

RECEIVED

1991 MAR 20 PM 4:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 2194

(By Mr. *Speaker, Mr. Chambers, and*
Del. R. Burk
[By Request of the Executive])

Passed *March 6* 1991

In Effect *From* Passage

RECEIVED

1001 MAR 20 PM 4:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2194

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
[By Request of the Executive]

[Passed March 6, 1991; in effect from passage.]

AN ACT to amend and reenact sections two, four, five and eleven, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five and six, article five-f; and sections three, five, seven, eight, eighteen, twenty, twenty-one and twenty-eight, article twenty-nine-b of said chapter; and to further amend said article twenty-nine-b by adding thereto two new sections, designated sections six and nineteen-a, all relating to health care cost containment; providing definitions; reducing expense and expenditure thresholds governing when certificate of need review is required; eliminating certain exemptions from certificate of need review; extending moratorium on intermediate care and skilled nursing beds; providing for the conversion of certain beds; defining transfer of certificate of need; expanding scope of covered facility reporting and financial disclosure requirements to include related organizations; requiring covered facilities and related organizations to furnish copies of tax returns; requiring confidentiality of tax returns; requiring report to governor and Legislature; continuing health care cost review authority until the first day

of July, one thousand nine hundred ninety-seven; deleting term limitation on board membership; increasing salaries of board members; creating health care cost review council to serve as advisory body to the board; exempting staff of health care cost review authority from civil service salary schedules; permitting promulgation of certain emergency rules; mandating cost-based review system; exempting regulations implementing cost-based review system from legislative rule-making; requiring filing of certain contracts; requiring contracts granting discounts to purchasers or third-party payors be reviewed and approved by the health care cost review authority; and changing standard for automatic rate increases.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and eleven, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, three, four, five and six, article five-f; and sections three, five, seven, eight, eighteen, twenty, twenty-one and twenty-eight, article twenty-nine-b of said chapter be amended and reenacted; and that said article twenty-nine-b be further amended by adding thereto two new sections, designated sections six and nineteen-a, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

- 1 As used in this article, unless otherwise indicated by
- 2 the context:
- 3 (a) "Affected person" means:
- 4 (1) The applicant;
- 5 (2) An agency or organization representing
- 6 consumers;
- 7 (3) Any individual residing within the geographic
- 8 area served or to be served by the applicant;
- 9 (4) Any individual who regularly uses the health care
- 10 facilities within that geographic area;

11 (5) The health care facilities which provide services
12 similar to the services of the facility under review and
13 which will be significantly affected by the proposed
14 project;

15 (6) The health care facilities which, prior to receipt
16 by the state agency of the proposal being reviewed, have
17 formally indicated an intention to provide similar
18 services in the future;

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

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

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility
25 which is free-standing and not physically attached to a
26 health care facility and which provides health care to
27 noninstitutionalized and nonhomebound persons on an
28 outpatient basis. This definition does not include the
29 private office practice of any one or more health
30 professionals licensed to practice in this state pursuant
31 to the provisions of chapter thirty of this code: *Provided*,
32 That such exemption from review of private office
33 practice shall not be construed to include such practices
34 where major medical equipment otherwise subject to
35 review under the provisions of this article is acquired,
36 offered or developed: *Provided, however*, That such
37 exemption from review of private office practice shall
38 not be construed to include certain health services
39 otherwise subject to review under the provisions of
40 subdivision (1), subsection (a), section four, of this
41 article.

42 (c) "Ambulatory surgical facility" means a facility
43 which is free-standing and not physically attached to a
44 health care facility and which provides surgical treat-
45 ment to patients not requiring hospitalization. This
46 definition does not include the private office practice of
47 any one or more health professionals licensed to practice
48 surgery in this state pursuant to the provisions of
49 chapter thirty of this code: *Provided*, That such exemp-

tion from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: *Provided, however,* That such exemption from review of private office practice shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four, of this article.

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

(e) "Bed capacity" means the number of beds for which a license is issued to a health care facility, or, if a facility is unlicensed, the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards.

(f) "Capital expenditure" means an expenditure:

(1) Made by or on behalf of a health care facility; and

(2) (A) Which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) which (i) exceeds the expenditure minimum, or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made, or (iii) is a substantial change to the services of such facility. For purposes of subparagraph (i), paragraph (B), subdivision (2) of this definition, the cost of any studies, surveys, designs, plans, working drawings,

90 specifications, and other activities, including staff effort
91 and consulting and other services, essential to the
92 acquisition, improvement, expansion, or replacement of
93 any plant or equipment with respect to which an
94 expenditure described in paragraph (B), subdivision (2)
95 of this definition is made shall be included in determin-
96 ing if such expenditure exceeds the expenditure
97 minimum. Donations of equipment or facilities to a
98 health care facility which if acquired directly by such
99 facility would be subject to review shall be considered
100 capital expenditures, and a transfer of equipment or
101 facilities for less than fair market value shall be
102 considered a capital expenditure for purposes of such
103 subdivisions if a transfer of the equipment or facilities
104 at fair market value would be subject to review. A series
105 of expenditures, each less than the expenditure min-
106 imum, which when taken together are in excess of the
107 expenditure minimum, may be determined by the state
108 agency to be a single capital expenditure subject to
109 review. In making its determination, the state agency
110 shall consider: Whether the expenditures are for
111 components of a system which is required to accomplish
112 a single purpose; whether the expenditures are to be
113 made over a two-year period and are directed towards
114 the accomplishment of a single goal within the health
115 care facility's long-range plan; or, whether the expend-
116 itures are to be made within a two-year period within
117 a single department such that they will constitute a
118 significant modernization of the department.

119 (g) "Expenditure minimum" means seven hundred
120 fifty thousand dollars per fiscal year.

121 (h) "Health," used as a term, includes physical and
122 mental health.

123 (i) "Health care facility" is defined as including
124 hospitals, skilled nursing facilities, kidney disease
125 treatment centers, including free-standing hemodialysis
126 units, intermediate care facilities, ambulatory health
127 care facilities, ambulatory surgical facilities, home
128 health agencies, rehabilitation facilities and health
129 maintenance organizations; community mental health
130 and mental retardation facilities, whether under public

131 or private ownership, or as a profit or nonprofit
132 organization and whether or not licensed or required to
133 be licensed in whole or in part by the state. For purposes
134 of this definition, "community mental health and mental
135 retardation facility" means a private facility which
136 provides such comprehensive services and continuity of
137 care as emergency, outpatient, partial hospitalization,
138 inpatient and consultation and education for individuals
139 with mental illness, mental retardation or drug or
140 alcohol addiction.

141 (j) "Health care provider" means a person, partner-
142 ship, corporation, facility or institution licensed or
143 certified or authorized by law to provide professional
144 health care service in this state to an individual during
145 that individual's medical care, treatment or
146 confinement.

147 (k) "Health maintenance organization" means a public
148 or private organization, organized under the laws of this
149 state, which:

150 (1) Is a qualified health maintenance organization
151 under Section 1310(d) of the Public Health Service Act,
152 as amended, Title 42 United States Code Section 300e-
153 9(d); or

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

160 (B) Is compensated except for copayments for the
161 provision of the basic health care services listed in
162 subdivision (2), paragraph (A), subdivision (k) of this
163 definition to enrolled participants on a predetermined
164 periodic rate basis without regard to the date the health
165 care services are provided and which is fixed without
166 regard to the frequency, extent or kind of health service
167 actually provided; and

168 (C) Provides physicians' services primarily (i) directly
169 through physicians who are either employees or

170 partners of such organization, or (ii) through arrange-
 171 ments with individual physicians or one or more groups
 172 of physicians organized on a group practice or individ-
 173 ual practice basis.

174 (l) "Health services" means clinically related preven-
 175 tive, diagnostic, treatment or rehabilitative services,
 176 including alcohol, drug abuse and mental health
 177 services.

178 (m) "Home health agency" is an organization primar-
 179 ily engaged in providing directly or through contract
 180 arrangements, professional nursing services, home
 181 health aide services, and other therapeutic and related
 182 services, including, but not limited to, physical, speech
 183 and occupational therapy and nutritional and medical
 184 social services to persons in their place of residence on
 185 a part-time or intermittent basis.

186 (n) "Hospital" means an institution which is primarily
 187 engaged in providing to inpatients, by or under the
 188 supervision of physicians, diagnostic and therapeutic
 189 services for medical diagnosis, treatment, and care of
 190 injured, disabled or sick persons, or rehabilitation
 191 services for the rehabilitation of injured, disabled or sick
 192 persons. This term also includes psychiatric and
 193 tuberculosis hospitals.

194 (o) "Intermediate care facility" means an institution
 195 which provides, on a regular basis, health-related care
 196 and services to individuals who do not require the
 197 degree of care and treatment which a hospital or skilled
 198 nursing facility is designed to provide, but who, because
 199 of their mental or physical condition require health-
 200 related care and services above the level of room and
 201 board.

202 (p) "Long-range plan" means a document formally
 203 adopted by the legally constituted governing body of an
 204 existing health care facility or by a person proposing a
 205 new institutional health service. Each long-range plan
 206 shall consist of the information required by the state
 207 agency in regulations adopted pursuant to section eight
 208 of this article.

209 (q) "Major medical equipment" means a single unit of
210 medical equipment or a single system of components
211 with related functions which is used for the provision
212 of medical and other health services and which costs in
213 excess of three hundred thousand dollars, except that
214 such term does not include medical equipment acquired
215 by or on behalf of a clinical laboratory to provide clinical
216 laboratory services if the clinical laboratory is independ-
217 ent of a physician's office and a hospital and it has been
218 determined under Title XVIII of the Social Security Act
219 to meet the requirements of paragraphs ten and eleven
220 of Section 1861(s) of such act, Title 42 United States
221 Code Sections 1395x (10) and (11). In determining
222 whether medical equipment costs more than three
223 hundred thousand dollars, the cost of studies, surveys,
224 designs, plans, working drawings, specifications, and
225 other activities essential to the acquisition of such
226 equipment shall be included. If the equipment is
227 acquired for less than fair market value, the term "cost"
228 includes the fair market value.

229 (r) "Medically underserved population" means the
230 population of an urban or rural area designated by the
231 state agency as an area with a shortage of personal
232 health services or a population having a shortage of such
233 services, after taking into account unusual local condi-
234 tions which are a barrier to accessibility or availability
235 of such services. Such designation shall be in regulations
236 adopted by the state agency pursuant to section eight of
237 this article, and the population so designated may
238 include the state's medically underserved population
239 designated by the Federal Secretary of Health and
240 Human Services under Section 330(b)(3) of the Public
241 Health Service Act, as amended, Title 42 United States
242 Code Section 254(b)(3).

243 (s) "New institutional health service" means such
244 service as described in section three of this article.

245 (t) "Offer" when used in connection with health
246 services, means that the health care facility or health
247 maintenance organization holds itself out as capable of
248 providing, or as having the means for the provision of,
249 specified health services.

250 (u) "Person" means an individual, trust, estate,
251 partnership, committee, corporation, association and
252 other organizations such as joint-stock companies and
253 insurance companies, a state or a political subdivision
254 or instrumentality thereof or any legal entity recognized
255 by the state.

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

258 (w) "Proposed new institutional health service" means
259 such service as described in section three of this article.

260 (x) "Psychiatric hospital" means an institution which
261 primarily provides to inpatients, by or under the
262 supervision of a physician, specialized services for the
263 diagnosis, treatment and rehabilitation of mentally ill
264 and emotionally disturbed persons.

265 (y) "Rehabilitation facility" means an inpatient facility
266 which is operated for the primary purpose of assisting
267 in the rehabilitation of disabled persons through an
268 integrated program of medical and other services which
269 are provided under competent professional supervision.

270 (z) "Review agency" means an agency of the state,
271 designated by the governor as the agency for the review
272 of state agency decisions.

273 (aa) "Skilled nursing facility" means an institution or
274 a distinct part of an institution which is primarily
275 engaged in providing to inpatients skilled nursing care
276 and related services for patients who require medical or
277 nursing care, or rehabilitation services for the rehabil-
278 itation of injured, disabled or sick persons.

279 (bb) "State agency" means the health care cost review
280 authority created, established, and continued pursuant
281 to article twenty-nine-b of this chapter.

282 (cc) "State health plan" means the document approved
283 by the governor after preparation by the former
284 statewide health coordinating council, or that document
285 as approved by the governor after amendment by the
286 health care planning council or its successor agency.

287 (dd) "Health care planning council" means the body

288 established by section five-a of this article to participate
289 in the preparation and amendment of the state health
290 plan and to advise the state agency.

291 (ee) "Substantial change to the bed capacity" of a
292 health care facility means any change, with which a
293 capital expenditure is associated, that increases or
294 decreases the bed capacity, or relocates beds from one
295 physical facility or site to another, but does not include
296 a change by which a health care facility reassigns
297 existing beds as swing beds between acute care and
298 long-term care categories: *Provided*, That a decrease in
299 bed capacity in response to federal rural health
300 initiatives shall be excluded from this definition.

301 (ff) "Substantial change to the health services" of a
302 health care facility means the addition of a health
303 service which is offered by or on behalf of the health
304 care facility and which was not offered by or on behalf
305 of the facility within the twelve-month period before the
306 month in which the service is first offered, or the
307 termination of a health service which was offered by or
308 on behalf of the facility, but does not include the
309 providing of hospice care, ambulance service, wellness
310 centers or programs, adult day care, or respite care by
311 acute care facilities.

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

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (h), section three
2 of this article, nothing in this article or the rules and
3 regulations adopted pursuant to the provisions of this
4 article may be construed to authorize the licensure,
5 supervision, regulation or control in any manner of the
6 following:

7 (1) Private office practice of any one or more health
8 professionals licensed to practice in this state pursuant

9 to the provisions of chapter thirty of this code: *Provided*,
 10 That such exemption from review of private office
 11 practice shall not be construed to include such practices
 12 where major medical equipment otherwise subject to
 13 review under the provisions of this article is acquired,
 14 offered or developed: *Provided, however*, That such
 15 exemption from review of private office practice shall
 16 not be construed to include the acquisition, offering or
 17 development of one or more health services, including
 18 ambulatory surgical facilities or centers, lithotripsy,
 19 magnetic resonance imaging and radiation therapy by
 20 one or more health professionals. The state agency shall
 21 adopt rules pursuant to section eight of this article
 22 which specify the health services acquired, offered or
 23 developed by health professionals which are subject to
 24 certificate of need review;

25 (2) Dispensaries and first-aid stations located within
 26 business or industrial establishments maintained solely
 27 for the use of employees: *Provided*, That such facility
 28 does not contain inpatient or resident beds for patients
 29 or employees who generally remain in the facility for
 30 more than twenty-four hours;

31 (3) Establishments, such as motels, hotels and board-
 32 inghouses, which provide medical, nursing personnel
 33 and health related services; and

34 (4) The remedial care or treatment of residents or
 35 patients in any home or institution conducted only for
 36 those who rely solely upon treatment by prayer or
 37 spiritual means in accordance with the creed or tenets
 38 of any recognized church or religious denomination.

39 (b) (1) A certificate of need is not required for the
 40 offering of an inpatient institutional health service or
 41 the acquisition of major medical equipment for the
 42 provision of an inpatient institutional health service or
 43 the obligation of a capital expenditure for the provisions
 44 of an inpatient institutional health service, if with
 45 respect to such offering, acquisition or obligation, the
 46 state agency has, upon application under subdivision (2),
 47 subsection (b) of this section, granted an exemption to:

48 (A) A health maintenance organization or a combina-

49 tion of health maintenance organizations if (i) the
50 organization or combination of organizations has, in the
51 service area of the organization or the service areas of
52 the organizations in the combination, an enrollment of
53 at least fifty thousand individuals, (ii) the facility in
54 which the service will be provided is or will be
55 geographically located so that the service will be
56 reasonably accessible to such enrolled individuals, and
57 (iii) at least seventy-five percent of the patients who can
58 reasonably be expected to receive the institutional
59 health service will be individuals enrolled with such
60 organization or organizations in the combination;

61 (B) A health care facility if (i) the facility primarily
62 provides or will provide inpatient health services, (ii) the
63 facility is or will be controlled, directly or indirectly, by
64 a health maintenance organization or a combination of
65 health maintenance organizations which has, in the
66 service area of the organization or service areas of the
67 organizations in the combination, an enrollment of at
68 least fifty thousand individuals, (iii) the facility is or will
69 be geographically located so that the service will be
70 reasonably accessible to such enrolled individuals, and
71 (iv) at least seventy-five percent of the patients who can
72 reasonably be expected to receive the institutional
73 health service will be individuals enrolled with such
74 organization or organizations in the combination; or

75 (C) A health care facility, or portion thereof, if (i) the
76 facility is or will be leased by a health maintenance
77 organization or combination of health maintenance
78 organizations which has, in the service area of the
79 organization or the service areas of the organizations in
80 the combination, an enrollment of at least fifty thousand
81 individuals and on the date the application is submitted
82 under subdivision (2), subsection (b) of this section, at
83 least fifteen years remain in the term of the lease, (ii)
84 the facility is or will be geographically located so that
85 the service will be reasonably accessible to such enrolled
86 individuals, and (iii) at least seventy-five percent of the
87 patients who can reasonably be expected to receive the
88 new institutional health service will be individuals
89 enrolled with such organization.

90 (2) (A) A health maintenance organization, combina-
 91 tion of health maintenance organizations, or other health
 92 care facility is not exempt under subdivision (1),
 93 subsection (b) of this section from obtaining a certificate
 94 of need unless:

95 (i) It has submitted, at such time and in such form
 96 and manner as the state agency shall prescribe, an
 97 application for such exemption to the state agency;

98 (ii) The application contains such information respect-
 99 ing the organization, combination or facility and the
 100 proposed offering, acquisition or obligation as the state
 101 agency may require to determine if the organization or
 102 combination meets the requirements of subdivision (1),
 103 subsection (b) of this section or the facility meets or will
 104 meet such requirements; and

105 (iii) The state agency approves such application.

106 (B) The state agency shall approve an application
 107 submitted under paragraph (A), subdivision (2), subsec-
 108 tion (b) of this section, if it determines that the
 109 applicable requirements of subdivision (1), subsection
 110 (b) of this section, are met or will be met on the date
 111 the proposed activity for which an exemption was
 112 requested will be undertaken.

113 (3) A health care facility, or any part thereof, or
 114 medical equipment with respect to which an exemption
 115 was granted under subdivision (1), subsection (b) of this
 116 section, may not be sold or leased and a controlling
 117 interest in such facility or equipment or in a lease of
 118 such facility or equipment may not be acquired and a
 119 health care facility described in paragraph (C), subdi-
 120 vision (1), subsection (b) of this section, which was
 121 granted an exemption under subdivision (1), subsection
 122 (b) of this section, may not be used by any person other
 123 than the lessee described in paragraph (C), subdivision
 124 (1), subsection (b) of this section, unless:

125 (A) The state agency issues a certificate of need
 126 approving the sale, lease, acquisition or use; or

127 (B) The state agency determines, upon application,
 128 that the entity to which the facility or equipment is

129 proposed to be sold or leased, which intends to acquire
130 the controlling interest in or to use the facility is:

131 (i) A health maintenance organization or a combina-
132 tion of health maintenance organizations which meets
133 the enrollment requirements of subparagraph (i),
134 paragraph (A), subdivision (1), subsection (b) of this
135 section, and with respect to such facility or equipment,
136 the entity meets the accessibility and patient enrollment
137 requirements of subparagraph (ii) and (iii), paragraph
138 (A), subdivision (1), subsection (b) of this section; or

139 (ii) A health care facility which meets the inpatient,
140 enrollment and accessibility requirements of subpara-
141 graph (i), (ii) and (iii), paragraph (B), subdivision (1),
142 subsection (b) of this section and with respect to its
143 patients meets the enrollment requirements of subpara-
144 graph (iv), paragraph (B), subdivision (1), subsection (b)
145 of this section.

146 (4) In the case of a health maintenance organization
147 or an ambulatory care facility or health care facility
148 which ambulatory or health care facility is controlled,
149 directly or indirectly, by a health maintenance organ-
150 ization or a combination of health maintenance organ-
151 izations, the certificate of need requirements apply only
152 to the offering of inpatient institutional health services,
153 the acquisition of major medical equipment, and the
154 obligation of capital expenditures for the offering of
155 inpatient institutional health services and then only to
156 the extent that such offering, acquisition or obligation
157 is not exempt under subdivision (1), subsection (b) of this
158 section.

159 (5) The state agency shall establish the period within
160 which approval or disapproval by the state agency of
161 applications for exemptions under subdivision (1),
162 subsection (b) of this section, shall be made.

163 (c) (1) A health care facility is not required to obtain
164 a certificate of need for the acquisition of major medical
165 equipment to be used solely for research, the addition
166 of health services to be offered solely for research, or the
167 obligation of a capital expenditure to be made solely for
168 research if the health care facility provides the notice

169 required in subdivision (2), subsection (c) of this section,
 170 and the state agency does not find, within sixty days
 171 after it receives such notice, that the acquisition,
 172 offering or obligation will, or will have the effect to:

173 (A) Affect the charges of the facility for the provision
 174 of medical or other patient care services other than the
 175 services which are included in the research;

176 (B) Result in a substantial change to the bed capacity
 177 of the facility; or

178 (C) Result in a substantial change to the health
 179 services of the facility.

180 (2) Before a health care facility acquires major
 181 medical equipment to be used solely for research, offers
 182 a health service solely for research, or obligates a capital
 183 expenditure solely for research, such health care facility
 184 shall notify in writing the state agency of such facility's
 185 intent and the use to be made of such medical equip-
 186 ment, health service or capital expenditure.

187 (3) If major medical equipment is acquired, a health
 188 service is offered, or a capital expenditure is obligated
 189 and a certificate of need is not required for such
 190 acquisition, offering or obligation as provided in
 191 subdivision (1), subsection (c) of this section, such
 192 equipment or service or equipment or facilities acquired
 193 through the obligation of such capital expenditure may
 194 not be used in such a manner as to have the effect or
 195 to make a change described in paragraphs (A), (B) and
 196 (C), subdivision (1), subsection (c) of this section unless
 197 the state agency issues a certificate of need approving
 198 such use.

199 (4) For purposes of this subsection, the term "solely
 200 for research" includes patient care provided on an
 201 occasional and irregular basis and not as part of a
 202 research program.

203 (d) (1) The state agency may adopt regulations
 204 pursuant to section eight of this article to specify the
 205 circumstances under which a certificate of need may not
 206 be required for the obligation of a capital expenditure
 207 to acquire, either by purchase or under lease or

208 comparable arrangement, an existing health care
209 facility: *Provided*, That a certificate of need shall be
210 required for the obligation of a capital expenditure to
211 acquire, either by purchase or under lease or compar-
212 able arrangement, an existing health care facility if:

213 (A) The notice required by subdivision (2), subsection
214 (d) of this section is not filed in accordance with that
215 subdivision with respect to such acquisition; or (B) the
216 state agency finds, within thirty days after the date it
217 receives a notice in accordance with subdivision (2),
218 subsection (d) of this section, with respect to such
219 acquisition, that the services or bed capacity of the
220 facility will be changed by reason of said acquisition.

221 (2) Before any person enters into a contractual
222 arrangement to acquire an existing health care facility,
223 such person shall notify the state agency of his or her
224 intent to acquire the facility and of the services to be
225 offered in the facility and its bed capacity. Such notice
226 shall be made in writing and shall be made at least
227 thirty days before contractual arrangements are entered
228 into to acquire the facility with respect to which the
229 notice is given. The notice shall contain all information
230 the state agency requires in accordance with subsections
231 (e) and (s), section seven of this article.

232 (e) The state agency shall adopt regulations, pursuant
233 to section eight of this article, wherein criteria are
234 established to exempt from review the addition of
235 certain health services, not associated with a capital
236 expenditure, that are projected to entail annual operat-
237 ing costs of less than the expenditure minimum for
238 annual operating costs. For purposes of this subsection,
239 "expenditure minimum for annual operating costs"
240 means three hundred thousand dollars for the first
241 twelve months following the effective date of this section
242 and for each twelve-month period thereafter, the state
243 agency may, by regulations adopted pursuant to section
244 eight of this article, adjust the expenditure minimum
245 for annual operating costs to reflect the impact of
246 inflation.

247 (f) The state agency shall adopt rules within ninety

248 days of the effective date of the amendment of this
 249 section in the year one thousand nine hundred ninety
 250 pursuant to section eight of this article to specify the
 251 circumstances under which and the procedures by
 252 which a certificate of need may not be required for
 253 shared services between two or more acute care
 254 facilities providing services made available through
 255 existing technology that can reasonably be mobile. The
 256 state agency shall specify the types of items in the
 257 regulations and under what circumstances mobile MRI
 258 and mobile lithotripsy may be so exempted from review.
 259 In no case, however, will mobile cardiac catheterization
 260 be exempted from certificate of need review. In
 261 addition, if the shared services mobile unit proves less
 262 cost effective than a fixed unit, the acute care facility
 263 will not be exempted from certificate of need review.

264 On a yearly basis, the state agency shall review
 265 existing technologies to determine if other shared
 266 services should be included under this exemption.

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

1 (a) The state agency is hereby empowered to admin-
 2 ister the certificate of need program as provided by this
 3 article.

4 (b) The state agency shall cooperate with the health
 5 care planning council or its successor agency in
 6 developing rules and regulations for the certificate of
 7 need program to the extent appropriate for the achieve-
 8 ment of efficiency in their reviews and consistency in
 9 criteria for such reviews.

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

14 (d) For health services for which competition appro-
 15 priately allocates supply consistent with the state health
 16 plan, the state agency shall, in the performance of its
 17 functions under this article, give priority, where
 18 appropriate to advance the purposes of quality assur-

19 ance, cost effectiveness and access, to actions which
20 would strengthen the effect of competition on the supply
21 of such services.

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

30 (f) Notwithstanding the provisions of section seven of
31 this article, the state agency may charge a fee for the
32 filing of any application, the filing of any notice in lieu
33 of an application, the filing of any exemption determi-
34 nation request, or the filing of any request for a
35 declaratory ruling. The fees charged may vary accord-
36 ing to the type of matter involved, the type of health
37 service or facility involved, or the amount of capital
38 expenditure involved. The state agency shall implement
39 this subsection by filing procedural rules pursuant to
40 chapter twenty-nine-a of this code. The fees charged
41 shall be deposited into a special fund known as the
42 certificate of need program fund to be expended for the
43 purposes of this article.

44 (g) No hospital, nursing home or other health care
45 facility shall add any intermediate care or skilled
46 nursing beds to its current licensed bed complement.
47 This prohibition also applies to the conversion of acute
48 care or other types of beds to intermediate care or
49 skilled nursing beds: *Provided*, That hospitals eligible
50 under the provisions of section four-a and subsection (i),
51 section five of this article may convert acute care beds
52 to skilled nursing beds in accordance with the provisions
53 of these sections, upon approval by the state agency.
54 Furthermore, no certificate of need shall be granted for
55 the construction or addition of any intermediate care or
56 skilled nursing beds except in the case of facilities
57 designed to replace existing beds in unsafe existing
58 facilities. A health care facility in receipt of a certificate
59 of need for the construction or addition of intermediate

60 care or skilled nursing beds which was approved prior
61 to the effective date of this section must incur an
62 obligation for a capital expenditure within twelve
63 months of the date of issuance of the certificate of need.
64 No extensions shall be granted beyond the twelve month
65 period.

66 (h) No additional intermediate care facility for the
67 mentally retarded (ICF/MR) beds shall be granted a
68 certificate of need, except that prohibition does not
69 apply to ICF/MR beds approved under the Kanawha
70 County circuit court order of the third day of August,
71 one thousand nine hundred eighty-nine, civil action
72 number MISC-81-585 issued in the case of E. H. v.
73 Matin, 168 West Virginia 248, 284 S.E.2d 232 (1981) and
74 does not apply to existing ICF/MR beds to be replaced,
75 sold, leased, transferred, or operated under contract or
76 other means.

77 (i) Notwithstanding the provisions of subsection (g),
78 section five of this article and, further notwithstanding
79 the provisions of subsection (d), section three of this
80 article, an existing acute care hospital may apply to the
81 health care cost review authority for a certificate of need
82 to convert acute care beds to skilled nursing beds:
83 *Provided*, That the proposed skilled nursing beds are
84 medicare certified only: *Provided, however*, That any
85 hospital which converts acute care beds to medicare
86 certified only skilled nursing beds is prohibited from
87 billing for any medicaid reimbursement for any beds so
88 converted. In converting beds, the hospital must convert
89 a minimum of one acute care bed into one medicare
90 certified only skilled nursing bed. The health care cost
91 review authority may require a hospital to convert up
92 to and including three acute care beds for each medicare
93 certified only skilled nursing bed. The health care cost
94 review authority shall adopt rules to implement this
95 subsection which require that:

96 (1) All acute care beds converted shall be permanently
97 deleted from the hospital's acute care bed complement
98 and the hospital may not thereafter add, by conversion
99 or otherwise, acute care beds to its bed complement
100 without satisfying the requirements of subsection (d),

101 section three of this article for which purposes such an
102 addition, whether by conversion or otherwise, shall be
103 considered a substantial change to the bed capacity of
104 the hospital notwithstanding the definition of that term
105 found in subsection (ee), section two of this article.

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

111 (3) The hospital must demonstrate a need for the
112 project.

113 (4) The hospital must use existing space for the
114 medicare certified only skilled nursing beds. Under no
115 circumstances shall the hospital construct, lease or
116 acquire additional space for purposes of this section.

117 (5) The hospital must notify the acute care patient,
118 prior to discharge, of facilities with skilled nursing beds
119 which are located in or near the patient's county of
120 residence.

121 Nothing in this subsection shall negatively affect the
122 rights of inspection and certification which are other-
123 wise required by federal law or regulations or by this
124 code of duly adopted regulations of an authorized state
125 entity.

126 (j) Notwithstanding the provisions of subsection (g),
127 section five, of this article, a retirement life care center
128 with no skilled nursing beds may apply to the health
129 care cost review authority for a certificate of need for
130 up to sixty skilled nursing beds provided the proposed
131 skilled beds are medicare certified only. On a statewide
132 basis, a maximum of one hundred eighty skilled beds
133 which are medicare certified only may be developed
134 pursuant to this subsection. The state health plan shall
135 not be applicable to projects submitted under this
136 subsection. The health care cost review authority shall
137 adopt rules to implement this subsection which shall
138 include:

139 (1) A requirement that the one hundred eighty beds

140 are to be distributed on a statewide basis;

141 (2) There shall be a minimum of twenty beds and a
142 maximum of sixty beds in each approved unit;

143 (3) The unit developed by the retirement life care
144 center shall meet all federal and state licensing
145 certification and operational requirements applicable to
146 nursing homes;

147 (4) The retirement center must demonstrate a need for
148 the project;

149 (5) The retirement center must offer personal care,
150 home health services and other lower levels of care to
151 its residents; and

152 (6) The retirement center must demonstrate both
153 short and long-term financial feasibility.

154 Nothing in this subsection shall negatively affect the
155 rights of inspection and certification which are other-
156 wise required by federal law or regulations or by this
157 code of duly adopted regulations of an authorized state
158 entity.

159 (k) The provisions of this article are severable and if
160 any provision, section or part thereby shall be held
161 invalid, unconstitutional or inapplicable to any person or
162 circumstance, such invalidity, unconstitutionality or
163 inapplicability shall not affect or impair any other
164 remaining provisions contained herein.

**§16-2D-11. Nontransference, time period compliance and
withdrawal of certificate of need.**

1 (A) A certificate of need is nontransferable and shall
2 be valid for a maximum of one year from the date of
3 issuance. A transfer includes the sale, lease, transfer of
4 stock or partnership shares, or other comparable
5 arrangement which has the effect of transferring the
6 control of the owner of the certificate of need. Upon the
7 expiration of the certificate or during the certification
8 period the person proposing the new institutional health
9 service shall provide the state agency such information
10 on the development of the project as the state agency
11 may request. The state agency shall periodically monitor

12 capital expenditures obligated under certificates,
13 determine whether sufficient progress is being made in
14 meeting the timetable specified in the approved appli-
15 cation for the certificate and whether there has been
16 compliance with the application and any conditions of
17 certification. The state agency shall take into account
18 recommendations made by the health systems agency in
19 making its determination. The certificate of need may
20 be extended by the state agency for additional periods
21 of time as are reasonably necessary to expeditiously
22 complete the project. A certificate of need may no longer
23 be in effect, and may no longer be required, after
24 written notice of substantial compliance with the
25 approved application and any conditions of certification
26 is issued to the applicant, after the activity is under-
27 taken for which the certificate of need was issued, and
28 after the state agency is provided written notice of such
29 undertaking. The person proposing a new institutional
30 health service may not be issued a license therefor until
31 the state agency has issued a written notice of substan-
32 tial compliance with the approved application and any
33 conditions of certification, nor may a new institutional
34 health service be used until such person has received
35 such notice. A new institutional health service may not
36 be found to be in substantial compliance with the
37 approved application and any conditions of certification
38 if there is a substantial change, as defined in regulations
39 adopted pursuant to subsection (i), section three of this
40 article, in the approved new institutional health service
41 for which change a certificate of need has not been
42 issued.

43 (B)(1) The certificate of need may be withdrawn by
44 the state agency for:

45 (a) Insufficient progress in meeting the timetable
46 specified in the approved application for the certificate
47 and for not making a good faith effort to meet it in
48 developing the project; or

49 (b) Noncompliance with any conditions of certifica-
50 tion; or

51 (c) A substantial change, as defined in regulations

52 adopted pursuant to subsection (i), section three of this
53 article, in an approved new institutional health service
54 for which change a certificate of need has not been
55 issued; or

56 (d) Material misrepresentation by an applicant upon
57 which the state agency relied in making its decision; or

58 (e) Other reasons that may be established by the state
59 agency in regulations adopted pursuant to section eight
60 of this article.

61 (2) Any decision of the state agency to withdraw a
62 certificate of need shall be based solely on:

63 (A) The provisions of this article and on regulations
64 adopted in accordance with section eight of this article;
65 and

66 (B) The record established in administrative proceed-
67 ings held with respect to the state agency's proposal to
68 withdraw the certificate.

69 (3) In the case of a proposed withdrawal of a certif-
70 icate of need:

71 (A) After commencement of a hearing on the state
72 agency's proposal to withdraw a certificate of need and
73 before a decision is made on withdrawal, there may be
74 no ex parte contacts between (i) the holder of the
75 certificate of need, any person acting on behalf of the
76 holder, or any person in favor of the withdrawal and (ii)
77 any person in the state agency who exercises responsi-
78 bility respecting withdrawal of the certificate;

79 (B) The state agency shall follow the notification of
80 review provisions of subsections (g) and (h), the public
81 hearing provisions of subsection (n), the notification of
82 the status of review and findings provisions of subsec-
83 tion (g), the annual report provisions of subsection (r),
84 and the reconsideration provisions of subsection (t), all
85 of section seven of this article, and the conditional
86 decision provisions of subsection (d), the notification of
87 decision and findings provisions of subsection (h), and
88 the statement to the applicable health systems agency
89 provisions of subsection (k), all of section nine of this

90 article; and

91 (C) Appeals of withdrawals of certificates of need shall
92 be made pursuant to section ten of this article.

93 (4) A new institutional health service may not be
94 acquired, offered, or developed within this state if a
95 certificate of need authorizing that new institutional
96 health service has been withdrawn by the state agency
97 and the acquisition, offering, or development of the new
98 institutional health service is subject to review under
99 this article.

**ARTICLE 5F. HEALTH CARE FACILITY FINANCIAL DIS-
CLOSURE.**

§16-5F-1. Legislative findings; purpose; intent of article.

1 (1) The West Virginia Legislature finds that the rising
2 cost of health care and services provided by health care
3 facilities are matters of vital concern to the people of
4 this state and have a direct relationship to the ability
5 of the people to obtain necessary health care.

6 (2) The citizens of this state have an inherent right to
7 receive and have available to them health care programs
8 and services which are capable of meeting individual
9 needs.

10 (3) Such services should be available to all citizens in
11 all regions of this state.

12 (4) The furnishing of health care services is an
13 essential public service.

14 (5) The public has a right to know the financial
15 position of facilities and related organizations.

16 It is the purpose of this article to provide that the
17 facilities and organizations covered herein shall make a
18 public disclosure of their financial position and to bring
19 about a review as to the reasonableness of the costs of
20 health care services.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) "Annual report" means an annual financial report

3 for the covered facility's or related organization's fiscal
4 year prepared by an accountant or the covered facility's
5 or related organization's auditor.

6 (2) "Board" means the West Virginia Health Care Cost
7 Review Authority.

8 (3) "Covered facility" means any hospital, skilled
9 nursing facility, kidney disease treatment center,
10 including a free-standing hemodialysis unit; interme-
11 diate care facility; ambulatory health care facility;
12 ambulatory surgical facility; home health agency;
13 rehabilitation facility; health maintenance organization;
14 or community mental health or mental retardation
15 facility, whether under public or private ownership or
16 as a profit or nonprofit organization and whether or not
17 licensed or required to be licensed in whole or in part
18 by the state.

19 (4) "Related organization" means an organization,
20 whether publicly owned, nonprofit, tax-exempt, or for-
21 profit, related to a covered facility through common
22 membership, governing bodies, trustees, officers, stock
23 ownership, family members, partners or limited
24 partners including but not limited to subsidiaries,
25 foundations, related corporations and joint ventures. For
26 the purposes of this subsection family members shall
27 mean brothers and sisters whether by the whole or half
28 blood, spouse, ancestors and lineal descendants.

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

31 (6) "Records" includes accounts, books, charts, con-
32 tracts, documents, files, maps, papers, profiles, reports,
33 annual and otherwise, schedules and any other fiscal
34 data, however recorded or stored.

**§16-5F-3. General powers and duties of the board re-
garding reporting and review.**

1 (a) In addition to the powers granted to the board
2 elsewhere in this article, the board shall have the powers
3 as indicated by this section and it shall be its duty to:

4 (1) Promulgate rules and regulations in accordance

5 with the provisions of article three, chapter twenty-nine-
6 a of this code, to implement and make effective the
7 powers, duties and responsibilities contained in the
8 provisions of this article.

9 (2) Require the filing of fiscal information by covered
10 facilities and related organizations relating to any
11 matter affecting the cost of health care services in this
12 state.

13 (3) Exercise, subject to the limitations and restrictions
14 herein imposed, all other powers which are reasonably
15 necessary or essential to carry out the expressed
16 purposes of this article.

17 (4) Require the filing of copies of all tax returns
18 required by federal and state law to be filed by covered
19 facilities and related organization.

20 (b) The board shall also investigate and recommend
21 to the Legislature whether other health care providers
22 should be made subject to the provisions of this article.

23 (c) The board shall, not later than December thirty-
24 first of each year, prepare and transmit to the governor
25 and to the clerks of both houses of the Legislature a
26 report containing the material and data as required by
27 section four of this article, based upon the most recent
28 data available.

29 The board shall, no later than the first day of July,
30 one thousand nine hundred ninety-two, prepare and
31 transmit to the governor and to the clerks of both houses
32 of the Legislature a special report containing the
33 material and data collected on related organizations.
34 The report shall further explain the effect of the
35 financial activities of the related organizations as
36 represented by the collected data and its relationship to
37 the rate setting powers of the board specified in section
38 nineteen, article twenty-nine-b of this chapter.

**§16-5F-4. Reports required to be published and filed;
form of reports; right of inspection.**

1 (a) Every covered facility and related organization
2 defined in this article, within one hundred twenty days

3 after the end of each of their fiscal years, unless an
4 extension be granted by the board for good cause shown,
5 shall be required to file with the board and publish, as
6 a Class I legal advertisement, pursuant to section two,
7 article three, chapter fifty-nine of the code of West
8 Virginia, in a qualified newspaper published within the
9 county within which such covered facility or related
10 organization is located, an annual report prepared by
11 the covered facility's or related organization's auditor or
12 an independent accountant.

13 Such report shall contain a complete statement of the
14 following:

15 (1) Assets and liabilities;

16 (2) Income and expenses;

17 (3) Profit or loss for the period reported;

18 (4) A statement of ownership for persons owning more
19 than five percent of the capital stock outstanding and
20 the dividends paid thereon, if any, and to whom paid for
21 the period reported unless the covered facility or related
22 organization be duly registered on the New York stock
23 exchange, American stock exchange, any regional stock
24 exchange, or its stock traded actively over the counter.
25 Such statement shall further contain a disclosure of
26 ownership by any parent company or subsidiary, if
27 applicable.

28 Such annual report shall also include a prominent
29 notice that the details concerning the contents of the
30 advertisement, together with the other reports, state-
31 ments and schedules required to be filed with the board
32 by the provisions of this section, shall be available for
33 public inspection and copying at the board's office.

34 (b) Every covered facility and related organization
35 shall also file with the board the following statements,
36 schedules or reports in such form and at such intervals
37 as may be specified by the board, but at least annually:

38 (1) A statement of services available and services
39 rendered;

40 (2) A statement of the total financial needs of such

41 covered facility or related organization and the resour-
42 ces available or expected to become available to meet
43 such needs;

44 (3) A complete schedule of such covered facility's or
45 related organization's then current rates with costs
46 allocated to each category of costs, in accordance with
47 the rules and regulations as promulgated by the board
48 pursuant to section three hereof;

49 (4) A copy of such reports made or filed with the
50 federal health care financing administration, or its
51 successor, as the board may deem necessary or useful
52 to accomplish the purposes of this article;

53 (5) A statement of all charges, fees or salaries for
54 goods or services rendered to the covered facility or
55 related organization for the period reported which shall
56 exceed in total the sum of fifty-five thousand dollars and
57 a statement of all charges, fees or other sums collected
58 by the covered facility or related organization for or on
59 the account of any person, firm, partnership, corpora-
60 tion or other entity, however structured, which shall
61 exceed in total the sum of fifty-five thousand dollars
62 during the period reported;

63 (6) Such other reports of the costs incurred in
64 rendering services as the board may prescribe. The
65 board may require the certification of specified financial
66 reports by the covered facility's or related organization's
67 auditor or independent accountant; and

68 (7) A copy of all tax returns required to be filed by
69 federal and state law.

70 (c) Notwithstanding any provision to the contrary
71 herein, any data or material that is furnished to the
72 board pursuant to the provisions of subdivision four,
73 subsection (b) of this section need not be duplicated by
74 any other requirements of this section requiring the
75 filing of data and material.

76 (d) No report, statement, schedule or other filing
77 required or permitted to be filed hereunder shall
78 contain any medical or individual information person-
79 ally identifiable to a patient or a consumer of health

80 services, whether directly or indirectly. All such reports,
 81 statements and schedules filed with the board under this
 82 section shall be open to public inspection and shall be
 83 available for examination during regular hours. Copies
 84 of such reports shall be made available to the public
 85 upon request and the board may establish fees reason-
 86 ably calculated to reimburse the board for its actual
 87 costs in making copies of such reports: *Provided*, That
 88 all tax returns filed pursuant to this article shall be
 89 confidential and it shall be unlawful for the board or any
 90 member of its staff to divulge or make known in any
 91 manner the tax return, or any part thereof, of any
 92 covered facility or related organization.

93 (e) Whenever further fiscal information is deemed
 94 necessary to verify the accuracy of any information set
 95 forth in any statement, schedule or report filed by a
 96 covered facility or related organization under the
 97 provisions of this article, the board shall have the
 98 authority to require the production of any records
 99 necessary to verify such information.

100 (f) From time to time, the board shall engage in or
 101 carry out analyses and studies relating to health care
 102 costs, the financial status of any covered facility or
 103 related organization or any other appropriate related
 104 matters, and make determinations of whether, in its
 105 opinion, the rates charged by a covered facility are
 106 economically justified.

§16-5F-5. Injunctions.

1 Whenever it appears that any covered facility or
 2 related organization, required to file or publish such
 3 reports, as provided in this article, has failed to file or
 4 publish such reports, the attorney general, upon the
 5 request of the board, may apply in the name of the state
 6 to, and the circuit court of the county in which such
 7 covered facility or related organization is located shall
 8 have jurisdiction for the granting of a mandatory
 9 injunction to compel compliance with the provisions of
 10 this article.

§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

1 Every covered facility and related organization failing

2 to make and transmit to the board any of the reports
3 required by law or failing to publish or distribute the
4 reports as so required, shall forthwith be notified by the
5 board and, if such failure continues for ten days after
6 receipt of said notice, such delinquent facility or
7 organization shall be subject to a penalty of one
8 thousand dollars for each day thereafter that such
9 failure continues, such penalty to be recovered by the
10 board through the attorney general in a civil action and
11 paid into the state treasury to the account of the general
12 fund. Review of any final judgment or order of the
13 circuit court shall be by appeal to the West Virginia
14 supreme court of appeals.

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

§16-29B-3. Definitions.

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

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

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

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

19 (d) "Health care provider" means a person, partner-
20 ship, corporation, facility or institution licensed,
21 certified or authorized by law to provide professional
22 health care service in this state to an individual during
23 this individual's medical care, treatment or

24 confinement;

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

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

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

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

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

55 (j) "Third-party payor" means any natural person,
 56 person, corporation or government entity responsible for
 57 payment for patient care services rendered by hospitals;
 58 and

59 (k) "Related organization" means an organization,
 60 whether publicly owned, nonprofit, tax-exempt or for-
 61 profit, related to a hospital through common member-
 62 ship, governing bodies, trustees, officers, stock owner-

63 ship, family members, partners or limited partners
64 including but not limited to subsidiaries, foundations,
65 related corporations and joint ventures. For the pur-
66 poses of this subsection family members shall mean
67 brothers and sisters, whether by the whole or half blood,
68 spouse, ancestors and lineal descendents.

**§16-29B-5. West Virginia health care cost review author-
ity continued; composition of the board;
qualifications; terms; oath; compensation
and expenses of members; vacancies; ap-
pointment of chairman, and meetings of
the board.**

1 The "West Virginia Health Care Cost Review Author-
2 ity," heretofore created as an autonomous division of the
3 department of health, hereinafter referred to as the
4 board, is hereby continued as an autonomous division of
5 the department of health and human resources.

6 (a) The board shall consist of three members, ap-
7 pointed by the governor, with the advice and consent of
8 the senate. The board members shall be citizens and
9 residents of this state. No more than two of said board
10 members may be members of the same political party.
11 One board member shall have a background in health
12 care finance or economics, one board member shall have
13 previous employment experience in human services,
14 business administration or substantially related fields
15 and one board member shall be a consumer of health
16 services with a demonstrated interest in health care
17 issues.

18 (b) Each board member shall, before entering upon
19 the duties of his office, take and subscribe to the oath
20 provided by section five, article IV of the constitution
21 of the state of West Virginia, which oath shall be filed
22 in the office of the secretary of state. The governor shall
23 designate one of the board members to serve as
24 chairman at the governor's will and pleasure. The
25 chairman shall be the chief administrative officer of the
26 board. The governor may remove any board member
27 only for incompetency, neglect of duty, gross immoral-
28 ity, malfeasance in office or violation of the provisions

29 of this article. The governor shall appoint three board
30 members, one for a term of two years, one for a term
31 of four years and one for a term of six years, with all
32 the terms beginning on the effective date of this article.
33 All future appointments shall be for terms of six years,
34 except that an appointment to fill a vacancy shall be for
35 the unexpired term only.

36 (c) No person while in the employ of, or holding any
37 official relation to, any hospital subject to the provisions
38 of this article, or who has any pecuniary interest therein,
39 may serve as a member of the board or as an employee
40 thereof. Nor may any such board member be a candi-
41 date for or hold public office or be a member of any
42 political committee while acting as such board member;
43 nor may any board member or employee of said board
44 receive anything of value, either directly or indirectly
45 from any hospital subject to the provisions of this article.
46 Should any of the board members become a candidate
47 for any public office or for membership on any political
48 committee, the governor shall remove said board
49 member from the board and shall appoint a new board
50 member to fill the vacancy created. No board member
51 may accept employment with any hospital subject to the
52 jurisdiction of the board within two years after said
53 board member ceases to be a board member.

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

59 (e) In order to adequately compensate the chairman
60 of the board and other members of the board for
61 additional duties newly imposed by law and not
62 heretofore required by law the annual salary of the
63 chairman of the board shall be fifty-five thousand
64 dollars and the annual salary of the other board
65 members shall be thirty-six thousand five hundred
66 dollars: *Provided*, That effective the first day of July,
67 one thousand nine hundred ninety-one, the annual salary
68 of other board members shall be fifty-one thousand two
69 hundred dollars.

§16-29B-6. Advisory council.

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

3 (a) The council is composed of thirteen members. Five
4 of the members shall be defined as government
5 members, those members being the secretary of the
6 department of health and human resources, the workers'
7 compensation commissioner or the successor to his or
8 her duties and responsibilities, the director of the public
9 employees insurance agency, the commissioner of
10 insurance, and the director of the division of vocational
11 rehabilitation, or their respective designated represen-
12 tatives. Eight members shall be defined as nongovern-
13 ment members who shall be appointed by the governor,
14 with the advice and consent of the senate, and shall be
15 selected as follows: one representative of the health
16 insurance industry, one administrator of a small
17 hospital, one administrator of a large hospital, one
18 physician, and four members who are consumers of
19 health services. When selecting the members who are
20 consumers of health services, in addition to other
21 factors, consideration shall be given to constituencies of
22 organized labor, major purchasers of health insurance,
23 and senior citizens.

24 (b) No more than five of the nongovernment members
25 of the council may belong to the same political party,
26 and at least two but no more than four may reside in
27 the same congressional district. Selection of all nongo-
28 vernment members of the council shall be made with
29 due diligence to ensure membership thereon by persons
30 representing all cultural, demographic, and ethnic
31 segments of the population of the state. Nongovernment
32 members of the council shall be appointed for terms of
33 three years each, except that of the members first
34 appointed, three members shall be appointed for terms
35 of one year, three members for terms of two years, and
36 two members for terms of three years. Members shall
37 be eligible for reappointment for a second three-year
38 term. Vacancies shall be filled in the same manner as
39 the original appointments for the duration of the
40 unexpired term. The board shall appoint a chairman of

41 the council who shall serve at the will and pleasure of
42 the board.

43 (c) The presence of a majority of the members of the
44 council shall constitute a quorum for the transaction of
45 business. The council shall elect from among its
46 members a vice chairman and such other officers as are
47 necessary. The council shall meet no less than four times
48 during the calendar year, and additional meetings shall
49 be held upon a call of the chairman or a majority of the
50 members, or the board.

51 (d) The council shall serve as an advisory body to the
52 board on the development of health care cost contain-
53 ment policy, strategies and methods, and shall review
54 and from time to time make recommendations in regard
55 thereto and on state-of-the-art concepts in health care
56 policy at the national, state and local level and their
57 application to the deliberations of the board. The council
58 shall serve as a conduit for the collection and transmis-
59 sion of information to the board regarding the conse-
60 quences of board policy upon health care cost contain-
61 ment and upon hospitals that are subject to the
62 provisions of this article. The council shall serve as a
63 means of coordinating health care cost containment
64 policy among departments of state government. The
65 council shall review decisions of the board and make
66 public comments thereon as it sees fit.

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

77 (f) The board staff shall further gather information on
78 state-of-the-art advances in medical technology, the cost
79 effectiveness of such advances and their impact on
80 health care advances in hospital and health care

81 management practices, and any other state-of-the-art
82 concepts relating to health care cost containment, health
83 care improvement or other issues the council finds
84 relevant and directs staff to investigate. The board staff
85 shall prepare and keep a register of such information
86 and update it on an annual basis.

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

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

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

§16-29B-7. Staff.

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

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

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

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

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

23 (d) The board shall identify which members of the
24 staff of the health care cost review authority shall be
25 exempted from the salary schedules or pay plan adopted
26 by the state personnel board, and further identify such
27 staff members by job classification or designation,
28 together with the salary or salary ranges for each such
29 job classification or designation. This information shall
30 be filed by the board with the director of the division
31 of personnel no later than the first day of July, one
32 thousand nine hundred ninety-one, and thereafter as
33 necessary.

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

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

3 (1) Adopt, amend and repeal necessary, appropriate
4 and lawful policy guidelines, rules and regulations in
5 accordance with article three, chapter twenty-nine-a of
6 this code: *Provided*, That subsequent amendments and
7 modifications to any rule promulgated pursuant to this
8 article and not exempt from the provisions of article
9 three, chapter twenty-nine-a of this code may be
10 implemented by emergency rule;

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

18 (3) Apply for, receive and accept gifts, payments and
19 other funds and advances from the united states, the
20 state or any other governmental body, agency or

21 agencies or from any other private or public corporation
22 or person (with the exception of hospitals subject to the
23 provisions of this article, or associations representing
24 them, doing business in the state of west virginia, except
25 in accordance with subsection (c) of this section), and
26 enter into agreements with respect thereto, including
27 the undertaking of studies, plans, demonstrations or
28 projects. Any such gifts or payments that may be
29 received or any such agreements that may be entered
30 into shall be used or formulated only so as to pursue
31 legitimate, lawful purposes of the board, and shall in no
32 respect inure to the private benefit of a board member,
33 staff member, donor or contracting party;

34 (4) Lease, rent, acquire, purchase, own, hold, con-
35 struct, equip, maintain, operate, sell, encumber and
36 assign rights or dispose of any property, real or
37 personal, consistent with the objectives of the board as
38 set forth in this article: *Provided*, That such acquisition
39 or purchase of real property or construction of facilities
40 shall be consistent with planning by the state building
41 commissioner and subject to the approval of the
42 Legislature;

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

46 (6) Exercise, subject to limitations or restrictions
47 herein imposed, all other powers which are reasonably
48 necessary or essential to effect the express objectives
49 and purposes of this article.

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

54 (c) Each hospital subject to the provisions of this
55 article shall be assessed by the board on a pro rata basis
56 using the gross revenues of each hospital as reported
57 under the authority of section eighteen of this article as
58 the measure of the hospital's obligation. The amount of
59 such fee shall be determined by the board except that
60 in no case shall the hospital's obligation exceed one tenth

61 of one percent of its gross revenue. Such fees shall be
 62 paid on or before the first day of July in each year and
 63 shall be paid into the state treasury and kept as a special
 64 revolving fund designated "health care cost review
 65 fund," with the moneys in such fund being expendable
 66 after appropriation by the Legislature for purposes
 67 consistent with this article. Any balance remaining in
 68 said fund at the end of any fiscal year shall not revert
 69 to the treasury, but shall remain in said fund and such
 70 moneys shall be expendable after appropriation by the
 71 Legislature in ensuing fiscal years.

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

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

92 (f) The board is empowered to withhold rate approvals
 93 if any such fees remain unpaid.

§16-29B-18. Hospital and related organizations' annual financial reporting.

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

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

8 (2) A statement of income and expenses for the
9 preceding fiscal year;

10 (3) A statement of services rendered and services
11 available; and

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

13 Where more than one licensed hospital is operated by
14 the reporting organization, the information required by
15 this section shall be reported for each hospital
16 separately.

17 (b) It shall be the duty of every related organization
18 to file with the board within thirty days from the
19 effective date of this section, the following financial
20 statements or reports for each of its three prior fiscal
21 years:

22 (1) A balance sheet detailing the assets, liabilities and
23 net worth of the related organization;

24 (2) A statement of income and expenses;

25 (3) A statement of cash flows; and

26 (4) Such other information as the board may
27 prescribe.

28 After the initial filing of the financial information
29 required by this subsection, every related organization
30 shall thereafter file annual financial reports with the
31 board in a form specified by the board.

32 (c) The annual financial statements filed pursuant to
33 this section shall be prepared in accordance with the
34 system of accounting and reporting adopted under
35 section seventeen of this article. The board may require
36 attestations from responsible officials of the hospitals or
37 related organizations that such reports have to the best
38 of their knowledge been prepared truthfully and in
39 accordance with the prescribed system of accounting
40 and reporting.

41 (d) All reports filed under any provisions of this

42 article, except personal medical information personally
43 identifiable to a purchaser and any tax return, shall be
44 open to public inspection and shall be available for
45 examination at the offices of the board during regular
46 business hours.

47 (e) Whenever a further investigation is deemed
48 necessary or desirable to verify the accuracy of any
49 information set forth in any statement, schedule or
50 report filed by a hospital or related organization under
51 the provisions of this section, the board may require a
52 full or partial audit of the records of the hospital or
53 related organization.

§16-29B-19a. Additional legislative findings and directives.

1 The Legislature hereby finds and declares that a cost-
2 based rate review system is more effective in containing
3 the cost of acute care hospital services than a revenue-
4 based system. Accordingly, the Legislature directs the
5 board to create a task force to advise the board on the
6 development of a methodology to implement a cost-based
7 rate review system. One member of the task force shall
8 be designated by the governor, one member shall be
9 designated by the president of the Senate, one member
10 shall be designated by the speaker of the House of
11 Delegates, and six members of the task force shall be
12 appointed by the board. The board shall develop a cost-
13 based rate review system and shall adopt regulations to
14 implement the cost-based rate review methodology by
15 the first day of July, one thousand nine hundred ninety-
16 two: *Provided*, That the board shall file a report with
17 the governor, the president of the Senate, and the
18 speaker of the House of Delegates by the first day of
19 December, one thousand nine hundred ninety-one, which
20 shall outline the status of the development of the cost-
21 based rate review methodology. Regulations promul-
22 gated by the board to implement the cost-based rate
23 review system shall be exempt from the requirements
24 of article three, chapter twenty-nine-a of this code. Upon
25 implementation of the regulations, the task force shall
26 be dissolved.

27 The Legislature further directs the board to imple-
28 ment the utilization review and quality assurance
29 program established by section twenty-three of this
30 article.

31 The Legislature further finds and directs that the
32 hospital cost containment methodology-phase one
33 adopted by the board effective the twenty-eighth day of
34 May, one thousand nine hundred eighty-five, and
35 approved by the Legislature effective the eighth day of
36 March, one thousand nine hundred eighty-six, shall
37 remain in effect during the development period of the
38 cost based rate review system.

39 The Legislature further finds and declares that
40 discounts to third-party payors by hospitals have
41 contributed to cost shifting thereby increasing the cost
42 of acute care hospital services to purchasers and other
43 third-party payors. Accordingly, the Legislature directs
44 that every hospital who contracts with a third party
45 payor for the payment of patient care services shall file
46 with the board a copy of every contract in force on the
47 first day of January, one thousand nine hundred ninety-
48 one. No third party payor shall be entitled to a greater
49 discount than the discount specified in any contract in
50 effect on the first day of January, one thousand nine
51 hundred ninety-one unless a subsequent contract is
52 approved by the board pursuant to the provisions of
53 section twenty of this article.

54 The Legislature further directs the board to examine
55 the problems associated with health care costs in this
56 state, including those associated with discount contracts
57 and the shifting of costs, and file a report with the
58 governor, the president of the Senate, and the speaker
59 of House of Delegates on or before the first day of
60 January, one thousand nine hundred ninety-two, which
61 outlines the problems and which includes recommenda-
62 tions for legislative action to resolve the problems
63 identified. This report shall include a separate exami-
64 nation of those problems associated with hospitals
65 located within twenty miles of the borders of this state
66 and separate recommendations on resolving those
67 problems.

§16-29B-20. Rate determination.

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

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

10 (2) The rates are equitably established among all
 11 purchasers or classes of purchasers within a hospital
 12 without discrimination unless federal or state statutes or
 13 regulations conflict with this requirement. On and after
 14 the effective date of this section, a summary of every
 15 proposed contract for the payment of patient care
 16 services between a purchaser or third party payor and
 17 a hospital shall be filed by the hospital with its rate
 18 application for review by the board. No contract for the
 19 payment of patient care services between a purchaser
 20 or third party payor and a hospital which establishes
 21 discounts to the purchaser or third party payor shall
 22 take effect until it is approved by the board. The board
 23 shall approve or deny the proposed contract within the
 24 overall rate review period established in section twenty-
 25 one of this article. No discount shall be approved by the
 26 board which constitutes an amount below the actual cost
 27 to the hospital.

28 The hospital shall demonstrate to the board that the
 29 cost of any discount contained in the contract will not
 30 be shifted to any other purchaser or third party payor.
 31 The hospital shall further demonstrate that the discount
 32 will not result in a decrease in its proportion of
 33 medicare, medicaid or uncompensated care patients. In
 34 addition, the hospital shall demonstrate to the board
 35 that the discount is based upon criteria which consti-
 36 tutes a quantifiable economic benefit to the hospital. All
 37 information submitted to the board shall be certified by
 38 the hospital administrator as to its accuracy and
 39 truthfulness.

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

50 (4) The rates are equitable in comparison to prevailing
51 rates for similar services in similar hospitals as
52 determined by the board; and

53 (5) In no event shall a hospital's receipt of emergency
54 disaster funds from the federal government be included
55 in such hospital's gross revenues for either rate-setting
56 or assessment purposes.

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

65 (c) When applying the criteria set forth above, the
66 board shall consider all relevant factors, including, but
67 not limited to, the following: The economic factors in the
68 hospital's area; the hospital's efforts to share services;
69 the hospital's efforts to employ less costly alternatives
70 for delivering substantially similar services or produc-
71 ing substantially similar or better results in terms of the
72 health status of those served; the efficiency of the
73 hospital as to cost and delivery of health care; the
74 quality of care; occupancy level; a fair return on
75 invested capital, not otherwise compensated for;
76 whether the hospital is operated for profit or not for
77 profit; costs of education; and, income from any
78 investments and assets not associated with patient care,
79 including, but not limited to, parking garages, residen-

80 ces, office buildings, and income from related organiza-
81 tions and restricted funds whether or not so associated.

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

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

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

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

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

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

123 (j) Notwithstanding any other provision of this article,
124 the board shall approve all requests for rate increases
125 by hospitals which are licensed for one hundred beds or
126 less and which are not located in a standard metropol-
127 itan statistical area where the rate of increase is equal
128 to or less than the lowest rate of inflation as established
129 by a recognized inflation index for either the national
130 or regional hospital industry. The board may, by
131 regulation, impose reporting requirements to ensure
132 that a hospital does not exceed the rate of increases
133 permitted herein.

134 (k) Notwithstanding any other provision of this article,
135 the board shall develop an expedited review process
136 applicable to all hospitals licensed for more than one
137 hundred beds or that are located in a standard metro-
138 politan statistical area for rate increase requests which
139 may be based upon a recognized inflation index for the
140 national or regional hospital industry.

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

1 (a) No hospital subject to this article may change or
2 amend its schedule of rates except in accordance with
3 the following procedures:

4 (1) Any request for a change in rate schedules or other
5 changes must be filed in writing to the board with such
6 supporting data as the hospital seeking to change its
7 rates considers appropriate, in the form prescribed by
8 the board. Upon receipt of notice, the board, if it
9 considers necessary, may hold a public hearing on the
10 proposed change. Such hearing shall be held no later
11 than forty-five days after receipt of the notice. The
12 review of the proposed change may not exceed an overall
13 period of one hundred eighty days from the date of filing
14 to the date of the board's order. If the board fails to
15 complete its review of the proposed change within the
16 time period specified for the review, the proposed

17 change shall be deemed to have been approved by the
18 board. Any proposed change shall go into effect upon the
19 date specified in the order. The review period is
20 complete upon the date of the board's final order
21 notwithstanding an appeal of the order to the agency of
22 the state designated by the governor, a circuit court, or
23 the supreme court of appeals by an affected party;

24 (2) Each hospital shall establish, in a written report
25 which shall be incorporated into each proposed rate
26 application, that it has thoroughly investigated and
27 considered:

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

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

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

44 (d) Initiatives to create alternative delivery systems;
45 and

46 (e) Efforts to encourage third-party payors, including,
47 but not limited to, insurers, health service, care and
48 maintenance organizations, to control costs, including a
49 combination of education, persuasion, financial incen-
50 tives and disincentives to control costs;

51 (3) In the event the board modifies the request of a
52 hospital for a change in its rates so that the hospital
53 obtains only a partial increase in its rate schedule, the
54 hospital shall have the right to accept the benefits of the
55 partial increase in rates and charge its purchasers

56 accordingly without in any way adversely affecting or
57 waiving its right to appeal that portion of the decision
58 and order of the board which denied the remainder of
59 the requested rate increase.

60 (b) The board shall allow a temporary change in a
61 hospital's rates which may be effective immediately
62 upon filing and in advance of review procedures when
63 a hospital files a verified claim that such temporary rate
64 changes are in the public interest, and are necessary to
65 prevent insolvency, to maintain accreditation or for
66 emergency repairs or to relieve undue financial hard-
67 ship. The verified claim shall state the facts supporting
68 the hospital's position, the amount of increase in rates
69 required to alleviate the situation, and shall summarize
70 the overall effect of the rate increase. The claim shall
71 be verified by either the chairman of the hospital's
72 governing body or by the chief executive officer of the
73 hospital.

74 (c) Following receipt of the verified claim for tempor-
75 ary relief, the board shall review the claim through its
76 usual procedures and standards; however, this power of
77 review does not affect the hospital's ability to place the
78 temporary rate increase into effect immediately. The
79 review of the hospital's claim shall be for a permanent
80 rate increase and the board may include such other
81 factual information in the review as may be necessary
82 for a permanent rate increase review. As a result of its
83 findings from the permanent review, the board may
84 allow the temporary rate increase to become permanent,
85 to deny any increase at all, to allow a lesser increase,
86 or to allow a greater increase.

87 (d) When any change affecting an increase in rates
88 goes into effect before a final order is entered in the
89 proceedings, for whatever reasons, where it deems it
90 necessary and practicable, the board may order the
91 hospital to keep a detailed and accurate account of all
92 amounts received by reason of the increase in rates and
93 the purchasers and third-party payors from whom such
94 amounts were received. At the conclusion of any
95 hearing, appeal or other proceeding, the board may
96 order the hospital to refund with interest to each

97 affected purchaser and/or third-party payor any part of
 98 the increase in rates that may be held to be excessive
 99 or unreasonable. In the event a refund is not practicable,
 100 the hospital shall, under appropriate terms and condi-
 101 tions determined by the board, charge over and amor-
 102 tize by means of a temporary decrease in rates whatever
 103 income is realized from that portion of the increase in
 104 rates which was subsequently held to be excessive or
 105 unreasonable.

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

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

§16-29B-28. Termination date.

1 Pursuant to the provisions of section four, article ten,
 2 chapter four of this code, the health care cost review
 3 authority shall continue to exist until the first day of
 4 July, one thousand nine hundred ninety-seven, to allow
 5 for a completion of an audit by the Joint Committee on
 6 Government Operations.

Enr. Com. Sub. for H. B. 2194] 50

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Lomer Heck
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harold E. Adams
Clerk of the Senate

Donald L. Hopp
Clerk of the House of Delegates

Witt Smittle
President of the Senate

Bob C. Cline
Speaker of the House of Delegates

The within *is approved* this the *20th*
day of *March*, 1991.

Walter D. Claitor
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

Time 11:35 AM