

SB 414 (veto)

FILED

2009 MAY -7 PM 3: 30

**WEST VIRGINIA LEGISLATURE**  
WEST VIRGINIA  
SECRETARY OF STATE  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2009**

—●—  
**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 414**

(SENATORS PREZIOSO, FOSTER, JENKINS,  
STOLLINGS, CARUTH, LAIRD, UNGER, MINARD  
AND KESSLER, *original sponsors*)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to repeal §5-16-7b of the Code of West Virginia, 1931, as amended; to repeal §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17 of said code; to amend and reenact §5F-2-2 of said code; to amend and reenact §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5 of said code; and to amend said code by adding thereto five new sections, designated §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9, and §16-29H-10, all relating generally to the creation of the Governor's Office of Health Enhancement and Lifestyle Planning; setting forth legislative findings; setting forth the powers and

duties of the office; transferring the powers and duties of the Pharmaceutical Cost Management Council to the office; creating the position of director; setting forth the qualifications of the director; setting forth the powers and duties of the director; providing for staff; requiring the development of a five-year strategic plan; providing for legislative rule-making authority; providing for coordination with various state agencies, departments, boards, bureaus and commissions; requiring reporting to the Governor and the Legislature; establishing pilot projects for patient-centered medical homes; setting forth legislative findings; defining terms; evaluating existing medical home pilot programs; establishing criteria for pilot projects for patient-centered medical homes; defining four types of pilot projects; setting forth evaluation criteria; granting rule-making authority; and exempting from Purchasing division requirements.

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

That §5-16-7b of the Code of West Virginia, 1931, as amended, be repealed; that §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17 of said code be repealed; that §5F-2-2 of said code be amended and reenacted; that §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5 of said code be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29-10, all to read as follows:

**CHAPTER 5F. ORGANIZATION OF THE EXECUTIVE  
BRANCH OF STATE GOVERNMENT.**

**ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

**§5F-2-2. Power and authority of secretary of each department.**

- 1 (a) Notwithstanding any other provision of this code to
- 2 the contrary, the secretary of each department shall have

3 plenary power and authority within and for the depart-  
4 ment to:

5 (1) Employ and discharge within the office of the  
6 secretary employees as may be necessary to carry out the  
7 functions of the secretary, which employees shall serve at  
8 the will and pleasure of the secretary;

9 (2) Cause the various agencies and boards to be operated  
10 effectively, efficiently and economically and develop goals,  
11 objectives, policies and plans that are necessary or desir-  
12 able for the effective, efficient and economical operation  
13 of the department;

14 (3) Eliminate or consolidate positions, other than  
15 positions of administrators or positions of board members  
16 and name a person to fill more than one position;

17 (4) Transfer permanent state employees between depart-  
18 ments in accordance with the provisions of section seven  
19 of this article;

20 (5) Delegate, assign, transfer or combine responsibilities  
21 or duties to or among employees, other than administra-  
22 tors or board members;

23 (6) Reorganize internal functions or operations;

24 (7) Formulate comprehensive budgets for consideration  
25 by the Governor and transfer within the department funds  
26 appropriated to the various agencies of the department  
27 which are not expended due to cost savings resulting from  
28 the implementation of the provisions of this chapter:  
29 *Provided*, That no more than twenty-five percent of the  
30 funds appropriated to any one agency or board may be  
31 transferred to other agencies or boards within the depart-  
32 ment: *Provided, however*, That no funds may be trans-  
33 ferred from a special revenue account, dedicated account,  
34 capital expenditure account or any other account or funds  
35 specifically exempted by the Legislature from transfer,

36 except that the use of appropriations from the State Road  
37 Fund transferred to the office of the Secretary of the  
38 Department of Transportation is not a use other than the  
39 purpose for which the funds were dedicated and is permit-  
40 ted: *Provided further*, That if the Legislature by subse-  
41 quent enactment consolidates agencies, boards or func-  
42 tions, the appropriate secretary may transfer the funds  
43 formerly appropriated to the agency, board or function in  
44 order to implement consolidation. The authority to  
45 transfer funds under this section shall expire on June 30,  
46 2010;

47 (8) Enter into contracts or agreements requiring the  
48 expenditure of public funds and authorize the expenditure  
49 or obligation of public funds as authorized by law: *Pro-*  
50 *vided*, That the powers granted to the secretary to enter  
51 into contracts or agreements and to make expenditures or  
52 obligations of public funds under this provision shall not  
53 exceed or be interpreted as authority to exceed the powers  
54 granted by the Legislature to the various commissioners,  
55 directors or board members of the various departments,  
56 agencies or boards that comprise and are incorporated into  
57 each secretary's department under this chapter;

58 (9) Acquire by lease or purchase property of whatever  
59 kind or character and convey or dispose of any property of  
60 whatever kind or character as authorized by law: *Pro-*  
61 *vided*, That the powers granted to the secretary to lease,  
62 purchase, convey or dispose of such property shall be  
63 exercised in accordance with the provisions of articles  
64 three, ten and eleven, chapter five-a of this code: *Provided*,  
65 *however*, That the powers granted to the secretary to lease,  
66 purchase, convey or dispose of such property shall not  
67 exceed or be interpreted as authority to exceed the powers  
68 granted by the Legislature to the various commissioners,  
69 directors or board members of the various departments,  
70 agencies or boards that comprise and are incorporated into  
71 each secretary's department under this chapter;

72 (10) Conduct internal audits;

73 (11) Supervise internal management;

74 (12) Promulgate rules, as defined in section two, article  
75 one, chapter twenty-nine-a of this code, to implement and  
76 make effective the powers, authority and duties granted  
77 and imposed by the provisions of this chapter in accor-  
78 dance with the provisions of chapter twenty-nine-a of this  
79 code;

80 (13) Grant or withhold written consent to the proposal  
81 of any rule, as defined in section two, article one, chapter  
82 twenty-nine-a of this code, by any administrator, agency  
83 or board within the department. Without written consent,  
84 no proposal for a rule shall have any force or effect;

85 (14) Delegate to administrators the duties of the secre-  
86 tary as the secretary may deem appropriate, from time to  
87 time, to facilitate execution of the powers, authority and  
88 duties delegated to the secretary; and

89 (15) Take any other action involving or relating to  
90 internal management not otherwise prohibited by law.

91 (b) The secretaries of the departments hereby created  
92 shall engage in a comprehensive review of the practices,  
93 policies and operations of the agencies and boards within  
94 their departments to determine the feasibility of cost  
95 reductions and increased efficiency which may be  
96 achieved therein, including, but not limited to, the follow-  
97 ing:

98 (1) The elimination, reduction and restriction of the  
99 state's vehicle or other transportation fleet;

100 (2) The elimination, reduction and restriction of state  
101 government publications, including annual reports,  
102 informational materials and promotional materials;

103 (3) The termination or rectification of terms contained in  
104 lease agreements between the state and private sector for  
105 offices, equipment and services;

106 (4) The adoption of appropriate systems for accounting,  
107 including consideration of an accrual basis financial  
108 accounting and reporting system;

109 (5) The adoption of revised procurement practices to  
110 facilitate cost-effective purchasing procedures, including  
111 consideration of means by which domestic businesses may  
112 be assisted to compete for state government purchases;  
113 and

114 (6) The computerization of the functions of the state  
115 agencies and boards.

116 (c) Notwithstanding the provisions of subsections (a) and  
117 (b) of this section, none of the powers granted to the  
118 secretaries herein shall be exercised by the secretary if to  
119 do so would violate or be inconsistent with the provisions  
120 of any federal law or regulation, any federal-state pro-  
121 gram or federally delegated program or jeopardize the  
122 approval, existence or funding of any program.

123 (d) The layoff and recall rights of employees within the  
124 classified service of the state as provided in subsections (5)  
125 and (6), section ten, article six, chapter twenty-nine of this  
126 code shall be limited to the organizational unit within the  
127 agency or board and within the occupational group  
128 established by the classification and compensation plan  
129 for the classified service of the agency or board in which  
130 the employee was employed prior to the agency or board's  
131 transfer or incorporation into the department: *Provided,*  
132 That the employee shall possess the qualifications estab-  
133 lished for the job class. The duration of recall rights  
134 provided in this subsection shall be limited to two years or  
135 the length of tenure, whichever is less. Except as provided  
136 in this subsection, nothing contained in this section shall

137 be construed to abridge the rights of employees within the  
138 classified service of the state as provided in sections ten  
139 and ten-a, article six, chapter twenty-nine of this code.

140 (e) Notwithstanding any other provision of this code to  
141 the contrary, the secretary of each department with  
142 authority over programs which have an impact on the  
143 delivery of health care services in the state or are payors  
144 for health care services or are payors for prescription  
145 drugs, including, but not limited to, the Public Employees  
146 Insurance Agency, the Department of Health and Human  
147 Resources, the Bureau for Senior Services, the Children's  
148 Health Insurance Program, the Health Care Authority, the  
149 Office of the Insurance Commissioner, the Division of  
150 Corrections, the Division of Juvenile Services, the Re-  
151 gional Jail and Correctional Facility Authority, state  
152 colleges and universities, public hospitals, state or local  
153 institutions including nursing homes and veterans' homes,  
154 the Division of Rehabilitation, public health departments,  
155 the Bureau for Medical Services and other programs,  
156 which have an impact on the delivery of health care  
157 services or are payors for health care services or are payors  
158 for prescription drugs, in West Virginia shall cooperate  
159 with the Governor's Office of Health Enhancement and  
160 Lifestyle Planning established pursuant to article twenty-  
161 nine-h, chapter sixteen of this code for the purpose of  
162 improving the health care delivery services in West  
163 Virginia for any program over which they have authority.

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

### **ARTICLE 29H. GOVERNOR'S OFFICE OF HEALTH ENHANCEMENT AND LIFESTYLE PLANNING.**

#### **§16-29H-1. Legislative findings.**

1 The Legislature finds:

2 (1) Rising health care costs have a significant impact not  
3 only on the citizens of the state, but also the state's ability



4 to develop a competitive advantage in seeking new  
5 business. Reducing this level of costs and developing new,  
6 more effective options for reducing growth in health care  
7 spending is essential to ensuring the health of West Vir-  
8 ginia's citizens and to the advancement of a well-devel-  
9 oped workforce.

10 (2) West Virginia spends thirteen percent more per  
11 person on health care than the national average. More-  
12 over, the growth in spending in the state is higher than the  
13 national average. These rising costs have contributed to  
14 fewer employers, particularly small employers, offering  
15 health insurance as a benefit of employment. This is an  
16 occurrence that may further drive up health care costs  
17 throughout the state.

18 (3) West Virginia is among the highest in such health  
19 care indicators as childhood and adult obesity which  
20 provides a direct connection to higher rates of diabetes,  
21 hypertension, hyperlipidemia, heart disease, pulmonary  
22 disorders and comorbid depression experienced in West  
23 Virginia. Nearly one third of the rise in health care costs  
24 can be attributed to the rise in obesity throughout the  
25 state and the nation. Additionally, high rates of chronic  
26 illness represents a substantial reduction in worker  
27 productivity.

28 (4) To address the concerns over rising costs, West  
29 Virginia must change the way it pays for care, shifting the  
30 focus to primary care and prevention. Seventy-five  
31 percent of health care spending is associated with treat-  
32 ment of chronic diseases requiring ongoing medical  
33 management over time. Patients with chronic diseases,  
34 however, only receive fifty-six percent of the clinically  
35 recommended preventive services. This lack of preventive  
36 services creates a seventy-five percent increase in health  
37 care spending.

38 (5) Health care delivery in West Virginia needs to be  
39 modernized. This will require substantial changes in how  
40 health care is delivered to the chronically ill, an increase  
41 in information technology tools used for patient manage-  
42 ment, a simplification of health care processing and a  
43 broad overhaul in our perceptions of wellness and preven-  
44 tion.

45 (6) West Virginians must be challenged to engage in a  
46 more healthy lifestyle, they must alter the focus of their  
47 perception of health care from one of episodic care to  
48 prevention and wellness efforts. Equally as important, is  
49 that healthcare providers must be engaged with their  
50 patients and in the process of delivery of health care and  
51 strive for continuous improvement of the quality of care  
52 they provide.

53 (7) West Virginia must develop a health care system that  
54 is sufficient to meet the needs of its citizens; equitable, fair  
55 and sustainable, but that is also accountable for quality,  
56 access, cost containment and service delivery.

**§16-29H-2. Creation of the Governor's Office of Health En-  
hancement and Lifestyle Planning; duties.**

1 (a) There is created the Governor's Office of Health  
2 Enhancement and Lifestyle Planning. The purpose of this  
3 office is to coordinate all state health care system reform  
4 initiatives among executive branch agencies, departments,  
5 bureaus and offices. The office shall be under the direct  
6 supervision of the director, who is responsible for the  
7 exercise of the duties and powers assigned to the office  
8 under the provisions of this article.

9 (b) All state agencies that have responsibility for the  
10 development, improvement and implementation of any  
11 aspect of West Virginia's health care system, including,  
12 but not limited to, the Public Employees Insurance  
13 Agency, the Bureau for Senior Services, the Children's

14 Health Insurance Program, Office of the Pharmaceutical  
15 Advocate, the Health Care Authority, the West Virginia  
16 Health Information Network, the Insurance Commission,  
17 the Department of Health and Human Resources, state  
18 colleges and universities, the Pharmaceutical Advocate,  
19 public hospitals, state or local institutions such as nursing  
20 homes, veteran's homes, the Division of Rehabilitation,  
21 public health departments, shall cooperate with the  
22 Governor's Office of Health Enhancement and Lifestyle  
23 Planning established for the purpose of coordinating the  
24 health care delivery system in West Virginia for any  
25 program over which they have authority.

**§16-29H-3. Director of the Governor's Office of Health Enhancement and Lifestyle Planning appointment; qualifications; oath; salary.**

1 (a) The office is under the supervision of the director.  
2 The director is the executive and administrative head of  
3 the office and shall be appointed by the Governor with  
4 advice and consent of the Senate. The director shall be  
5 qualified by training and experience to direct the opera-  
6 tions of the Governor's Office of Health Enhancement and  
7 Lifestyle Planning and serves at the will and pleasure of  
8 the Governor. The duties of the director include, but are  
9 not limited to, the management and administration of the  
10 Governor's Office of Health Enhancement and Lifestyle  
11 Planning.

12 (b) The director:

13 (1) Serves on a full time basis and may not be engaged in  
14 any other profession or occupation;

15 (2) May not hold political office in the government of the  
16 state either by election or appointment while serving as  
17 the director;

18 (3) Shall be a citizen of the United States and West  
19 Virginia and become a resident of the state within ninety  
20 days of appointment;

21 (4) Is ineligible for civil service coverage as provided in  
22 section four, article six, chapter twenty nine of this code.  
23 Any other employee hired by the director is also ineligible  
24 for civil service coverage.

25 (c) Before entering upon the discharge of the duties as  
26 director, the director shall take and subscribe to the oath  
27 of office prescribed in section five, article IV of the  
28 Constitution of West Virginia. The executed oath shall be  
29 filed in the Office of the Secretary of State.

**§16-29H-4. Director of the Governor's Office of Health Enhancement and Lifestyle; powers and duties, hiring of staff.**

1 (a) The director has the power and authority to:

2 (1) Purchase or enter into contracts or agreements as  
3 necessary to achieve the purposes of this article;

4 (2) File suit;

5 (3) At the request of a state agency that has responsibil-  
6 ity for any aspect of West Virginia's health care system,  
7 evaluate and advise the agency on ways that can better  
8 achieve the purposes of this article. In addition, the  
9 director may determine in collaboration with the agencies  
10 responsible for health systems in the state to improve  
11 efficiencies and reduce costs through interagency agree-  
12 ments to enter into contracts. Contracts may only be  
13 renegotiated if there is a demonstrated and measurable  
14 cost savings for the state and the agencies are in agree-  
15 ment;

16 (4) Enter into contracts with public or private entities in  
17 this state, governments of other states and jurisdictions

18 and their individual departments, agencies, authorities,  
19 institutions, programs, quasi-public corporations and  
20 political subdivisions in the event that such contracts  
21 would be a collaboration between the health system  
22 agencies involved and agreed to by all parties.

23 (5) Participate in regional or multistate purchasing  
24 alliances or consortia, formed for the purpose of pooling  
25 the combined purchasing power of the individual members  
26 and increasing purchasing power with agreement of all  
27 participating parties and financially advantageous to each  
28 party. This power does not effect individual state agencies  
29 from participating in any purchasing alliance or consor-  
30 tium as established in their own program. If the director  
31 participates in any cooperative purchasing agreement,  
32 alliance, or consortium which is comprised of at least five  
33 million covered lives, the cooperative purchasing agree-  
34 ment, alliance or consortium may employ an agreed-upon  
35 pricing schedule that, in the judgment of the director and  
36 the other participating entities, will maximize savings to  
37 the broadest percentage of the population of this state:  
38 *Provided*, That any pharmaceutical manufacturer that  
39 deals with such cooperative purchasing agreements,  
40 alliances or consortia may request a waiver from such  
41 pricing schedule in West Virginia or any other participat-  
42 ing state for a particular drug that should be granted if the  
43 director finds that the development, production, distribu-  
44 tion costs, other reasonable costs and reasonable profits  
45 excluding marketing, advertising and promotional costs  
46 not essential to bringing the product to market are more  
47 than the schedule price of the pharmaceutical or in those  
48 cases in which the pharmaceutical in question has a sole  
49 source. The director shall determine fees to be paid by the  
50 applicant at the time of the waiver application and proof  
51 required to be submitted at the time of the waiver request  
52 to support the validity of the request.

53 (6) Make recommendations to the Governor and the  
54 Legislature regarding strategies that could more effec-  
55 tively make the health care delivery system in West  
56 Virginia more timely, more patient centered, provide  
57 greater patient access and quality of service and control  
58 health care costs;

59 (7) Develop and implement other programs, projects and  
60 initiatives to achieve the purposes of this article, including  
61 initiating, evaluating and promoting primary-care medical  
62 homes pursuant to section six of this article and other  
63 strategies that result in greater access to health care,  
64 assure greater quality of care and result in reduced costs  
65 for health care delivery services to the citizens of West  
66 Virginia: *Provided*, That interagency agreements shall be  
67 utilized for services that would be duplicative:

68 (8) Work with the Health Care Authority to ensure that  
69 the preventive health care pilots are implementing a  
70 primary-care medical home model as defined in this  
71 article;

72 (9) Develop a five-year strategic plan as set forth in  
73 section six of this article for implementation of West  
74 Virginia's health care system reform initiatives together  
75 with recommendations for administration, policy, legisla-  
76 tive rules or legislation. This plan shall be reported to the  
77 Joint Committee on Government and Finance, the Legisla-  
78 tive Oversight Commission on Health and Human Re-  
79 sources Accountability and the Governor on or before  
80 December 31, 2009;

81 (10) Provide professional development on emerging  
82 health care policies and contracting for health care  
83 services; and

84 (11) Evaluate and offer, if resources become available, a  
85 grant program for local communities to encourage healthy

86 lifestyles in collaboration with the Healthy Lifestyles  
87 Coalition.

88 (b) The director shall employ such professional, clerical,  
89 technical and administrative personnel as may be neces-  
90 sary to carry out the provisions of this article and with  
91 consideration of the appropriation provided by the  
92 Legislature.

93 (c) The director shall prepare and submit to the Gover-  
94 nor and the Legislature annual proposed appropriations  
95 for the next fiscal year which shall include sums necessary  
96 to support the activities of the Governor's Office of Health  
97 Enhancement and Lifestyle Planning.

98 (d) The director shall submit an annual report separate  
99 from the strategic plan by January 1 of each year to the  
100 Governor and the Legislative Oversight Commission on  
101 Health and Human Resources Accountability on the  
102 condition, operation and functioning of the Governor's  
103 Office of Health Enhancement and Lifestyle Planning.

104 (e) The director shall supervise the fiscal management  
105 and responsibilities of the Governor's Office of Health  
106 Enhancement and Lifestyle Planning.

107 (f) The director shall keep an accurate and complete  
108 record of all the Governor's Office of Health Enhancement  
109 and Lifestyle Planning proceedings, records and file all  
110 bonds and contracts and assume responsibility for the  
111 custody and preservation of all papers and records of the  
112 office.

113 (g) The director may convene a series of focus groups,  
114 polls and any other available research tool to determine  
115 issues of importance to all stakeholders after a thorough  
116 review of available research currently in existence. The  
117 development of these survey tools shall be done in con-  
118 junction with employers, health care providers and

119 consumers. Data received from this research should be  
120 easily available to the public and utilized in the develop-  
121 ment and design of health benefit programs. The data  
122 should also be accessible to providers to allow them to  
123 meet the needs of the health care market.

124 (h) The director may propose rules for legislative ap-  
125 proval in accordance with the provisions of article three,  
126 chapter twenty-nine a of this code to accomplish the goals  
127 and purposes of this article.

**§16-29H-5. Creation of the Health Enhancement and Lifestyle  
Planning Advisory Council.**

1 (a) The Health Enhancement and Lifestyle Planning  
2 Advisory Council is hereby created. The advisory council  
3 is an independent, self-sustaining council that has the  
4 powers and duties specified in this article.

5 (b) The advisory council is a part-time council whose  
6 members perform such duties as specified in this article.  
7 The ministerial duties of the advisory council shall be  
8 administered and carried out by the Governor's Office of  
9 Health Enhancement and Lifestyle Planning.

10 (c) Each member of the advisory council shall devote the  
11 time necessary to carry out the duties and obligations of  
12 the office. Those members appointed by the Governor may  
13 pursue and engage in another business or occupation or  
14 gainful employment that is not in conflict with the duties  
15 of the advisory council.

16 (d) The advisory council is self-sustaining and independ-  
17 ent, however it, its members, the director and employees  
18 of the Governor's Office of Health Enhancement and  
19 Lifestyle Planning are subject to article nine-a, chapter six  
20 of this code and chapters six-b, twenty-nine-a and  
21 twenty-nine-b of this code.



22 (e) The advisory council is comprised of the following  
23 governmental officials: The Secretary of the Department  
24 of Health and Human Resources, or his or her designee,  
25 the Director of the Public Employees Insurance Agency, or  
26 his or her designee, the Commissioner of the Office of the  
27 Insurance Commissioner, or his or her designee, the Chair  
28 of the West Virginia Health Care Authority, or his or her  
29 designee and the director of the West Virginia Children's  
30 Health Insurance Program or his or her designee. The  
31 council shall also consist of the following public members:  
32 One public member shall represent an organization of  
33 senior citizens with at least ten thousand members within  
34 the state, one public member shall represent the West  
35 Virginia Academy of Family Physicians, one public  
36 member shall represent the West Virginia Chamber of  
37 Commerce, one public member shall represent a federally  
38 qualified health center, one public member shall represent  
39 the largest labor organization in the state, one public  
40 interest organization that represents the interests of  
41 consumers, one public member shall represent West  
42 Virginia Hospital Association, one public member shall  
43 represent the West Virginia Medical Association, one  
44 public member shall represent the West Virginia Nurse's  
45 Association and two ex-officio nonvoting members shall  
46 be the Speaker of the House, or his or her designee, and  
47 the President of the Senate, or his or her designee.

48 (f) Public members shall be appointed by the Governor  
49 with advice and consent of the Senate. Each public  
50 member shall serve for a term of four years. Of the public  
51 members of the advisory council first appointed, one shall  
52 be appointed for a term ending June 30, 2010, and two  
53 each for terms of three and four years. The remainder  
54 shall be appointed for the full four-year terms as provided  
55 in this section. Each public member serves until his or her  
56 successor is appointed and has qualified. The Director of  
57 the Governor's Office of Health Enhancement and Life-

58 style Planning shall serve as chairperson of the advisory  
59 council.

60 (g) Advisory council members may not be compensated  
61 in their capacity as members but shall be reimbursed for  
62 reasonable expenses incurred in the performance of their  
63 duties.

64 (h) The advisory council shall meet within the state at  
65 such times as the chair may decide, but at least once  
66 annually. The advisory council shall also meet upon a call  
67 of seven or more members upon seventy-two hours written  
68 notice to each member.

69 (i) Eight members of the advisory council are a quorum  
70 for the transaction of business.

71 (j) A majority vote of the members present is required for  
72 any final determination by the advisory council. Voting  
73 by proxy is not allowed.

74 (k) The advisory council shall keep a complete and  
75 accurate record of all its meetings according to section  
76 five, article nine-a, chapter six of this code.

77 (l) Notwithstanding the provisions of section four, article  
78 six, chapter six of this code, the Governor may remove any  
79 advisory council member for incompetence, misconduct,  
80 gross immorality, misfeasance, malfeasance or  
81 nonfeasance in office.

82 (m) The advisory council has general responsibility to  
83 review and provide advice and comment to the Governor's  
84 Office of Health Enhancement and Lifestyle Planning on  
85 its policies and procedures relating to the delivery of  
86 health care services or the purchase of prescription drugs.  
87 The advisory council shall offer advice to the director on  
88 matters over which the office has authority and oversight.  
89 This includes, but is not limited to:

90 (1) Hiring of professional, clerical, technical and admin-  
91 istrative personnel as may be necessary to carry out the  
92 provisions of this article;

93 (2) Contracts or agreements;

94 (3) Rule-making authority; and

95 (4) Development of policy necessary to meet the duties  
96 and responsibilities of the Governor's Office of Health  
97 Enhancement and Lifestyle Planning pursuant to the  
98 provisions of this article.

**§16-29H-6. Development of a strategic plan.**

1 The director shall develop a five-year strategic plan for  
2 implementation of any and all health care system reform  
3 initiatives. These initiatives shall be included, but are not  
4 limited to:

5 (1) Development of pilot projects for patient-centered  
6 medical homes as set forth in section nine of this chapter;

7 (2) Prioritization of chronic conditions to be targeted for  
8 purposes of resource allocation and for greater chronic  
9 care management. This should include pilot projects for  
10 community based health teams for the development of  
11 care plans for healthy children and adults to maintain  
12 good health and for at risk populations to prevent devel-  
13 opment of preventable chronic diseases;

14 (3) Development of standardized prior authorization  
15 requirements and processes from insurers;

16 (4) Coordination with the State Board of Education as  
17 set forth in article two, chapter eighteen of this code to  
18 provide for:

19 (i) The preservation and allocation of recess time away  
20 from instruction and separate from physical education  
21 classes in the state schools;

22 (ii) Continuing education for school food personnel and  
23 a career hierarchy for food personnel that offers rewards  
24 for continuing education hours and credits;

25 (iii) School-based physical education coordinators; and

26 (iv) Placement of a dietician in each regional education  
27 service area throughout the state.

28 (5) Implementation of school-based initiatives to achieve  
29 greater dietary consistency in West Virginia's school  
30 system and to gain greater physical fitness from students;

31 (6) Development of community-based projects designed  
32 for the construction, development and maintenance of  
33 bicycle and pedestrian trails and sidewalks;

34 (7) Development and implementation of universal  
35 wellness and health promotion benefits;

36 (8) Continued promotion and support for efforts to  
37 decrease the number of West Virginians using tobacco  
38 products;

39 (9) Any necessary changes that will increase small  
40 businesses who offer available health insurance as a  
41 benefit of employment;

42 (10) Development of goals to further improve health care  
43 delivery in West Virginia. This should include a means to  
44 evaluate progress toward achieving these goals in a simple  
45 and timely manner;

46 (11) Measurement of progress of health care providers  
47 and physicians to the adoption and use of electronic  
48 medical records in their offices;

49 (12 ) Collaboration on health information technology  
50 with the West Virginia Health Information Network, the  
51 Bureau for Medical Services and other appropriate entities  
52 which shall include:

53 (i) Working through the West Virginia Health Informa-  
54 tion Network, the Bureau for Medical Services and other  
55 appropriate entities, to develop a collaborative approach  
56 for health information exchange;

57 (ii) Facilitating and encouraging of ongoing projects  
58 such as electronic medical record resources in community  
59 health clinics;

60 (iii) Encouragement of continued development of  
61 hospital systems and deployment of hospital-supported  
62 electronic medical records when available for hospital-  
63 based, hospital-employed and nonhospital-employed  
64 physicians;

65 (iv) Development of strategies to implement tax incen-  
66 tives, vendor discounts, enhanced reimbursement and  
67 other means to individual physician offices and clinics to  
68 encourage greater adoption and use of electronic medical  
69 records;

70 (v) Development of recommended electronic medical  
71 record best practices utilizing the Certification Commis-  
72 sion for Health Care Information Technology as the  
73 minimum standard;

74 (vi) Development of funding mechanisms that provide  
75 initial start up funds and a mechanism for sustainability  
76 of electronic medical records; and

77 (vii) Exploration of federal funding to ensure the most  
78 efficient and cost-effective means of meeting the state's  
79 health information technology objectives.

**§16-29H-7. Coordination with higher education.**

1 The director shall consult with all the colleges and  
2 universities in the state, both public and private, with the  
3 state's three medical schools with community and techni-

4 cal colleges and with the Higher Education Policy Com-  
5 mission. The purpose of this collaboration would be:

6 (1) The development of curricula focused on a chronic  
7 care model to reflect the multidisciplinary team approach  
8 to the delivery of health care services in West Virginia as  
9 contemplated by the development of a patient centered  
10 medical home as that term is defined in article nine of this  
11 chapter; and

12 (2) The development of technology-centered jobs that  
13 would further the state's efforts in moving toward the  
14 broader use of electronic health records.

**§16-29H-8. Continuing efforts to reduce prescription drug  
prices.**

1 (a) The rule-making authority previously granted to the  
2 Pharmaceutical Cost Management Council in article  
3 three-c, chapter five-a of this code to require the reporting  
4 of pharmaceutical advertising costs is here transferred to  
5 the Governor's Office of Health Enhancement and Life-  
6 style Planning.

7 (b) Advertising costs for prescription drugs, based on  
8 aggregate national data, shall be reported to the Gover-  
9 nor's Office of Health Enhancement and Lifestyle Plan-  
10 ning by all manufacturers and labelers of prescription  
11 drugs dispensed in this state that employs, directs or  
12 utilizes marketing representatives. The reporting shall  
13 assist this state in its role as a purchaser of prescription  
14 drugs and an administrator of prescription drug programs,  
15 enabling this state to determine the scope of prescription  
16 drug advertising costs and their effect on the cost, utiliza-  
17 tion and delivery of health care services and furthering the  
18 role of this state as guardian of the public interest.

19 (c) The Governor's Office of Health Enhancement and  
20 Lifestyle Planning shall establish by legislative rule

21 pursuant to the provisions of article three, chapter twenty-  
22 nine-a of this code the reporting requirements of informa-  
23 tion by labelers and manufacturers which shall include all  
24 national aggregate expenses associated with advertising  
25 and direct promotion of prescription drugs through radio,  
26 television, magazines, newspapers, direct mail and tele-  
27 phone communications as they pertain to residents of this  
28 state.

29 (d) The following are exempt from disclosure require-  
30 ments:

31 (1) All free samples of prescription drugs intended to be  
32 distributed to patients;

33 (2) All marketing items of a value less than \$100;

34 (3) All payments of reasonable compensation and  
35 reimbursement of expenses in connection with a bona fide  
36 clinical trial. As used in this subdivision, "clinical trial"  
37 means an approved clinical trial conducted in connection  
38 with a research study designed to answer specific ques-  
39 tions about vaccines, new therapies or new ways of using  
40 known treatments;

41 (4) All scholarship or other support for medical students,  
42 residents and fellows to attend significant educational,  
43 scientific or policy making conference of national, regional  
44 or specialty medical or other professional association if  
45 the recipient of the scholarship or other support is selected  
46 by the association; and

47 (5) Any data that identifies specific prescription drugs or  
48 pharmaceuticals by individual name, any group of individ-  
49 uals or specific individual by name and any specific  
50 physician or pharmacy or group of physicians or pharma-  
51 cies by name.

52 (e) The Governor's Office of Health Enhancement and  
53 Lifestyle Planning is authorized to revise existing rules

54 that establish time lines, the documentation, form and  
55 manner of reporting required as he or she, with advice of  
56 the advisory council, and determine necessary changes to  
57 effectuate the purpose of this article. The director shall  
58 include in his or her annual report to the Legislature in an  
59 aggregate form, the information provided in the required  
60 reporting.

61 (f) Notwithstanding any provision of law to the contrary,  
62 information submitted to the director pursuant to this  
63 section is confidential and is not a public record and is not  
64 available for release pursuant to the West Virginia Free-  
65 dom of Information Act codified in chapter twenty-nine-b,  
66 article one of this code. Data compiled in aggregate form  
67 by the director for the purposes of reporting required by  
68 this section is a public record as defined in the West  
69 Virginia Freedom of Information Act as long as it does not  
70 reveal trade information that is protected by state or  
71 federal law or specific prescription drugs or  
72 pharmaceuticals by individual name, any group of individ-  
73 uals or specific individual by name and any specific  
74 physician or pharmacy or group of physicians or pharma-  
75 cies by name.

76 (g) The director is authorized to consider strategies by  
77 which West Virginia may manage the increasing costs of  
78 prescriptions drugs and increase access to prescription  
79 drugs for all of the state's residents, including the author-  
80 ity to:

81 (1) Explore discount prices or rebate programs for senior  
82 and persons without drug coverage;

83 (2) Explore and if in the best interest of the state and  
84 financially feasible, a counter-detailing program aimed at  
85 education health care practitioners about the relative costs  
86 and benefits of various prescription drugs with an empha-  
87 sis on generic drugs;



88 (3) Explore purchasing agreements with public or  
89 private sector entities that could be beneficial in the cost  
90 of pharmaceuticals; and

91 (4) Explore other strategies, as permitted under state and  
92 federal law, aimed at managing escalating prescription  
93 drug cost and increasing access for citizens of the state  
94 and develop necessary legislation to implement such  
95 strategies.

**§16-29H-9. Patient-centered medical homes.**

1 (a) *Legislative findings.* –

2 The Legislature finds that:

3 (1) There is a need in the state to transform the health  
4 care services delivery model toward primary prevention  
5 and more proactive care management through the devel-  
6 opment of patient-centered medical homes;

7 (2) The concept of a patient-centered medical home  
8 would promote a partnership between the individual  
9 patient, the patient's various health care providers, the  
10 patient's family and, if necessary, the community. It  
11 integrates the patient as an active participant in their own  
12 health and well-being;

13 (3) The patient-centered medical home provides care  
14 through a multidisciplinary health team consisting of  
15 physicians, nurse practitioners, nurses, physicians assis-  
16 tants, behavioral health providers, pharmacists, social  
17 workers, physical therapists, dental and eyecare providers  
18 and dieticians to meet the health care needs of a patient in  
19 all aspects of preventative, acute, chronic and end-of-life  
20 care using evidence-based medicine and technology;

21 (4) In a patient-centered medical home each patient has  
22 an ongoing relationship with a personal physician. The  
23 physician would lead a team of health care providers who

24 take responsibility for the care of the patient or for  
25 arranging care with other qualified professionals;

26 (5) Transitioning health care delivery services to a  
27 patient-centered medical home would provide greater  
28 quality of care, increase patient safety and ensure greater  
29 access to health care;

30 (6) Currently there are medical home pilot projects  
31 underway at the Bureau for Medical Services and the  
32 Public Employees Insurance Agency that should be  
33 reviewed and evaluated for efficiency and a means to  
34 expand these to greater segments of the state's population,  
35 most importantly the uninsured.

36 (b) The patient-centered medical home is a health care  
37 setting that facilitates partnerships between individual  
38 patients and their personal physicians and, when appro-  
39 priate, the patients' families and communities. A pa-  
40 tient-centered medical home integrates patients as active  
41 participants in their own health and well being. Patients  
42 are cared for by a physician or physician practice that  
43 leads a multidisciplinary health team, which may include,  
44 but is not limited to, nurse practitioners, nurses, physi-  
45 cian's assistants, behavioral health providers, pharmacists,  
46 social workers, physical therapists, dental and eye care  
47 providers and dieticians to meet the needs of the patient in  
48 all aspects of preventive, acute, chronic care and end-of-  
49 life care using evidence-based medicine and technology.  
50 At the point in time that the Center for Medicare and  
51 Medicaid Services includes the nurse practitioner as a  
52 leader of the multidisciplinary health team, this state will  
53 automatically implement this change.

54 (c) The Governor's Office of Health Enhancement and  
55 Lifestyle Planning shall consult with the Bureau for  
56 Medical Services and the Public Employees Insurance  
57 Agency on current medical home pilot projects which they  
58 are operating for their membership population. The

59 director shall evaluate these programs in consultation with  
60 the Commissioner of the Bureau for Medical Services and  
61 the Director of the Public Employees Insurance Agency for  
62 a means to expand these beyond the populations currently  
63 being served by these pilots. Once data is available on  
64 these pilots that can be reviewed for planning purposes,  
65 the director shall utilize this as a means to develop and  
66 implement additional patient-centered medical home pilot  
67 programs beyond the limited populations served by the  
68 Bureau for Medical Services and the Public Employees  
69 Insurance Agency. The director shall develop four varying  
70 types of patient-centered medical home pilots based upon  
71 experience gained from the projects currently in operation  
72 at the Bureau for Medical Services and the Public Employ-  
73 ees Insurance Agency. These patient-centered medical  
74 homes shall be based upon the individual practices of  
75 physicians.

76 (d) The four types of pilot programs shall be:

77 (1) *Chronic Care Model Pilots.* – This model shall focus  
78 on smaller physician practices. Primary care providers  
79 shall work with payers and providers to identify various  
80 disease states. Through the collaborative effort of the  
81 primary care provider and the payers and providers,  
82 programs shall be developed to improve management of  
83 agreed upon conditions of the patient. Through this  
84 model, the primary care provider may utilize current  
85 practices of multipayer workgroups. These groups shall be  
86 comprised of the medical directors of the major health  
87 care payers and the state payers along with medical  
88 providers and others.

89 (2) *Individual Medical Homes Pilots.* – These pilots shall  
90 focus on larger physician practices. They shall seek  
91 certification from the National Committee on Quality  
92 Assurance. That initial certification will be Level I  
93 certification. This would be granted by virtue of certifying

94 the provider is in the process of attaining certification  
95 and currently have met provisional standards as set by the  
96 National Committee on Quality Assurance. This provi-  
97 sional certification lasts only one year with no renewal.

98 (3) *Community-Centered Medical Home Pilots.* – This  
99 approach shall link primary care practices with commu-  
100 nity health teams which would grow out of the current  
101 structure in place for federally qualified health centers.  
102 The community health teams shall include social and  
103 mental health workers, nurse practitioners, care coordina-  
104 tors and community health workers. These personnel  
105 largely exist in community hospitals, home health agencies  
106 and other settings. These pilots shall identify these  
107 resources as a separate team to collaborate with the  
108 primary care practices. The teams would focus on primary  
109 prevention such as smoking cessation programs and  
110 wellness interventions as well as working with the primary  
111 care practices to manage patients with multiple chronic  
112 conditions. Within this pilot all health care agencies are  
113 connected and share resources. Citizens can enter the  
114 system of care from any point and receive the most  
115 appropriate level of care or be directed to the most  
116 appropriate care. Any financial incentives in this model  
117 would involve all health care payers and could be used to  
118 encourage collaboration between primary care practices  
119 and the community health teams.

120 (4) *Medical Homes for the Uninsured Pilots.* – These  
121 pilots shall focus on medical homes to serve the uninsured.  
122 They shall include various means of providing care to the  
123 uninsured with primary and preventative care. Through  
124 this mechanism, a variety of pilots may be developed that  
125 shall include screening, treatment of chronic disease and  
126 other aspects of primary care and prevention services. The  
127 pilots will be chosen based on their design meeting the  
128 requirements of this subsection and the resources avail-  
129 able to provide these services.

130 (e) The Governor's Office of Health Enhancement and  
131 Lifestyle Planning may promulgate emergency rules  
132 pursuant to the provisions of section fifteen, article three,  
133 chapter twenty-nine-a of this code if they deem them  
134 necessary to implement this section.

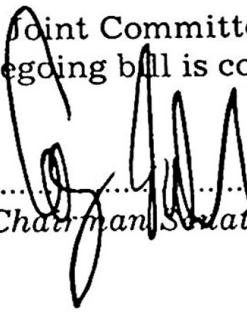
135 (1) The Governor's Office of Health Enhancement and  
136 Lifestyle Planning shall establish by guidelines, criteria to  
137 evaluate the pilot program and may require participating  
138 providers to submit such data and other information  
139 related to the pilot program as may be required by the  
140 Governor's Office of Health Enhancement and Lifestyle  
141 Planning. For purposes of this article, this information  
142 shall be exempt from disclosure under the Freedom of  
143 Information Act in article one, chapter twenty-nine-b of  
144 this code.

145 (2) No later than December 1, 2009, and annually  
146 thereafter during the operation of the pilot program, the  
147 Governor's Office of Health Enhancement and Lifestyle  
148 Planning must submit a report to the Legislative Oversight  
149 Commission of Health and Human Resources Accountabil-  
150 ity as established in article twenty-nine-e of this chapter  
151 on progress made by the pilot project including suggested  
152 legislation, necessary changes to the pilot program and  
153 suggested expansion of the pilot program.

**§16-29H-10. Exemption from Purchasing Division require-  
ments.**

1 The provisions of article three, chapter five-a of this  
2 code do not apply to the agreements and contracts exe-  
3 cuted under the provisions of this article, except that the  
4 contracts and agreements shall be approved as to form and  
5 conformity with applicable law by the Attorney General.


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

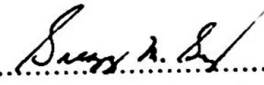
  
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Chairman Senate Committee

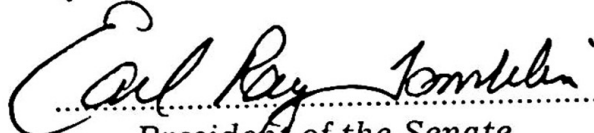
  
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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is disapproved* ..... this the *7<sup>th</sup>* .....  
Day of *May* ....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 1 2009

Time 8:50 pm