven of this code. Any actions of hospitals under
4 the board's jurisdiction, when made in compliance with
5 orders, directives, rules or regulations issued or promul-
6 gated by the board, shall likewise be exempt.

§16-29B-27. Penalties for violations.

1 In addition to civil remedies set forth, any person or
2 hospital violating any provision of this article or any
3 valid order or rule and regulation lawfully established
4 hereunder shall be guilty of a misdemeanor and, upon
5 conviction thereof, shall be punished by a fine of not
6 more than one thousand dollars. Each day of a continuing
7 violation after conviction shall be considered a separate
8 offense. No fines assessed may be considered part of the
9 hospital's costs in the regulation of its rates.

§16-29B-28. Effective date and termination date.

1 This article shall be in effect from passage. The board
2 shall terminate under the provisions of article ten, chapter
3 four of the code, on the thirtieth day of June, one thousand
4 nine hundred eighty-seven, unless extended by legislation
5 enacted before the termination date.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _______________ this the ________ day of __________, 1983.

Governor