

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

SB300

Enrolled
Committee Substitute
for
Senate Bill 300

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2024 FEB 19 P 4: 33

FILED

BY SENATORS DEEDS, GRADY, PLYMALE, TAKUBO,
WOODRUM, WOELFEL, STUART, JEFFRIES, AND PHILLIPS
[Passed February 8, 2024; in effect from passage]

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1 AN ACT to repeal §5-11-1, §5-11-2, §5-11-3, §5-11-4, §5-11-5, §5-11-6, §5-11-7, §5-11-8, §5-11-
2 9, §5-11-9a, §5-11-10, §5-11-11, §5-11-12, §5-11-13, §5-11-14, §5-11-15, §5-11-16, §5-
3 11-17, §5-11-18, §5-11-19, and §5-11-20 of the Code of West Virginia, 1931, as amended;
4 to repeal §5-11A-1, §5-11A-2, §5-11A-3, §5-11A-3a, §5-11A-4, §5-11A-5, §5-11A-6, §5-
5 11A-7, §5-11A-8, §5-11A-9, §5-11A-10, §5-11A-11, §5-11A-12, §5-11A-13, §5-11A-14,
6 §5-11A-15, §5-11A-16, §5-11A-17, §5-11A-18, §5-11A-19, and §5-11A-20 of said code;
7 to repeal §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6, and §5-11B-7 of
8 said code; to amend and reenact §5F-2-1a of said code; to amend and reenact §9-5-27
9 of said code; to repeal §16-1-22, §16-1-22a, §16-1-22b, and §16-1-22c of said code; to
10 repeal §16-2E-1, §16-2E-2, §16-2E-3, §16-2E-4, and §16-2E-5 of said code; to repeal
11 §16-2N-1, §16-2N-2, and §16-2N-3 of said code; to repeal §16-5B-1, §16-5B-2, §16-5B-
12 3, §16-5B-4, §16-5B-5, §16-5B-5a, §16-5B-6, §16-5B-7, §16-5B-8, §16-5B-9, §16-5B-10,
13 §16-5B-11, §16-5B-12, §16-5B-13, §16-5B-14, §16-5B-15, §16-5B-16, §16-5B-17, §16-
14 5B-18, §16-5B-19, and §16-5B-20 of said code; to repeal §16-5C-1, §16-5C-2, §16-5C-3,
15 §16-5C-4, §16-5C-5, §16-5C-6, §16-5C-7, §16-5C-8, §16-5C-9, §16-5C-9a, §16-5C-10,
16 §16-5C-11, §16-5C-12, §16-5C-12a, §16-5C-13, §16-5C-14, §16-5C-15, §16-5C-18, §16-
17 5C-19, §16-5C-20, §16-5C-21, and §16-5C-22 of said code; to repeal §16-5D-1, §16-5D-
18 2, §16-5D-3, §16-5D-4, §16-5D-5, §16-5D-6, §16-5D-7, §16-5D-8, §16-5D-9, §16-5D-10,
19 §16-5D-11, §16-5D-12, §16-5D-13, §16-5D-14, §16-5D-15, and §16-5D-18 of said code;
20 to repeal §16-5E-1, §16-5E-1a, §16-5E-2, §16-5E-3, §16-5E-3a, §16-5E-4, §16-5E-5, and
21 §16-5E-6 of said code; to repeal §16-5H-1, §16-5H-2, §16-5H-3, §16-5H-4, §16-5H-5,
22 §16-5H-6, §16-5H-7, §16-5H-8, §16-5H-9, and §16-5H-10 of said code; to repeal §16-5I-
23 1, §16-5I-2, §16-5I-3, §16-5I-4, §16-5I-5, and §16-5I-6 of said code; to repeal §16-5N-1,
24 §16-5N-2, §16-5N-3, §16-5N-4, §16-5N-5, §16-5N-6, §16-5N-7, §16-5N-8, §16-5N-9, §16-
25 5N-10, §16-5N-11, §16-5N-12, §16-5N-13, §16-5N-14, §16-5N-15, and §16-5N-16 of said
26 code; to repeal §16-5O-1, §16-5O-2, §16-5O-3, §16-5O-4, §16-5O-5, §16-5O-6, §16-5O-

27 7, §16-5O-8, §16-5O-9, §16-5O-10, §16-5O-11, and §16-5O-12 of said code; to repeal
28 §16-5R-1, §16-5R-2, §16-5R-3, §16-5R-4, §16-5R-5, §16-5R-6, and §16-5R-7 of said
29 code; to repeal §16-5W-1, §16-5W-2, §16-5W-3, and §16-5W-4 of said code; to repeal
30 §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-
31 5Y-9, §16-5Y-10, §16-5Y-11, §16-5Y-12, and §16-5Y-13 of said code; to repeal §16-5AA-
32 1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, §16-5AA-6, §16-5AA-7, §16-5AA-8,
33 §16-5AA-9, and §16-5AA-10 of said code; to repeal §16-49-1, §16-49-2, §16-49-3, §16-
34 49-4, §16-49-5, §16-49-6, §16-49-7, §16-49-8, and §16-49-9 of said code; to amend said
35 code by adding thereto a new chapter, designated §16B-1-1, §16B-2-1, §16B-2-2, §16B-
36 2-3, §16B-2-4, §16B-3-1, §16B-3-2, §16B-3-3, §16B-3-4, §16B-3-5, §16B-3-5a, §16B-3-
37 6, §16B-3-7, §16B-3-8, §16B-3-9, §16B-3-10, §16B-3-11, §16B-3-12, §16B-3-13, §16B-
38 3-14, §16B-3-15, §16B-3-16, §16B-3-17, §16B-3-18, §16B-3-19, §16B-3-20, §16B-4-1,
39 §16B-4-2, §16B-4-3, §16B-4-4, §16B-4-5, §16B-4-6, §16B-4-7, §16B-4-8, §16B-4-9,
40 §16B-4-9a, §16B-4-10, §16B-4-11, §16B-4-12, §16B-4-12a, §16B-4-13, §16B-4-14,
41 §16B-4-15, §16B-4-16, §16B-4-17, §16B-4-18, §16B-4-19, §16B-4-20, §16B-5-1, §16B-
42 5-2, §16B-5-3, §16B-5-4, §16B-5-5, §16B-5-6, §16B-5-7, §16B-5-8, §16B-5-9, §16B-5-10,
43 §16B-5-11, §16B-5-12, §16B-5-13, §16B-5-14, §16B-5-15, §16B-5-16, §16B-6-1, §16B-
44 6-1a, §16B-6-2, §16B-6-3, §16B-6-3a, §16B-6-4, §16B-6-5, §16B-6-6, §16B-7-1, §16B-
45 7-2, §16B-7-3, §16B-7-4, §16B-7-5, §16B-7-6, §16B-7-7, §16B-7-8, §16B-7-9, §16B-7-10,
46 §16B-8-1, §16B-8-2, §16B-8-3, §16B-8-4, §16B-8-5, §16B-8-6, §16B-9-1, §16B-9-2,
47 §16B-9-3, §16B-9-4, §16B-9-5, §16B-9-6, §16B-9-7, §16B-9-8, §16B-9-9, §16B-9-10,
48 §16B-9-11, §16B-9-12, §16B-9-13, §16B-9-14, §16B-9-15, §16B-9-16, §16B-10-1, §16B-
49 10-2, §16B-10-3, §16B-10-4, §16B-10-5, §16B-10-6, §16B-10-7, §16B-10-8, §16B-10-9,
50 §16B-10-10, §16B-10-11, §16B-10-12, §16B-11-1, §16B-11-2, §16B-11-3, §16B-11-4,
51 §16B-11-5, §16B-11-6, §16B-11-7, §16B-12-1, §16B-12-2, §16B-12-3, §16B-13-1, §16B-
52 13-2, §16B-13-3, §16B-13-4, §16B-13-5, §16B-13-6, §16B-13-7, §16B-13-8, §16B-13-9,

53 §16B-13-10, §16B-13-11, §16B-13-12, §16B-13-13, §16B-14-1, §16B-14-2, §16B-14-3,
54 §16B-14-4, §16B-14-5, §16B-14-6, §16B-14-7, §16B-14-8, §16B-14-9, §16B-14-10,
55 §16B-15-1, §16B-15-2, §16B-15-3, §16B-15-4, §16B-15-5, §16B-15-6, §16B-15-7, §16B-
56 15-8, §16B-15-9, §16B-16-1, §16B-16-2, §16B-16-3, §16B-16-4, §16B-16-5, §16B-16-6,
57 §16B-16-7, §16B-16-8, §16B-16-9, §16B-16-10, §16B-17-1, §16B-17-2, §16B-17-3,
58 §16B-17-4, §16B-17-5, §16B-17-6, §16B-17-7, §16B-17-8, §16B-17-9, §16B-17-9a,
59 §16B-17-10, §16B-17-11, §16B-17-12, §16B-17-13, §16B-17-14, §16B-17-15, §16B-17-
60 16, §16B-17-17, §16B-17-18, §16B-17-19, §16B-17-20, §16B-18-1, §16B-18-2, §16B-18-
61 3, §16B-18-3a, §16B-18-4, §16B-18-5, §16B-18-6, §16B-18-7, §16B-18-8, §16B-18-9,
62 §16B-18-10, §16B-18-11, §16B-18-12, §16B-18-13, §16B-18-14, §16B-18-15, §16B-18-
63 16, §16B-18-17, §16B-18-18, §16B-18-19, §16B-18-20, §16B-19-1, §16B-19-2, §16B-19-
64 3, §16B-19-4, §16B-19-5, §16B-19-6, §16B-19-7, §16B-20-1, §16B-20-2, §16B-20-3,
65 §16B-20-4, §16B-20-5, §16B-21-1, §16B-21-2, and §16B-21-3; to amend and reenact
66 §25-1B-7 of said code; to amend and reenact §27-1-9 of said code; to amend and reenact
67 §27-1A-6 and §27-1A-7 of said code; to amend and reenact §27-9-1 and §27-9-2 of said
68 code; to amend and reenact §27-17-1 and §27-17-3 of said code; to amend and reenact
69 §49-1-203 of said code; and to repeal §49-9-101, §49-9-102, §49-9-103, §49-9-104, §49-
70 9-105, §49-9-106, §49-9-107, §49-9-108, §49-9-109, and §49-9-110 of said code, all
71 relating to the organization of the Office of the Inspector General; moving related units,
72 programs, and commissions that are affiliated with the Office of Inspector General into the
73 same chapter; setting for findings; setting forth duties and powers; providing for
74 rulemaking authority; setting forth qualifications for directors; requiring directors to be
75 appointed by a certain date; and making technical and stylistic changes.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-1. Short title.

1 [Repealed.]

§5-11-2. Declaration of policy.

1 [Repealed.]

§5-11-3. Definitions.

1 [Repealed.]

§5-11-4. Powers and objectives.

1 [Repealed.]

§5-11-5. Composition; appointment, terms, and oath of members; compensation and expenses.

1 [Repealed.]

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

1 [Repealed.]

§5-11-7. Assistance to commission; legal services.

1 [Repealed.]

§5-11-8. Commission powers; functions; services.

1 [Repealed.]

§5-11-9. Unlawful discriminatory practices.

1 [Repealed.]

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

1 [Repealed.]

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

1 [Repealed.]

§5-11-11. Appeal and enforcement of commission orders

1 [Repealed.]

§5-11-12. Local human relations commissions.

1 [Repealed.]

§5-11-13. Exclusiveness of remedy; exceptions.

1 [Repealed.]

§5-11-14. Penalty.

1 [Repealed.]

§5-11-15. Construction; severability.

1 [Repealed.]

§5-11-16. Certain records exempt.

1 [Repealed.]

§5-11-17. Posting of law and information.

1 [Repealed.]

§5-11-18. Injunctions in certain housing complaints.

1 [Repealed.]

§5-11-19. Private club exemption.

1 [Repealed.]

§5-11-20. Violations of human rights; civil action by attorney general.

1 [Repealed.]

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-1. Short title.

1 [Repealed.]

§5-11A-2. Declaration of policy.

1 [Repealed.]

§5-11A-3. Definitions.

1 [Repealed.]

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

1 [Repealed.]

§5-11A-4. Application of article.

1 [Repealed.]

§5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.

1 [Repealed.]

§5-11A-6. Discrimination in residential real estate-related transactions.

1 [Repealed.]

§5-11A-7. Discrimination in provision of brokerage services.

1 [Repealed.]

§5-11A-8. Religious organization or private club exemption.

1 [Repealed.]

§5-11A-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

1 [Repealed.]

§5-11A-10. Education and conciliation; conferences and consultations; reports.

1 [Repealed.]

§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

1 [Repealed.]

§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

1 [Repealed.]

§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

1 [Repealed.]

§5-11A-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by Attorney General.

1 [Repealed.]

§5-11A-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

1 [Repealed.]

§5-11A-16. Interference, coercion, or intimidation; enforcement by civil action.

1 [Repealed.]

§5-11A-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication instate register.

1 [Repealed.]

§5-11A-18. Effect on other laws.

1 [Repealed.]

§5-11A-19. Severability of provisions.

1 [Repealed.]

§5-11A-20. Rules to implement article.

1 [Repealed.]

ARTICLE 11B. PREGNANCY WORKERS' FAIRNESS ACT.

§5-11B-1. Short title.

1 [Repealed.]

§5-11B-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

1 [Repealed.]

§5-11B-3. Remedies and enforcement.

1 [Repealed.]

§5-11B-4. Rule-making.

1 [Repealed.]

§5-11B-5. Definitions.

1 [Repealed.]

§5-11B-6. Relationship to other laws.

1 [Repealed.]

§5-11B-7. Reports.

2 [Repealed.]

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1a. Termination of the department of health and human resources; transfer and incorporation of agencies and boards legislative intent; creation of new departments.

1 (a) It is the intent of the Legislature to devolve the functions of the Department of Health
2 and Human Resources into three new and separate departments of the executive branch as
3 provided in this Act over a period of transition that concludes with the termination of the
4 Department of Health and Human Resources. It is the intent of the Legislature that the provisions
5 of this Act be construed to achieve the restructuring and reallocation of the powers, duties and
6 functions of the Department of Health and Human Resources to the three new departments
7 created in this section in an orderly manner designed to maintain the delivery of services that
8 have heretofore been provided by the Department of Health and Human Resources by the new
9 departments during the transition and beyond the termination of the Department of Health and
10 Human Resources without disruption and to streamline and, where possible, to share
11 administrative and operative expenses where common to each of the new departments. To that
12 end, the Secretary of the Department of Health and Human Resources, the Secretary of the
13 Department of Human Services, the Secretary of the Department of Health and the Secretary of
14 the Department of Health Facilities shall enter into a memorandum of understanding to effect the
15 provisions of this Act that shall, at a minimum, create a Office of Shared Administration mutually
16 administered by the secretaries that shall coordinate efforts with the Department of Administration
17 to maximize efficiencies and function of services in an effort to contain expenses within the
18 Department of Human Services, the Department of Health and the Department of Health
19 Facilities. The Office of Shared Administration shall implement a plan to maximize function and
20 efficiency administrative services for the purpose of streamlining administrative services and
21 reducing expenses within the departments. The Office of Shared Administration shall complete
22 implementation by June 30, 2024, and shall provide quarterly updates to the Legislative Oversight
23 Commission on Health and Human Resources Accountability.

24 (b) The Department of Human Services created under §5F-1-2 of this code is a separate
25 and distinct department of the executive branch. The following agencies and boards, including all
26 of the allied, advisory, affiliated, or related entities and funds associated with any agency or board,
27 are transferred to, incorporated in and administered as a part of the Department of Human
28 Services:

- 29 (1) Bureau for Social Services;
- 30 (2) Bureau for Medical Services;
- 31 (3) Bureau for Child Support Enforcement;
- 32 (4) Bureau for Family Assistance;
- 33 (5) Bureau for Behavioral Health; and
- 34 (6) Any other agency or entity hereinafter established within the Department of Human
35 Services by an act of the Legislature.

36 (c) (1) The Department of Health created under §5F-1-2 of this code is a separate and
37 distinct department of the executive branch. The following agencies and boards, including all of
38 the allied, advisory, affiliated, or related entities and funds associated with any agency or board,
39 are transferred to, incorporated in and administered as a part of the Department of Health:

- 40 (A) Bureau for Public Health;
- 41 (B) Office of Emergency Medical Services;
- 42 (C) Office of the Chief Medical Examiner;
- 43 (D) Center for Threat Preparedness;
- 44 (E) Health Care Authority; and
- 45 (F) Any other agency or entity hereinafter established within the Department of Health by
46 an act of the Legislature.

47 (2) The Office of the Inspector General is a separate and autonomous agency within the
48 Department of Health as provided in §16B-2-1. The following agencies and boards, including all
49 of the allied, advisory, affiliated, or related entities and funds associated with any agency or board,

50 are transferred to, incorporated in and administered as a part of the Office of the Inspector
51 General. The Office of the Inspector General, shall include:

52 (A) Office of Health Facility Licensure and Certification;

53 (B) Board of Review;

54 (C) Foster Care Ombudsman;

55 (D) Olmstead Office;

56 (E) Investigations and Fraud Management;

57 (F) Quality Control;

58 (G) Mental Health Ombudsman;

59 (H) WV Clearance for Access: Registry and Employment Screening; and

60 (I) Human Rights Commission.

61 (d) The Department of Health Facilities created under §5F-1-2 of this code is a separate
62 and distinct department of the executive branch. The following state facilities, including all of the
63 allied, advisory, affiliated, or related entities and funds associated with any state facility, are
64 transferred to, incorporated in and administered as a part of the Department of Health Facilities:

65 (1) Hopemont Hospital;

66 (2) Jackie Withrow Hospital;

67 (3) John Manchin, Sr. Health Care Center;

68 (4) Lakin Hospital;

69 (5) Mildred Mitchell-Bateman Hospital;

70 (6) Welch Community Hospital;

71 (7) William R. Sharpe Jr. Hospital; and

72 (8) Any other agency or entity hereinafter established within the Department of Health
73 Facilities by an act of the Legislature.

74 (e) Any secretary may recommend that a bureau, office, board, commission or other state
75 entity be included or excluded from the organization of the departments created in this section to

76 the Joint Committee on Government and Finance and the Legislative Commission on Health and
77 Human Resources Accountability.

78 (f) All programs, orders, determinations, rules, permits, grants, contracts, certificates,
79 bonds, authorizations and privileges which have been issued, promulgated, made, granted or
80 allowed to become pursuant to authority provided by this code to the Department of Health and
81 Human Resources or the Secretary of that Department that are in effect on the dates of the
82 creation of the new departments as provided in this section shall continue in effect according to
83 their terms until modified, terminated, superseded, set aside or revoked by the department or
84 secretary that assumes authority over the subject matter of the same under the provisions of this
85 Act.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-27. Transitioning foster care into managed care.

1 (a) "Eligible services" means acute care, including medical, pharmacy, dental, and
2 behavioral health services.

3 (b) The secretary shall transition to a capitated Medicaid program for a child classified as
4 a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is
5 living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk
6 based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure
7 the appropriate care is delivered in the most appropriate place and time.

8 (c) The secretary shall make payments for the eligible services, including home and
9 community-based services, using a managed care model.

10 (d) The secretary shall submit, if necessary, applications to the United States Department
11 of Health and Human Services for waivers of federal Medicaid requirements that would otherwise
12 be violated in the implementation of the program and shall consolidate any additional waivers

13 where appropriate: *Provided*, That this subsection does not apply to the Aged and Disabled
14 Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

15 (e) If a selected managed care organization ceases to contract to provide Medicaid
16 managed care services, it must provide all patient records, including medical records, to the next
17 selected managed care organization to ensure the Eligible Medicaid Beneficiaries do not
18 experience an interruption in care.

19 (f) In designing the program, the secretary shall ensure that the program:

20 (1) Reduces fragmentation and offers a seamless approach to meeting participants'
21 needs;

22 (2) Delivers needed supports and services in the most integrated, appropriate, and cost-
23 effective way possible;

24 (3) Offers a continuum of acute care services, which includes an array of home and
25 community-based options; and

26 (4) Includes a comprehensive quality approach across the entire continuum of care
27 services;

28 (g) An employee of the department who, as a function of that employment, has engaged
29 in the development of any contract developed pursuant to the requirements of this section may
30 not for a period of two years thereafter be employed by any agency or company that has benefitted
31 or stands to benefit directly from a contract between the department and that agency or company.

32 (h) Any managed care company selected as the managed care contractor pursuant to the
33 provisions of this article shall have at least 80 percent of the total full-time equivalent positions
34 allocated to manage care of foster children in West Virginia according to the contract must have
35 a primary workplace in the state of West Virginia.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2. OFFICE OF THE INSPECTOR GENERAL, DUTIES, AND POWERS.

§16-1-22. Office of the Inspector General.

1 [Repealed.]

§16-1-22a. Judicial Review of decisions of contested cases.

1 [Repealed.]

§16-1-22b. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

1 [Repealed.]

§16-1-22c. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

1 [Repealed.]

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-1. Definitions.

1 [Repealed.]

§16-2E-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

1 [Repealed.]

§16-2E-3. State director of health to establish rules and regulations; legislative findings; emergency filing.

1 [Repealed.]

§16-2E-4. Insurance.

1 [Repealed.]

§16-2E-5. Violations; penalties; injunction.

1 [Repealed.]

ARTICLE 2N. NEONATAL ABSTINENCE SYNDROME CENTER.

§16-2N-1. Neonatal Abstinence Centers authorized; licensure required.

1 [Repealed.]

§16-2N-2. Rules; minimum standards for neonatal abstinence centers.

1 [Repealed.]

§16-2N-3. Certificate of need; exemption from moratorium.

1 [Repealed.]

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

1 [Repealed.]

§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.

1 [Repealed.]

§16-5B-3. Application for license.

1 [Repealed.]

§16-5B-4. License fees.

1 [Repealed.]

§16-5B-5. Inspection.

1 [Repealed.]

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

1 [Repealed.]

§16-5B-6. State director of health -to issue licenses; suspension or revocation.

1 [Repealed.]

§16-5B-7. Judicial review.

1 [Repealed.]

§16-5B-8. State board of health to establish standards; director enforces.

1 [Repealed.]

§16-5B-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

1 [Repealed.]

§16-5B-10. Information not to be disclosed; exception.

1 [Repealed.]

§16-5B-11. Violations; penalties.

1 [Repealed.]

§16-5B-12. Injunction; severability.

1 [Repealed.]

§16-5B-13. Hospital-based paternity program.

1 [Repealed.]

§16-5B-14. Rural Emergency Hospital Act.

1 [Repealed.]

§16-5B-15. Hospital visitation.

1 [Repealed.]

§16-5B-16. Public notice regarding the closure of a licensed health care facility or hospital.

1 [Repealed.]

§16-5B-17. Healthcare-associated infection reporting.

1 [Repealed.]

§16-5B-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

1 [Repealed.]

§16-5B-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability.

1 [Repealed.]

§16-5B-20. Patient safety and transparency.

1 [Repealed.]

ARTICLE 5C NURSING HOMES.

§16-5C-1. Purpose.

1 [Repealed.]

§16-5C-2. Definitions.

1 [Repealed.]

§16-5C-3. Powers, duties, and rights of secretary.

1 [Repealed.]

§16-5C-4. Administrative and inspection staff.

1 [Repealed.]

§16-5C-5. Rules; minimum standards for nursing homes.

1 [Repealed.]

§16-5C-6. License required; application; fees; duration; renewal.

1 [Repealed.]

§16-5C-7. Cost disclosure; surety for resident funds.

1 [Repealed.]

§16-5C-8. Investigation of complaints.

1 [Repealed.]

§16-5C-9. Inspections.

1 [Repealed.]

§16-5C-9a. Exemptions.

1 [Repealed.]

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

1 [Repealed.]

§16-5C-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

1 [Repealed.]

§16-5C-12. License denial, limitation, suspension, or revocation.

1 [Repealed.]

§16-5C-12a. Independent informal dispute resolution.

1 [Repealed.]

§16-5C-13. Judicial Review.

1 [Repealed.]

§16-5C-14. Legal counsel and services of the department.

1 [Repealed.]

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

1 [Repealed.]

§16-5C-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

1 [Repealed.]

§16-5C-19. Federal law; legislative rules.

1 [Repealed.]

§16-5C-20. Hospice palliative care required to be offered.

1 [Repealed.]

§16-5C-21. Employment restrictions.

1 [Repealed.]

§16-5C-22. Jury trial waiver to be a separate document.

1 [Repealed.]

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-1. Purpose.

1 [Repealed.]

§16-5D-2. Definitions.

1 [Repealed.]

§16-5D-3. Powers, duties, and rights of secretary.

1 [Repealed.]

§16-5D-4. Administrative and inspection staff.

1 [Repealed.]

§16-5D-5. Rules; minimum standards for assisted living residences.

1 [Repealed.]

§16-5D-6. License required; application; fees; duration; renewal.

1 [Repealed.]

§16-5D-7. Cost disclosure; surety for residents' funds.

1 [Repealed.]

§16-5D-8. Investigation of complaints.

1 [Repealed.]

§16-5D-9. Inspections.

1 [Repealed.]

**§16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use
of funds derived therefrom; hearings.**

1 [Repealed.]

**§16-5D-11. Enforcement actions; assessment of interest; collection of assessments;
hearings.**

1 [Repealed.]

§16-5D-12. License denial; limitation, suspension, or revocation.

1 [Repealed.]

§16-5D-13. Judicial review.

1 [Repealed.] .

§16-5D-14. Legal counsel and services for the secretary.

1 [Repealed.]

§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.

1 [Repealed.]

§16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

1 [Repealed.]

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-1. Purpose.

1 [Repealed.]

§16-5E-1a. Powers, rights and duties of the director.

1 [Repealed.]

§16-5E-2. Definitions.

1 [Repealed.]

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

1 [Repealed.]

§16-5E-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.

1 [Repealed.]

§16-5E-4. Public availability of registry.

1 [Repealed.]

§16-5E-5. Inspections; right of entry.

1 [Repealed.]

§16-5E-6. Enforcement; criminal penalties.

1 [Repealed.]

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-1. Purpose and short title.

1 [Repealed.]

§16-5H-2. Definitions.

1 [Repealed.]

§16-5H-3. Pain management clinics to obtain license; application; fees and inspections.

1 [Repealed.]

§16-5H-4. Operational requirements.

1 [Repealed.]

§16-5H-5. Exemptions.

1 [Repealed.]

§16-5H-6. Inspection.

1 [Repealed.]

§16-5H-7. Suspension; revocation.

1 [Repealed.]

§16-5H-8. Violations; penalties; injunction.

1 [Repealed.]

§16-5H-9. Rules.

1 [Repealed.]

§16-5H-10. Advertisement disclosure.

1 [Repealed.]

ARTICLE 5I. HOSPICE LICENSURE ACT.

§16-5I-1. Purpose and short title.

1 [Repealed.]

§16-5I-2. Definitions.

1 [Repealed.]

§16-5I-3. Hospices to obtain license; application; fees and inspections.

1 [Repealed.]

§16-5I-4. Suspension; revocation.

1 [Repealed.]

§16-5I-5. Secretary of Health and Human Resources to establish rules.

1 [Repealed.]

§16-5I-6. Violations; penalties; injunction.

1 [Repealed.]

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-1. Purpose.

1 [Repealed.]

§16-5N-2. Definitions.

1 [Repealed.]

§16-5N-3. Powers, duties, and rights of director.

1 [Repealed.]

§16-5N-4. Administrative and inspection staff.

1 [Repealed.]

§16-5N-5. Rules; minimum standards for residential care communities.

1 [Repealed.]

§16-5N-6. License required; application; fees; duration; renewal.

1 [Repealed.]

§16-5N-7. Cost disclosure; residents' funds; nursing care; fire code.

1 [Repealed.]

§16-5N-8. Investigation of complaints.

1 [Repealed.]

§16-5N-9. Inspections.

1 [Repealed.]

§16-5N-10. Reports of inspections; plans of correction; assessment of penalties, fees and costs; use of funds derived therefrom; hearings.

1 [Repealed.]

§16-5N-11. License limitation, suspension, and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

1 [Repealed.]

§16-5N-12. Administrative appeals from civil penalty assessment, license limitation, suspension, or revocation.

1 [Repealed.]

§16-5N-13. Judicial review.

1 [Repealed.]

§16-5N-14. Legal counsel and services for the director.

1 [Repealed.]

§16-5N-15. Unlawful acts; penalties; injunctions; private right of action.

1 [Repealed.]

§16-5N-16. Availability of reports and records.

1 [Repealed.]

ARTICLE 50. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-50-1. Short title.

1 [Repealed.]

§16-50-2. Definitions.

1 [Repealed.]

§16-50-3. Administration of medications; performance of health maintenance tasks; maintenance of liability insurance in facilities.

1 [Repealed.]

§16-50-4. Exemption from licensure; statutory construction.

1 [Repealed.]

§16-50-5. Instruction and training.

1 [Repealed.]

§16-50-6. Availability of records; eligibility requirements of facility staff.

1 [Repealed.]

§16-50-7. Oversight of medication administration and performance of health maintenance tasks by the approved medication assistive personnel.

1 [Repealed.]

§16-50-8. Withdrawal of authorization.

1 [Repealed.]

§16-50-9. Fees.

1 [Repealed.]

§16-50-10. Limitations on medication administration or performance of health maintenance tasks.

1 [Repealed.]

§16-50-11. Rules.

1 [Repealed.]

§16-5O-12. Advisory Committee.

1 [Repealed.]

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-1. Name of act.

1 [Repealed.]

§16-5R-2. Findings and declarations.

1 [Repealed.]

§16-5R-3. Definition of Alzheimer's special care unit/program.

1 [Repealed.]

§16-5R-4. Alzheimer's special care disclosure required.

1 [Repealed.]

§16-5R-5. Standards for care; rules.

1 [Repealed.]

§16-5R-6. Alzheimer's and dementia care training; rules.

1 [Repealed.]

§16-5R-7. Establishment of a central registry.

1 [Repealed.]

ARTICLE 5W. REGULATION OF BEHAVIORAL HEALTH.

§16-5W-1. Reporting.

1 [Repealed.]

§16-5W-2. Independent Mental Health Ombudsman.

1 [Repealed.]

§16-5W-3. Intellectual and Developmental Disabilities Waiver Program workforce study.

1 [Repealed.]

§16-5W-4. Annual capitation rate review.

1 [Repealed.]

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-1. Purpose.

1 [Repealed.]

§16-5Y-2. Definitions.

1 [Repealed.]

§16-5Y-3. Opioid treatment programs to obtain license; application; fees and inspections.

1 [Repealed.]

§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

1 [Repealed.]

§16-5Y-5. Operational requirements.

1 [Repealed.]

§16-5Y-6. Restrictions; variances and waivers.

1 [Repealed.]

§16-5Y-7. Inspection; inspection warrant.

1 [Repealed.]

§16-5Y-8. License and registration limitation; denial; suspension; revocation.

1 [Repealed.]

§16-5Y-9. Violations; penalties; injunction.

1 [Repealed.]

§16-5Y-10. Advertisement disclosure.

1 [Repealed.]

§16-5Y-11. State Opioid Treatment Authority.

1 [Repealed.]

§16-5Y-12. Moratorium; certificate of need.

1 [Repealed.]

§16-5Y-13. Rules; minimum standards for medication-assisted treatment programs.

1 [Repealed.]

ARTICLE 5AA. MEDICATION ADMINISTERED BY UNLICENSED PERSONNEL IN NURSING HOMES.

§16-5AA-1. Definitions.

1 [Repealed.]

§16-5AA-2. Administration of medications.

1 [Repealed.]

§16-5AA-3. Exemption from licensure; statutory construction.

1 [Repealed.]

§16-5AA-4. Instruction and training.

1 [Repealed.]

§16-5AA-5. Eligibility requirements of nursing home staff.

1 [Repealed.]

§16-5AA-6. Oversight of approved medication assistive personnel.

1 [Repealed.]

§16-5AA-7. Withdrawal of authorization.

1 [Repealed.]

§16-5AA-8. Fees.

1 [Repealed.]

§16-5AA-9. Limitations on medication administration.

1 [Repealed.]

§16-5AA-10. Permissive participation.

1 [Repealed.]

**ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND
EMPLOYMENT SCREENING ACT.**

§16-49-1. Definitions.

1 [Repealed.]

**§16-49-2. Background check program for the department, covered providers, and covered
contractors.**

1 [Repealed.]

§16-49-3. Prescreening and criminal background checks.

1 [Repealed.]

**§16-49-4. Notice of ineligibility; prohibited participation as direct access personnel or
department employee.**

1 [Repealed.]

§16-49-5. Variance; appeals.

1 [Repealed.]

§16-49-6. Provisional employment pending completion of background check.

1 [Repealed.]

§16-49-7. Clearance for subsequent employment.

1 [Repealed.]

§16-49-8. Fees.

1 [Repealed.]

§16-49-9. Rules; penalties; confidentiality; immunity.

1 [Repealed.]

CHAPTER 16B. INSPECTOR GENERAL.

ARTICLE 1. OFFICE OF THE INSPECTOR GENERAL, LEGISLATIVE FINDINGS.

§16B-1-1. Legislative Findings.

1 It is declared to be the public policy of this state that:

2 (1) The Department of Health, the Department of Human Services, and the Department
3 of Health Facilities need separate and independent oversight by an autonomous agency to protect
4 the vulnerable citizens served by these agencies.

5 (2) The Office of Inspector General shall be free of all influence, control, and direction by
6 the Department of Health, the Department of Human Services, and the Department of Health
7 Facilities over which it: exercises oversight and accountability, promotes transparency, and
8 monitors legal compliance.

9 (3) The Office of Inspector General shall be continued to provide oversight, transparency,
10 and accountability to the Department of Health, the Department of Human Services, and the
11 Department of Health Facilities. The powers of the Office of Inspector General shall be interpreted
12 broadly to effectuate this legislative purpose.

ARTICLE 2. OFFICE OF THE INSPECTOR GENERAL, DUTIES, AND POWERS.

§16B-2-1. Office of the Inspector General continued; appointment and qualifications of Director of Office of Health Facility Licensure and Certification and the Director of Investigations and Fraud Management Units.

1 (a) The Office of the Inspector General is continued as a separate and autonomous
2 agency within the Department of Health. The Department of Health shall provide administrative
3 support, at the request of the Office of Inspector General. Shared services shall be provided at
4 the request of the Office of the Inspector General when the same cannot be accomplished with
5 current staffing within the Office of the Inspector General. The Office of Inspector General shall
6 be headed by the Inspector General and is comprised of the offices as provided in §5F-2-1a of
7 this code. Any administrative supports or shared services provided or received by the Office of
8 the Inspector General are not subject to review by the Department of Health, the Department of
9 Human Services, or the Department of Health Facilities.

10 (b) (1) The Inspector General shall be appointed by the Governor, within 90 days of a
11 vacancy, subject to the advice and consent of the Senate.

12 (A) The term of the Inspector General is five years.

13 (B) At the end of a term, the Inspector General is eligible to be reappointed for one
14 additional term. The Inspector General shall continue to serve until a successor is appointed.

15 (C) If a vacancy occurs in the office, an interim Inspector General may be appointed as
16 successor to serve for the remainder of the unexpired term.

17 (2) The Inspector General may be removed by the Governor only for:

18 (A) Misconduct in office;

19 (B) Persistent failure to perform the duties of the Office; or

20 (C) Conduct prejudicial to the proper administration of justice.

21 (c) The Inspector General shall be professionally qualified through experience or
22 education in at least two of the following areas:

23 (1) Law;

24 (2) Auditing;

25 (3) Government operations;

26 (4) Financial management; or

27 (5) Health policy.

28 (d) The Inspector General shall be paid an annual salary as provided in the budget.

29 (e) Funding for the office shall be as provided in the state budget.

30 (f) The Inspector General shall:

31 (1) Conduct and supervise investigations, perform inspections, evaluations, and review,
32 and provide quality control for the programs of the Department of Human Services, the
33 Department of Health, and the Department of Health Facilities to promote legal, regulatory,
34 programmatic, and fiscal compliance.

35 (2) Investigate fraud, waste, and abuse of the Department of Human Services, the
36 Department of Health, and the Department of Health Facilities' funds, and conduct, whether by
37 acts or omissions in the Department of Human Services, the Department of Health, and the
38 Department of Health Facilities, that threatens or has the reasonable likelihood to threaten public
39 safety or demonstrates negligence, incompetence, or malfeasance;

40 (3) Cooperate with and coordinate investigative efforts with the Medicaid Fraud Control
41 Unit within the Office of the Attorney General, and where a preliminary investigation establishes
42 a sufficient basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit;

43 (4) Cooperate with and coordinate investigative efforts with departmental programs and
44 other state and federal agencies to ensure a provider is not subject to duplicative audits; and

45 (5) Be empowered to consult with the Legislature for policy development;

46 (6) (A) Organize a board of review, consisting of a chairman appointed by the Inspector
47 General and as many assistants or employees as may be determined by the Inspector General
48 and as may be required by federal laws and rules respecting assistance; the board of review to
49 have such powers of a review nature and such additional powers as may be granted to it by the
50 Inspector General and as may be required by federal laws and rules respecting assistance;

51 (B) Provide by rules, review, and appeal procedures within the office as may be required
52 by applicable federal laws and rules respecting assistance, and as will provide applicants for, and
53 recipients of, all classes of assistance, an opportunity to be heard by the board of review, a
54 member thereof, or individuals designated by the board, upon claims involving denial, reduction,
55 closure, delay, or other action or inaction pertaining to public assistance;

56 (7) (A) May subpoena any person or evidence, administer oaths, take and certify affidavits,
57 and take depositions and other testimony for the purpose of investigating fraud, waste, and abuse
58 of Department of Health, Department of Human Services, or Department of Health Facilities'
59 funds, or behavior in the same departments that threaten public safety or demonstrate negligence,
60 incompetence, or malfeasance;

61 (B) If a person fails to comply with a lawful order or subpoena issued under this subsection,
62 on petition of the Inspector General or a designated Assistant Inspector General, a court of
63 competent jurisdiction may compel:

64 (i) Compliance with the order or subpoena; or

65 (ii) Testimony or the production of evidence;

66 (C) Within 30 business days after receiving a complaint or allegation, the Inspector
67 General shall respond to the individual who filed the complaint or allegation with:

68 (i) A preliminary indication of whether the Office of the Inspector General is able to
69 investigate the complaint or allegation; and

70 (ii) If the Office of the Inspector General is unable to investigate the complaint or allegation
71 because of a conflict of interest, the Office of the Inspector General shall refer the complaint or
72 allegation to another unit of government or law enforcement.

73 (g) Neither the secretary nor any employee of the Department of Human Services,
74 Department of Health, or the Department of Health Facilities may prevent, inhibit, or prohibit or
75 cause to be prevented, inhibited, or prohibited, the Inspector General or his or her employees
76 from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or
77 other activity oversight of public integrity by the Office of the Inspector General.

78 (h) The Inspector General formulates, approves, and submits his or her budget to the
79 Governor for consideration by the Governor.

80 (i) The Inspector General shall supervise all personnel of the Office of the Inspector
81 General. Qualification, compensation, and personnel practice relating to the employees of the
82 Office of the Inspector General, shall be governed by the classified service.

83 (j) Employ and discharge within the Office of the Inspector General employees, including
84 professional employees such as investigators and other professional personnel as may be
85 necessary to carry out the functions of the Inspector General, which employees shall continue to

86 be within the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated
87 thereunder, except for the Inspector General.

88 (k) Cause the various sections of the Office of the Inspector General to be operated
89 effectively, efficiently, and economically, and to develop goals, policies, and plans that are
90 necessary or desirable for the effective, efficient, and economical operation of the Office of the
91 Inspector General.

92 (l) Eliminate or consolidate positions and name a person to fill more than one position.

93 (m) Reorganize internal functions or operations.

94 (n) Enter into contracts or agreements requiring the expenditure of public funds and
95 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the
96 powers granted to the Inspector General to enter into agreements and to make expenditures or
97 obligations of public funds under this provision shall not exceed or be interpreted as authority to
98 exceed the powers granted by the Legislature.

99 (o) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make effective
100 the powers, authority, and duties granted and imposed by the provisions of this chapter in
101 accordance with the provisions of chapter 29A of this code. The Inspector General may
102 promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this
103 section.

104 (p) Delegate to administrators the duties the Inspector General may deem appropriate,
105 from time to time, to facilitate execution of the powers, authority, and duties delegated to the
106 Inspector General.

107 (q) Transfer permanent state employees between units of the Inspector General.

108 (r) Enter into memorandums of understanding;

109 (s) Take any other action involving or relating to internal management not otherwise
110 prohibited by law;

111 (t) All legislative rules currently in effect impact the Office of the Inspector General or its
112 programs will continue to remain in full force and effect.

113 (u) (1) The Director of Office of Health Facility Licensure and Certification shall be
114 appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the
115 Senate;

116 (2) The Director of the Office of Health Facility Licensure and Certification shall have at
117 least eight years' experience in the field of licensure and regulatory matters; and

118 (v)(1) The Director of Investigations and Fraud Management shall be appointed by the
119 Governor, subject to advice and consent of the Senate.

120 (2) The Director of Investigations and Fraud Management shall have at least eight years'
121 experience in the field of investigations and fraud matters.

122 (w) The Inspector General, the Director of The Office of Health Facility Licensure and
123 Certification and the Director of the Investigations and Fraud Management may not be the same
124 person.

§16B-2-2. Board of Review- judicial review of decisions of contested cases.

1 (a) The Board of Review shall provide a fair, impartial, and expeditious grievance and
2 appeal process to applicants or recipients of assistance as defined in §9-1-2 *et seq.* of this code
3 and to all parties of contested cases arising under §29A-5-1 *et seq.*

4 (b) The Bureau of Medical Services shall provide a fair, impartial, and expeditious
5 grievance and appeal process to providers of Medicaid services.

6 (c) Any party adversely affected or aggrieved by a final decision or order of the board or
7 the bureau may seek judicial review of that decision by filing an appeal to the Intermediate Court
8 of Appeals as provided in §29A-5-4 *et seq.* of this code.

9 (d) The process established by this section is the exclusive remedy for judicial review of
10 final decisions of the Board of Review and the Bureau for Medical Services.

§16B-2-3. Board of Review; subpoena powers.

1 (a) The Inspector General and the Chair of the Board of Review may subpoena witnesses,
2 papers, records, documents and any other information or data it considers necessary for its
3 determination. They shall issue all subpoenas and subpoenas duces tecum in the name of the
4 appropriate entity.

5 (b) Requests for subpoenas and subpoenas duces tecum shall be in writing and shall
6 contain a statement acknowledging that the requesting party agrees to pay all fees for the
7 attendance and travel of witnesses.

8 (c) A subpoena or subpoena duces tecum issued at the request of an entity shall be served
9 by the party at least five days before the return date, either by personal service by a person over
10 18 years of age or by registered or certified mail, return receipt requested. If service is by mail,
11 the five-day notice period shall not begin until the date the person or entity receives the subpoena
12 or subpoena duces tecum.

13 (d) Fees for the attendance of witnesses are the same as for witnesses before the circuit
14 court of this State and shall be paid by the party requesting the issuance of the subpoena or
15 subpoena duces tecum.

16 (e) In any case of disobedience or neglect of any subpoena or subpoena duces tecum,
17 or any refusal of a witness to testify to any matter regarding which he or she may be lawfully
18 interrogated, the issuing entity may apply to the Circuit Court of Kanawha County, and the court
19 shall compel obedience through the same manner as a subpoena or subpoena duces tecum is
20 enforced in Kanawha County Circuit Court.

§16B-2-4. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

1 (a) When the Investigations and Fraud Management Unit of the Office of the Inspector
2 General, which is charged with investigating welfare fraud and intra-agency employee
3 misconduct, has credible information that indicates a person has engaged in an act or activity
4 related to the Department of Human Services, the Department of Health, or the Department of

5 Health Facilities programs, benefits, or intra-agency employee misconduct which is subject to
6 prosecution, it may conduct an investigation to determine if the act has been committed. To the
7 extent necessary to the investigation, the Inspector General or an employee of the Office of the
8 Inspector General may administer oaths or affirmations and issue subpoenas for witnesses and
9 documents relevant to the investigation, including information concerning the existence,
10 description, nature, custody, condition, and location of any book, record, documents or other
11 tangible thing, and the identity and location of persons having knowledge of relevant facts or any
12 matter reasonably calculated to lead to the discovery of admissible evidence.

13 When the Investigations and Fraud Management Unit has probable cause to believe that
14 a person has engaged in an act or activity which is subject to prosecution relating to the
15 Department of Human Services, the Department of Health, or the Department of Health Facilities
16 programs, benefits, or intra-agency employee misconduct, the Inspector General or an employee
17 of the Office of the Inspector General may request search warrants and present and swear or
18 affirm criminal complaints.

19 (b) If documents necessary to an investigation of the Investigations and Fraud
20 Management Unit appear to be located outside the state, the documents shall be made available
21 by the person or entity within the jurisdiction of the state having control over such documents
22 either at a convenient location within the state or, upon payment of necessary expenses to the
23 division for transportation and inspection, at the place outside the state where these documents
24 are maintained.

25 (c) Upon failure of a person to comply with a subpoena or a subpoena for the production
26 of evidence or failure of a person to give testimony without lawful excuse and upon reasonable
27 notice to all persons affected thereby, the Investigations and Fraud Management Division may
28 apply to the circuit court of the county in which compliance is sought for appropriate orders to
29 compel obedience with the provisions of this section.

30 (d) The Investigations and Fraud Management Unit may not make public the name or
31 identity of a person whose acts or conduct is investigated pursuant to this section or the facts
32 disclosed in an investigation except as the same may be used in any legal action or enforcement
33 proceeding brought pursuant to this code or federal law.

ARTICLE 3. HOSPITALS AND SIMILAR INSTITUTIONS.

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

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

13 A hospital or extended care facility operated in connection with a hospital, within the
14 meaning of this article, shall mean any institution, place, building, or agency in which an
15 accommodation of five or more beds is maintained, furnished, or offered for the hospitalization of
16 the sick or injured: *Provided*, That nothing contained in this article shall apply to nursing homes,
17 rest homes, personal care facilities, homes for the aged, extended care facilities not operated in
18 connection with a hospital, boarding homes, homes for the infirm or chronically ill, convalescent
19 homes, hotels or other similar places that furnish to their guests only board and room, or either of

20 them: *Provided, however,* That the hospitalization, care or treatment in a household, whether for
21 compensation or not, of any person related by blood or marriage, within the degree of
22 consanguinity of second cousin to the head of the household, or his or her spouse, shall not be
23 deemed to constitute the premises a hospital or extended care facility operated in connection with
24 a hospital, within the meaning of this article. "Hospital" shall include state hospitals as defined by
25 §27-1-6 of this code.

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

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

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

35 "Inspector General" means the Inspector General of the Office of the Inspector General
36 as described in §16B-2-1 of this code, or his or her designee.

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

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

41 Nothing in this article or the rules and regulations adopted pursuant to the provisions of
42 this article shall be construed to authorize the licensure, supervision, regulation, or control in any
43 manner of: (1) Private offices of physicians, dentists, or other practitioners of the healing arts; or
44 (2) dispensaries and first aid stations located within business or industrial establishments
45 maintained solely for the use of employees: *Provided,* That such facility does not contain inpatient

.46 or resident beds for patients or employees who generally remain in the facility for more than 24
.47 hours.

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

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

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

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

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

§16B-3-3. Application for license.

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

§16B-3-4. License fees.

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

- 5 (1) Those with five beds but less than 50 beds shall pay a fee of \$500;
6 (2) Those with 50 beds or more and less than 100 beds shall pay a fee of \$750;
7 (3) Those with 100 beds or more and less than 200 beds shall pay a fee of \$1,000; and
8 (4) those with 200 beds or more shall pay a fee of \$1,250.

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

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

15 (d) No such fee shall be refunded.

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

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

§16B-3-5. Inspection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§16B-3-7. Judicial review.

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

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

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

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

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

1 The Inspector General shall have the power to promulgate rules and regulations in
2 accordance with the provisions of §29-1-1 *et seq.* of this code and the director shall have the
3 power to enforce such rules and regulations, as the Inspector General may establish, not in

4 conflict with any provision of this article, as it finds necessary, or in the public interest, in order to
5 protect patients in institutions required to be licensed under this article from detrimental practices
6 and conditions, or to ensure adequate provision for their accommodations and care. No rule or
7 regulation or standard of the Inspector General shall be adopted or enforced which would have
8 the effect of denying a license to a hospital or other institution required to be licensed hereunder,
9 solely by reason of the school or system of practice employed or permitted to be employed by
10 physicians therein: *Provided*, That such school or system of practice is recognized by the laws of
11 this state.

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

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

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

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

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

§16B-3-11. Violations; penalties.

1 Any person, partnership, association, or corporation, and any state or local governmental
2 unit or any division, department, board, or agency thereof establishing, conducting, managing, or

3 operating an ambulatory health care facility, ambulatory surgical facility, a hospital, or extended
4 care facility operated in connection with a hospital, without first obtaining a license therefor as
5 herein provided, or violating any provision of this article or any rule or regulation lawfully
6 promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be
7 punished for the first offense by a fine of not more than \$100, or by imprisonment in the county
8 jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion
9 of the court. For each subsequent offense the fine may be increased to not more than \$500, with
10 imprisonment in the county jail for a period of not more than 90 days, or both such fine and
11 imprisonment, in the discretion of the court. Each day of a continuing violation after conviction
12 shall be considered a separate offense.

§16B-3-12. Injunction; severability.

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

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

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

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

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

7 (1) Information regarding the establishment of paternity;

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

9 and

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

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

16 (1) Information regarding the establishment of paternity;

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

18 and

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

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

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

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

1 (a) Definitions – As used in this section:

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

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

6 (A) Was a critical access hospital;

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

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

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

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

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

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

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

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

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

24 (3) Maintains 24-hour emergency services; and

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

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

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

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

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

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

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

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

36 (e) A rural emergency hospital may:

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

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

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

§16B-3-15. Hospital visitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (c) The advisory panel shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 of Emergency Medical Services. A hospital shall immediately notify the Office of Emergency
7 Medical Services of any change in its certification status.

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

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

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

24 (1) Increasing stroke awareness;

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

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

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

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

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

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

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

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

42 (1) A representative of the Department of Health;

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

45 (3) A registered emergency medical technician;

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

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

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

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

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

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

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

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

5 (1) A person who fulfills the certification requirements for law-enforcement officers under
6 §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (d) The salary of a hospital police officer is paid by the employing hospital's governing
44 board. The hospital shall furnish each hospital police officer with a firearm and an official uniform

45 to be worn while on duty. The hospital shall furnish, and require each officer while on duty to wear,
46 a shield with the appropriate inscription and to carry credentials certifying the person's identity
47 and authority as a hospital police officer.

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

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

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

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

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

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

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

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

1 (a) As used in this section:

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

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

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

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

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

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

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

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

28 (b) The Legislature finds that to better improve the quality and efficiency of health care
29 and to better facilitate planning for future states of emergency in West Virginia, a comprehensive
30 system for nurses should be established to create staffing plans to ensure facilities are adequately
31 staffed to handle the daily workload that may accompany a state of emergency. Further, the
32 Legislature finds that nurses in West Virginia fall under the definition of "critical infrastructure,"
33 and by establishing a comprehensive staffing plan, West Virginia will be better equipped to deal
34 with employment and staffing issues associated with higher acuity treatment in facilities.
35 Additionally, the Legislature finds that based upon the nature of the acuity-based patient
36 classification system it relies upon confidential patient information to generate a staffing plan
37 model and therefore both the classification system and the staffing plan are considered
38 confidential records as defined in §30-3C-3 of this code and are therefore not subject to discovery
39 in any civil action or administrative proceeding.

40 (c) A facility shall:

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

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

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

ARTICLE 4. NURSING HOMES.

§16B-4-1. Purpose.

1 It is the policy of this state to encourage and promote the development and utilization of
2 resources to ensure the effective and financially efficient care and treatment of persons who are
3 convalescing or whose physical or mental condition requires them to receive a degree of nursing
4 or related health care greater than that necessary for well individuals. Such care and treatment
5 require a living environment for such persons which, to the extent practicable, will approximate a
6 normal home environment. To this end, the guiding principle for administration of the laws of the
7 state is that such persons shall be encouraged and assisted in securing necessary care and
8 treatment in noninstitutional surroundings. In recognition that for many such persons effective
9 care and treatment can only be secured from proprietary, voluntary, and governmental nursing
10 homes it is the policy of this state to encourage, promote, and require the maintenance of nursing
11 homes so as to ensure protection of the rights and dignity of those using the services of such
12 facilities.

13 The provisions of this article are hereby declared to be remedial and shall be liberally
14 construed to effectuate its purposes and intents.

§16B-4-2. Definitions.

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

2 "Deficiency" means a nursing home's failure to meet the requirements specified in §16B-
3 4-1 *et seq.* of this code and rules promulgated thereunder.

4 "Department" means the Department of Health.

5 "Director" means the director of the office of Health Facility Licensure and Certification.

6 "Distance learning technologies" means computer-centered technologies delivered over
7 the internet, broadcasts, recordings, instructional videos, or videoconferencing.

8 "Household" means a private home or residence which is separate from or unattached to
9 a nursing home.

10 "Immediate jeopardy" means a situation in which the nursing home's noncompliance with
11 one or more of the provisions of this article or rules promulgated thereunder has caused or is
12 likely to cause serious harm, impairment or death to a resident.

13 "Inspector General" means the Inspector General of the Office of the Inspector General
14 as described in §16B-2-1 of this code, or his or her designee.

15 "Nursing home" or "facility" means any institution, residence, or place, or any part or unit
16 thereof, however named, in this state which is advertised, offered, maintained, or operated by the
17 ownership or management, whether for a consideration or not, for the express or implied purpose
18 of providing accommodations and care, for a period of more than 24 hours, for four or more
19 persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due
20 to physical or mental impairment or which provides services for the rehabilitation of persons who
21 are convalescing from illness or incapacitation.

22 The care or treatment in a household, whether for compensation or not, of any person
23 related by blood or marriage, within the degree of consanguinity of second cousin to the head of
24 the household, or his or her spouse, may not be deemed to constitute a nursing home within the
25 meaning of this article. Nothing contained in this article applies to nursing homes operated by the
26 federal government; or extended care facilities operated in conjunction with a hospital; or
27 institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or
28 hotels, boarding homes, or other similar places that furnish to their guests only room and board;
29 or to homes or asylums operated by fraternal orders pursuant to §35-3-1 *et seq.* of this code.

30 "Nursing care" means those procedures commonly employed in providing for the physical,
31 emotional, and rehabilitation needs of the ill or otherwise incapacitated which require technical
32 skills and knowledge beyond that which the untrained person possesses, including, but not limited
33 to, such procedures as: Irrigations, catheterization, special procedure contributing to
34 rehabilitation, and administration of medication by any method which involves a level of
35 complexity and skill in administration not possessed by the untrained person.

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

38 "Person" means an individual and every form of organization, whether incorporated or
39 unincorporated, including any partnership, corporation, trust, association, or political subdivision
40 of the state.

41 "Resident" means an individual living in a nursing home.

42 "Review organization" means any committee or organization engaging in peer review or
43 quality assurance, including, but not limited to, a medical audit committee; a health insurance
44 review committee; a professional health service plan review committee or organization; a dental
45 review committee; a physician's advisory committee; a podiatry advisory committee; a nursing
46 advisory committee; any committee or organization established pursuant to a medical assistance
47 program; any committee or organization established or required under state or federal statutes
48 rules or regulations; and any committee established by one or more state or local professional
49 societies or institutes, to gather and review information relating to the care and treatment of
50 residents for the purposes of:

51 Evaluating and improving the quality of health care rendered, reducing morbidity or
52 mortality, or establishing and enforcing guidelines designed to keep within reasonable bounds the
53 cost of health care.

54 "Sponsor" means the person or agency legally responsible for the welfare and support of
55 a resident.

56 "Substantial compliance" means a level of compliance with the rules such that no
57 deficiencies exist or such that identified deficiencies pose no greater risk to resident health or
58 safety than the potential for causing minimal harm.

59 The Inspector General may define in the rules any term used herein which is not expressly
60 defined.

§16B-4-3. Powers, duties, and rights of Inspector General.

1 In the administration of this article, the Inspector General shall have the following powers,
2 duties, and rights:

3 (a) To enforce rules and standards promulgated hereunder for nursing homes;

4 (b) To exercise as sole authority all powers relating to the issuance, suspension, and
5 revocation of licenses of nursing homes;

6 (c) To enforce rules promulgated hereunder governing the qualification of applicants for
7 nursing home licenses, including, but not limited to, educational requirements, financial
8 requirements, personal, and ethical requirements;

9 (d) To receive and disburse federal funds and to take whatever action not contrary to law
10 as may be proper and necessary to comply with the requirements and conditions for the receipt
11 of such federal funds;

12 (e) To receive and disburse for authorized purposes any moneys appropriated to the
13 department by the Legislature;

14 (f) To receive and disburse for purposes authorized by this article any funds that may
15 come to the department by gift, grant, donation, bequest, or devise, according to the terms thereof,
16 as well as funds derived from the department's operation, or otherwise;

17 (g) To make contracts, and to execute all instruments necessary or convenient in carrying
18 out the Inspector General's functions and duties; and all such contracts, agreements, and
19 instruments will be executed by the Inspector General;

20 (h) To appoint officers, agents, employees, and other personnel and fix their
21 compensation;

22 (i) To offer and sponsor educational and training programs for nursing homes for clinical,
23 administrative, management, and operational personnel;

24 (j) To undertake survey, research and planning projects, and programs relating to
25 administration and operation of nursing homes and to the health, care, treatment, and service in
26 general of such homes;

27 (k) To assess civil penalties for violations of facility standards, in accordance with §16B-
28 4-10 of this code;

29 (l) To inspect any nursing home and any records maintained therein that are necessary to
30 determine compliance with licensure laws or Medicare or Medicaid certification, subject to the
31 provisions of §16B-4-9 and §16B-4-10 of this code;

32 (m) To establish and implement procedures, including informal conferences,
33 investigations, and hearings, subject to applicable provisions of §29A-3-1 *et seq.* of this code, and
34 to enforce compliance with the provisions of this article and with rules issued hereunder;

35 (n) To subpoena witnesses and documents, administer oaths and affirmations, and to
36 examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a
37 person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice
38 to all persons affected thereby, the director may apply to the circuit court of the county in which
39 the hearing is to be held for an order compelling compliance;

40 (o) To make complaint or cause proceedings to be instituted against any person or
41 persons for the violation of the provisions of this article or of rules issued hereunder. Such action
42 may be taken by the director without the sanction of the prosecuting attorney of the county in
43 which proceedings are instituted if the officer fails or refuses to discharge his or her duty. The
44 circuit court of the county in which the conduct has occurred or, if emergency circumstances
45 require, the Circuit Court of Kanawha County shall have jurisdiction in all civil enforcement actions
46 brought under this article and may order equitable relief without bond. In no such case may the
47 Inspector General or any person acting under the Inspector General's direction be required to
48 give security for costs;

49 (p) To delegate authority to the director's employees and agents to perform all functions
50 of the director;

51 (q) To make available to the Governor, the Legislature, and the public at all times online
52 access through the Office of Health Facility Licensure and Certification website, the following

53 information. The online information will describe the licensing and investigatory activities of the
54 Office of Health Facility Licensure and Certification during the year. The online information will
55 include a list of all nursing homes in the state, whether such homes are proprietary or
56 nonproprietary; the name of the administrator or administrators; the total number of beds; the
57 legal name of the facility; state identification number; health investigations information and
58 reports; life safety investigations information and reports; and whether or not those nursing homes
59 listed accept Medicare and Medicaid residents; and

60 (r) To establish a formal process for licensed facilities to file complaints about the
61 inspection process or inspectors.

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

§16B-4-4. Administrative and inspection staff.

1 The director may, at such time or times as he or she may deem necessary, employ such
2 administrative employees, inspectors, or other persons as may be necessary to properly carry out
3 the provisions of this article. All employees of the Office of Health Facility Licensure and
4 Certification shall be members of the state civil service system and inspectors shall be trained to
5 perform their assigned duties. Such inspectors and other employees as may be duly designated
6 by the director shall act as the director's representatives and, under the direction of the director,
7 shall enforce the provisions of this article and all duly promulgated regulations and, in the
8 discharge of official duties, shall have the right of entry into any place maintained as a nursing
9 home.

§16B-4-5. Rules; minimum standards for nursing homes.

1 (a) All rules shall be proposed for legislative approval in accordance with the provisions of
2 §29A-3-1 *et seq.* of this code. The Inspector General shall recommend the adoption, amendment,
3 or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this
4 article.

5 (b) The Inspector General shall recommend rules establishing minimum standards of
6 operation of nursing homes including, but not limited to, the following:

7 (1) Administrative policies, including:

8 (A) An affirmative statement of the right of access to nursing homes by members of
9 recognized community organizations and community legal services programs whose purposes
10 include rendering assistance without charge to residents, consistent with the right of residents to
11 privacy;

12 (B) A statement of the rights and responsibilities of residents in nursing homes which
13 prescribe, as a minimum, such a statement of residents' rights as included in the United States
14 Department of Health and Human Services regulations, in force on the effective date of this article,
15 governing participation of nursing homes in the Medicare and Medicaid programs pursuant to 42
16 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*;

17 (C) The process to be followed by applicants seeking a license;

18 (D) The clinical, medical, resident, and business records to be kept by the nursing home;

19 (E) The procedures and inspections for the review of utilization and quality of resident
20 care; and

21 (F) The procedures for informal dispute resolution, independent informal dispute
22 resolution, and administrative due process, and when such remedies are available;

23 (2) Minimum numbers of administrators, medical directors, nurses, aides, and other
24 personnel according to the occupancy of the facility;

25 (3) Qualifications of the facility's administrators, medical directors, nurses, aides, and other
26 personnel;

27 (4) Safety requirements;

28 (5) Sanitation requirements;

29 (6) Personal services to be provided;

30 (7) Dietary services to be provided;

31 (8) Medical records;

32 (9) Social and recreational activities to be made available;

33 (10) Pharmacy services;

34 (11) Nursing services;

35 (12) Medical services;

36 (13) Physical facility;

37 (14) Resident rights;

38 (15) Visitation privileges that:

39 (A) Permit immediate access to a resident, subject to the resident's right to deny or
40 withdraw consent at any time, by immediate family or other relatives of the resident;

41 (B) Permit immediate access to a resident, subject to reasonable restrictions and the
42 resident's right to deny or withdraw consent at any time, by others who are visiting with the consent
43 of the resident; and

44 (C) Permit access to other specific persons or classes of persons consistent with state
45 and federal law; and

46 (16) Admission, transfer, and discharge rights.

47 (c) To ensure compliance with §29A-3-11(b)(3) of this code, the Inspector General shall
48 amend his or her legislative rule to exempt federally certified Medicare and Medicaid nursing
49 facilities from provisions addressed in the federal regulations.

50 (d) The director shall permit the nonclinical instruction portions of a nurse aide training
51 program approved by the Office of Health Facility Licensure and Certification to be provided
52 through distance learning technologies.

§16B-4-6. License required; application; fees; duration; renewal.

1 No person may establish, operate, maintain, offer, or advertise a nursing home within this
2 state unless and until he or she obtains a valid license therefor as hereinafter provided, which
3 license remains unsuspended, unrevoked, and unexpired. No public official or employee may

4 place any person in, or recommend that any person be placed in, or directly or indirectly cause
5 any person to be placed in, any nursing home, as defined in §16B-4-2 of this code, which is being
6 operated without a valid license from the Inspector General. The procedure for obtaining a license
7 is as follows:

8 (a) The applicant shall submit an application to the director on a form to be prescribed by
9 the director, containing such information as may be necessary to show that the applicant is in
10 compliance with the standards for nursing homes, as established by this article and the rules
11 lawfully promulgated hereunder. The application and any exhibits thereto shall provide the
12 following information:

13 (1) The name and address of the applicant;

14 (2) The name, address, and principal occupation:

15 (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10
16 percent or more in the applicant;

17 (B) Of each officer and director of a corporate applicant;

18 (C) Of each trustee and beneficiary of an applicant which is a trust; and

19 (D) Where a corporation has a proprietary interest of 25 percent or more in an applicant,
20 the name, address, and principal occupation of each officer and director of the corporation;

21 (3) The name and address of the owner of the premises of the nursing home or proposed
22 nursing home, if he or she is a different person from the applicant, and in such case, the name
23 and address:

24 (A) Of each person who, as a stockholder or otherwise, has a proprietary interest 10
25 percent or more in the owner;

26 (B) Of each officer and director of a corporate applicant; and

27 (C) Of each trustee and applicant, the name, address, and principal occupation of each
28 officer and director of the corporation;

29 (4) Where the applicant is the lessee or the assignee of the nursing home or the premises
30 of the proposed nursing home, a signed copy of the lease and any assignment thereof;

31 (5) The name and address of the nursing home or the premises of the proposed nursing
32 home;

33 (6) A description of the nursing home to be operated;

34 (7) The bed quota of the nursing home;

35 (8) An organizational plan for the nursing home indicating the number of persons
36 employed or to be employed and the positions and duties of all employees;

37 (9) The name and address of the individual who is to serve as administrator;

38 (10) Such evidence of compliance with applicable laws and rules governing zoning,
39 buildings, safety, fire prevention, and sanitation as the director may require;

40 (11) A listing of other states in which the applicant owns, operates, or manages a nursing
41 home or long-term care facility; and

42 (12) Such additional information as the director may require.

43 (b) Upon receipt and review of an application for license made pursuant to §16B-4-6(a) of
44 this code, and inspection of the applicant nursing home pursuant to §16B-4-9 and §16B-4-10 of
45 this code, the director shall issue a license if he or she finds:

46 (1) That an individual applicant, and every partner, trustee, officer, director, and controlling
47 person of an applicant which is not an individual, is a person responsible and suitable to operate
48 or to direct or participate in the operation of a nursing home by virtue of financial capacity,
49 appropriate business or professional experience, a record of compliance with lawful orders of the
50 department, if any, and lack of revocation of a license during the previous five years or consistent
51 poor performance in other states;

52 (2) That the facility is under the supervision of an administrator who is licensed pursuant
53 to the provisions of §30-25-1 *et seq.* of this code; and

54 (3) That the facility is in substantial compliance with standards established pursuant to
55 §16B-4-5 of this code, and such other requirements for a license as may be established by rule
56 under this article.

57 Any license issued by the director shall state the maximum bed capacity for which it is
58 issued, the date the license was issued, and the expiration date. Such licenses shall be issued
59 for a period not to exceed 15 months for nursing homes: *Provided*, That any license in effect for
60 which timely application for renewal, together with payment of the proper fee has been made to
61 the director in conformance with the provisions of this article and the rules issued thereunder, and
62 prior to the expiration date of the license, shall continue in effect until:

63 (A) Six months following the expiration date of the license; or

64 (B) The date of the revocation or suspension of the license pursuant to the provisions of
65 this article; or

66 (C) The date of issuance of a new license, whichever date first occurs.

67 Each license shall be issued only for the premises and persons named in the application
68 and is not transferable or assignable: *Provided*, That in the case of the transfer of ownership of
69 a facility with an unexpired license, the application by the proposed new owner shall be filed with
70 the director no later than 30 days before the proposed date of transfer. Upon receipt of proof of
71 the transfer of ownership, the application shall have the effect of a license for three months. The
72 director shall issue or deny a license within three months of the receipt of the proof of the transfer
73 of ownership. Every license shall be posted in a conspicuous place in the nursing home for which
74 it is issued so as to be accessible to and in plain view of all residents of and visitors to the nursing
75 home.

76 (c) A license is renewable, conditioned upon the licensee filing timely application for the
77 extension of the term of the license accompanied by the fee, and contingent upon evidence of
78 compliance with the provisions of this article and rules promulgated hereunder. Any application
79 for renewal of a license shall include a report by the licensee in such form and containing such

80 information as shall be prescribed by the director, including a statement of any changes in the
81 name, address, management, or ownership information on file with the director. All holders of
82 facility licenses as of the effective date of this article shall include, in the first application for
83 renewal filed thereafter, such information as is required for initial applicants under the provisions
84 of §16B-4-6(a) of this code.

85 (d) In the case of an application for a renewal license, if all requirements of §16B-4-6 of
86 this code are not met, the director may at his or her discretion issue a provisional license, provided
87 that care given in the nursing home is adequate for resident needs and the nursing home has
88 demonstrated improvement and evidences potential for substantial compliance within the term of
89 the license: *Provided*, That a provisional license may not be issued for a period greater than six
90 months, may not be renewed, and may not be issued to any nursing home that is a poor
91 performer.

92 (e) A nonrefundable application fee in the amount of \$200 for an original nursing home
93 license shall be paid at the time application is made for the license. Direct costs of initial licensure
94 inspections or inspections for changes in licensed bed capacity shall be borne by the applicant
95 and shall be received by the director prior to the issuance of an initial or amended license. The
96 license fee for renewal of a license shall be at the rate of \$15 per bed per year for nursing homes,
97 except the annual rate per bed may be assessed for licenses issued for less than 15 months.
98 Annually, the director may adjust the licensure fees for inflation based upon the increase in the
99 consumer price index during the last 12 months. All such license fees shall be due and payable
100 to the director, annually, and in the manner set forth in the rules promulgated hereunder. The fee
101 and application shall be submitted to the director who shall retain both the application and fee
102 pending final action on the application. All fees received by the director under the provisions of
103 this article shall be deposited in accordance with §16-1-13 of this code.

§16B-4-7. Cost disclosure; surety for resident funds.

1 (a) Each nursing home shall disclose in writing to all residents at the time of admission a
2 complete and accurate list of all costs which may be incurred by them, and shall notify the
3 residents 30 days in advance of changes in costs. The nursing home shall make available copies
4 of the list in the nursing home's business office for inspection. Residents may not be liable for any
5 cost not so disclosed.

6 (b) If the nursing home handles any money for residents within the facility, the licensee
7 or his or her authorized representative shall either: (1) Give a bond; or (2) obtain and maintain
8 commercial insurance with a company licensed in this state in an amount consistent with this
9 subsection and with the surety as the director shall approve. The bond or insurance shall be upon
10 condition that the licensee shall hold separately and in trust all residents' funds deposited with the
11 licensee; shall administer the funds on behalf of the resident in the manner directed by the
12 depositor; shall render a true and complete account to the depositor and the director when
13 requested, and at least quarterly to the resident; and upon termination of the deposit, shall account
14 for all funds received, expended, and held on hand. The licensee shall file a bond or obtain
15 insurance in a sum at least 1.25 times the average amount of funds deposited with the nursing
16 home during the nursing home's previous fiscal year.

17 This insurance policy shall specifically designate the resident as the beneficiary or payee
18 reimbursement of lost funds. Regardless of the type of coverage established by the facility, the
19 facility shall reimburse, within 30 days, the resident for any losses directly and seek
20 reimbursement through the bond or insurance itself. Whenever the director determines that the
21 amount of any bond or insurance required pursuant to this subsection is insufficient to adequately
22 protect the money of residents which is being handled, or whenever the amount of any such bond
23 or insurance is impaired by any recovery against the bond or insurance, the director may require
24 the licensee to file an additional bond or insurance in such amount as necessary to adequately
25 protect the money of residents being handled.

26 The provisions of this subsection do not apply if the licensee handles less than \$35 per
27 resident per month in the aggregate. Nursing homes certified to accept payment by Medicare and
28 Medicaid must meet the requirements for surety bonds as listed in the applicable federal
29 regulations.

§16B-4-8. Investigation of complaints.

1 (a) The director shall establish rules for prompt investigation of all complaints of alleged
2 violations by nursing homes of applicable requirements of state law or rules, except for such
3 complaints that the director determines are willfully intended to harass a licensee or are without
4 any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of
5 the complainant and for promptly informing the complaint and the nursing home involved of the
6 results of the investigation.

7 (b) If, after its investigation, the director determines that the complaint has merit, the
8 director shall take appropriate disciplinary action and shall advise any injured party of the
9 possibility of a civil remedy.

10 (1) A nursing home or licensee adversely affected by an order or citation of a deficient
11 practice issued pursuant to this section may request the independent informal dispute resolution
12 process contained in §16B-4-12a of this code.

13 (2) No later than 20 working days following the last day of a complaint investigation, the
14 director shall transmit to the nursing home a statement of deficiencies committed by the facility.
15 Notification of the availability of the independent informal dispute resolution process and an
16 explanation of the independent informal dispute resolution process shall be included in the
17 transmittal.

18 (c) No nursing home may discharge or in any manner discriminate against any resident,
19 legal representative, or employee for the reason that the resident, legal representative, or
20 employee has filed a complaint or participated in any proceeding specified in this article. Violation
21 of this prohibition by any nursing home constitutes ground for the suspension or revocation of the

22 license of the nursing home as provided in §16B-4-11 and §16B-4-12 of this code. Any type of
23 discriminatory treatment of a resident, legal representative, or employee by whom, or upon whose
24 behalf, a complaint has been submitted to the director, or any proceeding instituted under this
25 article, within 120 days of the filing of the complaint or the institution of such action, shall raise a
26 rebuttable presumption that such action was taken by the nursing home in retaliation for such
27 complaint or action.

§16B-4-9. Inspections.

1 The director and any duly designated employee or agent shall have the right to enter
2 upon and into the premises of any nursing home at any time for which a license has been issued,
3 for which an application for license has been filed with the director, or which the director has
4 reason to believe is being operated or maintained as a nursing home without a license. If entry is
5 refused by the owner or person in charge of the nursing home, the director may apply to the circuit
6 court of the county in which the nursing home is located or the Circuit Court of Kanawha County
7 for a warrant authorizing inspection to conduct the following inspections:

8 (1) An initial inspection prior to the issuance of a license pursuant to §16B-4-6 of this
9 code;

10 (2) A license inspection for a nursing home, which shall be conducted at least once every
11 15 months, if the nursing home has not applied for and received an exemption from the
12 requirement as provided for in this section;

13 (3) The director, by the director's authorized employees or agents, shall conduct at least
14 one inspection prior to issuance of a license pursuant to §16B-4-6 of this code, and shall conduct
15 periodic unannounced inspections thereafter, to determine compliance by the nursing home with
16 applicable rules promulgated thereunder. All facilities shall comply with regulations of the State
17 Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall
18 make all fire, safety, and like inspections. The director may provide for such other inspections as
19 the director may deem necessary to carry out the intent and purpose of this article. Any nursing

20 home aggrieved by a determination or assessment made pursuant to this section, shall have the
21 right to an administrative appeal as set forth in §16B-4-12 of this code;

22 (4) A complaint inspection based on a complaint received by the director. If, after
23 investigation of a complaint, the director determines that the complaint is substantiated, the
24 director may invoke any applicable remedies available pursuant to §16B-4-11 of this code.

§16B-4-9a. Exemptions.

1 (a) The director may grant an exemption from a license inspection if a nursing home was
2 found to be in substantial compliance with the provisions of this chapter at its most recent
3 inspection and there have been no substantiated complaints thereafter. The director may not
4 grant more than one exemption in any two-year period.

5 (b) The director may grant an exemption to the extent allowable by federal law from a
6 standard survey, only if the nursing home was found to be in substantial compliance with
7 certification participation requirements at its previous standard inspection and there have been
8 no substantiated complaints thereafter.

9 (c) The director may grant an exemption from periodic license inspections if a nursing
10 home receives accreditation by an accrediting body approved by the director and submits a
11 complete copy of the accreditation report. The accrediting body shall identify quality of care
12 measures that assure continued quality care of residents. The director may not grant more than
13 one exemption in any two-year period.

14 (d) If a complaint is substantiated, the director has the authority to immediately remove
15 the exemption.

**§16B-4-10. Reports of inspections; plans of correction; assessment of penalties and use
of funds derived therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to §16B-4-8 and §16B-4-9 of this code shall
2 be in writing and filed with the director and shall list all deficiencies in the nursing home's
3 compliance with the provisions of this article and the rules adopted hereunder.

4 (1) No later than 10 working days following the last day of the inspection, the director shall
5 transmit to the nursing home a copy of such report and shall specify a time within which the
6 nursing home shall submit a plan for correction of such deficiencies.

7 (2) Additionally, notification of the availability of the independent informal dispute
8 resolution process and an explanation of the independent informal dispute resolution process
9 shall be included in the transmittal.

10 (3) A nursing home adversely affected by an order or citation of a deficient practice issued
11 pursuant to this section may request the independent informal dispute resolution process
12 contained in §16B-4-12a of this code.

13 (4) The plan submitted by the nursing home shall be approved, rejected, or modified by
14 the director.

15 (5) The inspectors or the nursing home shall allow audio taping of the exit conference with
16 the expense to be paid by the requesting party.

17 (b) With regard to a nursing home with deficiencies and upon its failure to submit a plan
18 of correction which is approved by the director, or to correct any deficiency within the time
19 specified in an approved plan of correction, the director, in consultation with the Inspector
20 General, may assess civil penalties as hereinafter provided or may initiate any other legal or
21 disciplinary action as provided by this article: *Provided*, That any action by the director shall be
22 stayed until federal proceedings arising from the same deficiencies are concluded.

23 (c) Nothing in this section may be construed to prohibit the director from enforcing a rule,
24 administratively or in court, without first affording formal opportunity to make correction under this
25 section, where, in the opinion of the director, the violation of the rule jeopardizes the health or
26 safety of residents, or where the violation of the rule is the second or subsequent such violation
27 occurring during a period of 12 full months.

28 (d) Civil penalties assessed against nursing home shall not be less than \$50 nor more
29 than \$8,000: *Provided*, That the director, in consultation with the Inspector General, may not

30 assess a penalty under state licensure for the same deficiency or violation cited under federal law
31 and may not assess a penalty against a nursing home if the nursing home corrects the deficiency
32 within 20 days of receipt of written notice of the deficiency unless it is a repeat deficiency or the
33 nursing home is a poor performer.

34 (e) In determining whether to assess a penalty, and the amount of penalty to be assessed,
35 the director, in consultation with the Inspector General shall consider:

- 36 (1) How serious the noncompliance is in relation to direct resident care and safety;
37 (2) The number of residents the noncompliance is likely to affect;
38 (3) Whether the noncompliance was noncompliance during a previous inspection;
39 (4) The opportunity the nursing home has had to correct the noncompliance; and
40 (5) Any additional factors that may be relevant.

41 (f) The range of civil penalties shall be as follows:

42 (1) For a deficiency which presents immediate jeopardy to the health, safety, or welfare
43 of one or more residents, the director, in consultation with the Inspector General, may impose a
44 civil penalty of not less than \$3,000 nor more than \$8,000;

45 (2) For a deficiency which actually harms one or more residents, the director, in
46 consultation with the Inspector General, may impose a civil penalty of not less than \$1,000 nor
47 more than \$3,000;

48 (3) For a deficiency which has the potential to harm one or more residents, the director,
49 in consultation with the Inspector General, may impose a civil penalty of not less than \$50 nor
50 more than \$1,000;

51 (4) For a repeated deficiency, the director, in consultation with the Inspector General, may
52 impose a civil penalty of up to 150 percent of the penalties provided in §16B-4-10(f)(1) through
53 §16B-4-10(f)(3) of this code; and

54 (5) If no plan of correction is submitted as established in this rule, a penalty may be
55 assessed in the amount of \$100 a day unless a reasonable explanation has been provided and
56 accepted by the director, in consultation with the Inspector General.

57 (g) The director, in consultation with the Inspector General, shall assess a civil penalty of
58 not more than \$1,000 against an individual who willfully and knowingly certifies a material and
59 false statement in a resident assessment. Such penalty shall be imposed with respect to each
60 such resident assessment. The director, in consultation with the Inspector General, shall impose
61 a civil penalty of not more than \$5,000 against an individual who willfully and knowingly causes
62 another individual to certify a material and false statement in a resident assessment. Such penalty
63 shall be imposed with respect to each such resident assessment.

64 (h) The director, in consultation with the Inspector General, shall assess a civil penalty of
65 not more than \$2,000 against any individual who notifies, or causes to be notified, a nursing home
66 of the time or date on which an inspection is scheduled to be conducted under this article or under
67 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*

68 (i) If the director, in consultation with the Inspector General, assesses a penalty under this
69 section, the director shall cause delivery of notice of such penalty by personal service or by
70 certified mail. Said notice shall state the amount of the penalty, the action or circumstance for
71 which the penalty is assessed, the requirement that the action or circumstance violates, and the
72 basis upon which the director, in consultation with the Inspector General, assessed the penalty
73 and selected the amount of the penalty.

74 (j) The Inspector General shall, in a civil judicial proceeding, recover any unpaid
75 assessment which has not been contested under §16B-4-12 of this code within 30 days of receipt
76 of notice of such assessment, or which has been affirmed under the provisions of that section and
77 not appealed within 30 days of receipt of the Board of Review's final order, or which has been
78 affirmed on judicial review, as provided in §16B-4-13 of this code. All money collected by

79 assessments of civil penalties or interest shall be paid into a special resident benefit account and
80 shall be applied by the Inspector General for:

81 (1) The protection of the health or property of facility residents;

82 (2) Long-term care educational activities;

83 (3) The costs arising from the relocation of residents to other nursing homes when no
84 other funds are available; and

85 (4) In an emergency situation in which there are no other funds available, the operation of
86 a facility pending correction of deficiencies or closure.

87 (k) The opportunity for a hearing on an action taken under this section shall be as provided
88 in §16B-4-12 of this code.

§16B-4-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

1 (a) The director, in consultation with the Inspector General, may reduce the bed quota of
2 the nursing home or impose a ban on new admissions, where he or she finds upon inspection of
3 the nursing home that the licensee is not providing adequate care under the nursing home's
4 existing bed quota, and that reduction in quota or ban on new admissions, or both, would place
5 the licensee in a position to render adequate care. A reduction in bed quota or a ban on new
6 admissions, or both, may remain in effect until the nursing home is determined by the director to
7 be in substantial compliance with the rules. In addition, the director shall determine that the facility
8 has the management capability to ensure continued substantial compliance with all applicable
9 requirements. The director, in consultation with the Inspector General, shall evaluate the
10 continuation of the admissions ban or reduction in bed quota on a continuing basis, and may
11 make a partial lifting of the admissions ban or reduction in bed quota consistent with the purposes
12 of this section. If the residents of the facility are in immediate jeopardy of their health, safety,
13 welfare, or rights, the Inspector General may seek an order to transfer residents out of the nursing

14 home as provided for in §16B-4-11(d) of this code. Any notice to a licensee of reduction in bed
15 quota or a ban on new admissions shall include the terms of such order, the reasons therefor,
16 and a date set for compliance.

17 (b) The director, in consultation with the Inspector General, may deny, limit, suspend, or
18 revoke a license issued under this article or take other action as set forth in this section, if he or
19 she finds upon inspection that there has been a substantial failure to comply with the provisions
20 of this article or the standards or rules promulgated pursuant hereto.

21 (c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of a
22 license issued by the director, or the withdrawal of an application for a license after it has been
23 filed with the director, may not deprive the director, in consultation with the Inspector General, of
24 the authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a
25 license application, against the licensee or applicant upon any ground provided by law or to enter
26 an order denying the license application, suspending, or revoking the license, or otherwise taking
27 disciplinary action on any such ground.

28 (d) In addition to other remedies provided in this article, upon petition from the Inspector
29 General, a circuit court in the county in which a facility is located, or in Kanawha County if
30 emergency circumstances occur, may determine that a nursing home's deficiencies under this
31 article, or under 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*, if applicable, constitute an
32 emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and
33 issue an order to:

34 (1) Close the nursing home;

35 (2) Transfer residents in the nursing home to other nursing homes; or

36 (3) Appoint temporary management to oversee the operation of the facility and to assure
37 the health, safety, welfare, and rights of the nursing home's residents, where there is a need for
38 temporary management while:

39 (A) There is an orderly closure of the facility; or

40 (B) Improvements are made in order to bring the nursing home into compliance with all
41 the applicable requirements of this article and, if applicable, 42 U.S.C.A. §§ 1395 *et seq.* and 1396
42 *et seq.*

43 If the Inspector General petitions a circuit court for the closure of a nursing home, the
44 transfer of residents, or the appointment of temporary management, the circuit court shall hold a
45 hearing no later than seven days thereafter, at which time the Inspector General and the licensee
46 or operator of the nursing home may participate and present evidence. The burden of proof is on
47 the Inspector General.

48 A circuit court may divest the licensee or operator of possession and control of a nursing
49 home in favor of temporary management. The temporary management shall be responsible to
50 the court and shall have such powers and duties as the court may grant to direct all acts necessary
51 or appropriate to conserve the property and promote the health, safety, welfare, and rights of the
52 residents of the nursing home, including, but not limited to, the replacement of management and
53 staff, the hiring of consultants, the making of any necessary expenditures to close the nursing
54 home, or to repair or improve the nursing home so as to return it to compliance with applicable
55 requirements, and the power to receive, conserve, and expend funds, including Medicare,
56 Medicaid, and other payments on behalf of the licensee or operator of the nursing home. Priority
57 shall be given to expenditures for current direct resident care or the transfer of residents.
58 Expenditures other than normal operating expenses totaling more than \$20,000 shall be approved
59 by the circuit court.

60 The person charged with temporary management shall be an officer of the court, is not
61 liable for conditions at the nursing home which existed or originated prior to his or her
62 appointment, and is not personally liable, except for his or her own gross negligence and
63 intentional acts which result in injuries to persons or damage to property at the nursing home
64 during his or her temporary management. All compensation and per diem costs of the temporary
65 manager shall be paid by the nursing home. The costs for the temporary manager for any 30-day

66 period may not exceed the 75th percentile of the allowable administrator's salary as reported on
67 the most recent cost report for the nursing home's peer group as determined by the director. The
68 temporary manager shall bill the nursing home for compensation and per diem costs. Within 15
69 days of receipt of the bill, the nursing home shall pay the bill or contest the costs for which it was
70 billed to the court. Such costs shall be recoverable through recoupment from future
71 reimbursement from the state Medicaid agency in the same fashion as a benefits overpayment.

72 The temporary management shall promptly employ at least one person who is licensed
73 as a nursing home administrator in West Virginia.

74 A temporary management established for the purpose of making improvements in order
75 to bring a nursing home into compliance with applicable requirements may not be terminated until
76 the court has determined that the nursing home has the management capability to ensure
77 continued compliance with all applicable requirements, except if the court has not made such
78 determination within six months of the establishment of the temporary management, the
79 temporary management terminates by operation of law at that time, and the nursing home shall
80 be closed. After the termination of the temporary management, the person who was responsible
81 for the temporary management shall make an accounting to the court, and after deducting from
82 receipts the costs of the temporary management, expenditures, civil penalties, and interest no
83 longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the
84 nursing home.

85 (e) The assessments for penalties and for costs of actions taken under this article shall
86 have interest assessed at five percent per annum beginning 30 days after receipt of notice of such
87 assessment or 30 days after receipt of the Board of Review's final order following a hearing,
88 whichever is later. All such assessments against a nursing home that are unpaid shall be added
89 to the nursing home's licensure fee and may be filed as a lien against the property of the licensee
90 or operator of the nursing home. Funds received from such assessments shall be deposited as
91 funds received in §16B-4-10 of this code.

92 (f) The opportunity for a hearing on an action by the Inspector General taken under this
93 section shall be as provided in §16B-4-12 of this code.

§16B-4-12. License denial, limitation, suspension, or revocation.

1 (a) The director, in consultation with the Inspector General, shall deny, limit, suspend, or
2 revoke a license issued if the provisions of this article or if the rules promulgated pursuant to this
3 article are violated. The director, in consultation with the Inspector General, may revoke a nursing
4 home's license and prohibit all physicians and licensed disciplines associated with that nursing
5 home from practicing at the nursing home location based upon an annual, periodic, complaint,
6 verification, or other inspection and evaluation.

7 (b) Before any such license is denied, limited, suspended, or revoked, however, written
8 notice shall be given to the licensee, stating the grounds for such denial, limitation, suspension,
9 or revocation.

10 (c) An applicant or licensee has 10 working days after receipt of the order denying, limiting,
11 suspending, or revoking a license to request a formal hearing contesting the denial, limitation,
12 suspension, or revocation of a license under this article. If a formal hearing is requested, the
13 applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-
14 1 *et seq.* of this code.

15 (d) If a license is denied or revoked as herein provided, a new application for license shall
16 be considered by the director if, when, and after the conditions upon which the denial or revocation
17 was based have been corrected and evidence of this fact has been furnished. A new license shall
18 then be granted after proper inspection, if applicable, has been made and all provisions of this
19 article and rules promulgated pursuant to this article have been satisfied.

20 (e) If the license of a nursing home is denied, limited, suspended, or revoked, the
21 administrator or owner or lessor of the nursing home property shall cease to operate the facility
22 as a nursing home as of the effective date of the denial, limitation, suspension, or revocation. The
23 owner or lessor of the nursing home property is responsible for removing all signs and symbols

24 identifying the premises as a nursing home within 30 days. Any administrative appeal of such
25 denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or
26 revocation.

27 (f) Upon the effective date of the denial, limitation, suspension, or revocation, the
28 administrator of the nursing home shall advise the director and the Board of Pharmacy of the
29 disposition of all medications located on the premises. The disposition is subject to the supervision
30 and approval of the director. Medications that are purchased or held by a nursing home that is
31 not licensed may be deemed adulterated.

32 (g) The period of suspension for the license of a nursing home shall be prescribed by the
33 director but may not exceed one year.

§16B-4-12a. Independent informal dispute resolution.

1 (a) A facility or licensee adversely affected by an order or citation of a deficient practice
2 issued pursuant to this article or by a citation issued for a deficient practice pursuant to federal
3 law may request the independent informal dispute resolution process. A facility may contest a
4 cited deficiency as contrary to law or unwarranted by the facts or both.

5 (b) The director shall contract with up to three independent review organizations to
6 conduct an independent informal dispute resolution process for facilities. The independent review
7 organization shall be accredited by the Utilization Review Accreditation Commission.

8 (c) The independent informal dispute resolution process is not a formal evidentiary
9 proceeding and utilizing the independent informal dispute resolution process does not waive the
10 facility's right to a formal hearing.

11 (d) The independent informal dispute resolution process consists of the following:

12 (1) No later than 10 working days following the last day of the survey or inspection, or no
13 later than 20 working days following the last day of a complaint investigation, the director shall
14 transmit to the facility a statement of deficiencies committed by the facility. Notification of the

15 availability of the independent informal dispute resolution process and an explanation of the
16 independent informal dispute resolution process shall be included in the transmittal;

17 (2) When the facility returns its plan to correct the cited deficiencies to the director, the
18 facility may request in writing the independent informal dispute resolution process to refute the
19 cited deficiencies;

20 (3) Within five working days of receipt of the written request for the independent informal
21 dispute resolution process made by a facility, the director shall refer the request to an independent
22 review organization from the list of certified independent review organizations approved by the
23 state. The director shall vary the selection of the independent review organization on a rotating
24 basis. The director shall acknowledge in writing to the facility that the request for independent
25 review has been received and forwarded to an independent review organization for review. The
26 notice shall include the name and address of the independent review organization.

27 (4) Within 10 working days of receipt of the written request for the independent informal
28 dispute resolution process made by a facility, the independent review organization shall hold an
29 independent informal dispute resolution conference unless additional time is requested by the
30 facility. Before the independent informal dispute resolution conference, the facility may submit
31 additional information.

32 (5) The facility may not be accompanied by counsel during the independent informal
33 dispute resolution conference. The manner in which the independent informal dispute resolution
34 conference is held is at the discretion of the facility, but is limited to:

35 (A) A desk review of written information submitted by the facility;

36 (B) A telephonic conference; or

37 (C) A face-to-face conference held at the facility or a mutually agreed upon location.

38 (6) If the independent review organization determines the need for additional information,
39 clarification, or discussion after conclusion of the independent informal dispute resolution
40 conference, the director and the facility shall present the requested information.

41 (7) Within 10 calendar days of the independent informal dispute resolution conference, the
42 independent review organization shall provide and make a determination, based upon the facts
43 and findings presented, and shall transmit a written decision containing the rationale for its
44 determination to the facility and the director.

45 (8) If the director disagrees with the determination, the director may reject the
46 determination made by the independent review organization and shall issue an order setting forth
47 the rationale for the reversal of the independent review organization's decision to the facility within
48 10 calendar days of receiving the independent review organization's determination.

49 (9) If the director accepts the determination, the director shall issue an order affirming the
50 independent review organization's determination within 10 calendar days of receiving the
51 independent review organization's determination.

52 (10) If the independent review organization determines that the original statement of
53 deficiencies should be changed as a result of the independent informal dispute resolution process
54 and the director accepts the determination, the director shall transmit a revised statement of
55 deficiencies to the facility within 10 calendar days of the independent review organization's
56 determination.

57 (11) Within 10 calendar days of receipt of the director's order and the revised statement
58 of deficiencies, the facility shall submit a revised plan to correct any remaining deficiencies to the
59 director.

60 (e) A facility has 10 calendar days after receipt of the director's order to request a formal
61 hearing for any deficient practice cited under this article. If the facility requests a formal hearing,
62 the director and the facility shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of
63 this code.

64 (f) Under the following circumstances, the facility is responsible for certain costs of the
65 independent informal dispute resolution review, which shall be remitted to the director within 60
66 days of the informal hearing order:

67 (1) If the facility requests a face-to-face conference, the facility shall pay any costs incurred
68 by the independent review organization that exceed the cost of a telephonic conference,
69 regardless of which part ultimately prevails.

70 (2) If the independent review organization's decision supports the originally written
71 contested deficiency or adverse action taken by the director, the facility shall reimburse the
72 director for the cost charged by the independent review organization. If the independent review
73 organization's decision supports some of the originally written contested deficiencies, but not all
74 of them, the facility shall reimburse the director for the cost charged by the independent review
75 organization on a pro rata basis.

§16B-4-13. Judicial review.

1 (a) Any applicant or licensee who is dissatisfied with the decision of the formal hearing as
2 a result of the hearing provided for in §16B-4-12 of this code may, within 30 days after receiving
3 notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review
4 of the decision.

5 (b) The court may affirm, modify, or reverse the decision of the Board of Review and either
6 the applicant, licensee, or Inspector General may appeal from the court's decision to the Supreme
7 Court of Appeals.

8 (c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless
9 reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with
10 the provisions of §29A-6-1 *et seq.* of this code.

§16B-4-14. Legal counsel and services of the Inspector General.

1 (a) Legal counsel and services for the Office of Health Facility Licensure and Certification
2 in all administrative hearings may be provided by the Attorney General or a staff attorney and all
3 proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the
4 Attorney General, or his or her assistants, or an attorney employed by the Inspector General in

5 proceedings in any circuit court, by the prosecuting attorney of the county as well, all without
6 additional compensation.

7 (b) The Governor may appoint counsel for the Office of Health Facility Licensure and
8 Certification, who shall perform such legal services in representing the interests of residents in
9 nursing homes in matters under the jurisdiction of the Inspector General as the Governor shall
10 direct. It shall be the duty of such counsel to appear for the residents in all cases where they are
11 not represented by counsel. The compensation of such counsel shall be fixed by the Governor.

§16B-4-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever establishes, maintains, or is engaged in establishing or maintaining a nursing
2 home without a license granted under §16B-4-6 of this code, or who prevents, interferes with or
3 impedes in any way the lawful enforcement of this article, is guilty of a misdemeanor and, upon
4 conviction thereof, shall be punished for the first offense by a fine of not more than \$100, or by
5 confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the
6 discretion of the court. For each subsequent offense, the fine may be increased to not more than
7 \$250, with confinement in jail for a period of not more than 90 days, or by both fine and
8 confinement, at the discretion of the court. Each day of a continuing violation after conviction is
9 considered a separate offense.

10 (b) The director, in consultation with the Inspector General, may in his or her discretion
11 bring an action to enforce compliance with this article or any rule or order hereunder whenever it
12 appears to the director, in consultation with the Inspector General, that any person has engaged
13 in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or
14 whenever it appears to the director, in consultation with the Inspector General, that any person
15 has aided, abetted or caused, or is aiding, abetting, or causing, such an act or practice. Upon
16 application by the Inspector General, the circuit court of the county in which the conduct has
17 occurred or is occurring, or if emergency circumstances occur the Circuit Court of Kanawha

18 County, has jurisdiction to grant without bond a permanent or temporary injunction, decree, or
19 restraining order.

20 Whenever the director, in consultation with the Inspector General, has refused to grant or
21 renew a license, or has revoked a license required by law to operate or conduct a nursing home,
22 or has ordered a person to refrain from conduct violating the rules of the Inspector General, and
23 the person has appealed the action of the director, the court may, during pendency of the appeal,
24 issue a restraining order or injunction upon proof that the operation of the nursing home or its
25 failure to comply with the order of the director adversely affects the well-being or safety of the
26 residents of the nursing home. Should a person who is refused a license or the renewal of a
27 license to operate or conduct a nursing home or whose license to operate is revoked or who has
28 been ordered to refrain from conduct or activity which violates the rules of the Inspector General
29 fails to appeal or should the appeal be decided favorably to the Inspector General, then the court
30 shall issue a permanent injunction upon proof that the person is operating or conducting a nursing
31 home without a license as required by law, or has continued to violate the rules of the Inspector
32 General.

33 (c) Any nursing home that deprives a resident of any right or benefit created or established
34 for the well-being of this resident by the terms of any contract, by any state statute or rule, or by
35 any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as
36 a result of such deprivation. Upon a finding that a resident has been deprived of such a right or
37 benefit, and that the resident has been injured as a result of such deprivation, and unless there is
38 a finding that the nursing home exercised all care reasonably necessary to prevent and limit the
39 deprivation and injury to the resident, compensatory damages shall be assessed in an amount
40 sufficient to compensate the resident for such injury. In addition, where the deprivation of the right
41 or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident,
42 punitive damages may be assessed. A resident may also maintain an action pursuant to this
43 section for any other type of relief, including injunctive and declaratory relief, permitted by law.

44 Exhaustion of any available administrative remedies is not required prior to commencement of
45 suit under this subsection.

46 (d) The amount of damages recovered by a resident, in an action brought pursuant to this
47 section, is exempt for purposes of determining initial or continuing eligibility for medical assistance
48 under §9-5-1 *et seq.* of this code, and may neither be taken into consideration, nor required to be
49 applied toward the payment or part payment of the cost of medical care or services available
50 under that article.

51 (e) Any waiver by a resident or his or her legal representative of the right to commence an
52 action under this section, whether oral or in writing, is void as contrary to public policy.

53 (f) The penalties and remedies provided in this section are cumulative and are in addition
54 to all other penalties and remedies provided by law.

55 (g) Nothing in this section or any other section of the code shall limit the protections
56 afforded nursing homes or their health care providers under §55-7b-1 *et seq.* of this code. Nursing
57 homes and their health care providers shall be treated in the same manner as any other health
58 care facility or health care provider under §55-7b-1 *et seq.* of this code. The terms "health care
59 facility" and "health care provider" as used in this subsection shall have the same meaning as set
60 forth in §55-7b-2(f) and (g) of this code.

61 (h) The proper construction of this section and the limitations and provisions of §55-7b-1
62 *et seq.* of this code shall be determined by principles of statutory construction.

**§16B-4-16. Separate accounts for residents' personal funds; consent for use; records;
penalties.**

1 (a) Each nursing home subject to the provisions of this article shall hold in a separate
2 account and in trust each resident's personal funds deposited with the nursing home.

3 (b) No person may use or cause to be used for any purpose the personal funds of any
4 resident admitted to any such nursing home unless consent for the use thereof has been obtained
5 from the resident, or from a committee, or guardian, or relative.

6 (c) Each nursing home shall maintain a true and complete record of all receipts for any
7 disbursements from the personal funds account of each resident in the nursing home, including
8 the purpose and payee of each disbursement, and shall render a true account of such record to
9 the resident or his or her representative upon demand and upon termination of the resident's stay
10 in the nursing home.

11 (d) Any person or corporation who violates any subsection of this section is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned in
13 jail not more than one year, or both fined and imprisoned.

14 (e) Reports provided to review organizations are confidential unless inaccessibility of
15 information interferes with the director's ability to perform his or her oversight function as
16 mandated by federal regulations and this section.

17 (f) Notwithstanding §16B-4-16(b) or any other provision of this code, upon the death of a
18 resident, any funds remaining in his or her personal account shall be made payable to the person
19 or probate jurisdiction administering the estate of said resident: *Provided*, That if after 30 days
20 there has been no qualification over the decedent resident's estate, those funds are presumed
21 abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform
22 Unclaimed Property Act, §36-8-1 *et seq.* of this code.

§16B-4-17. Federal law; legislative rules.

1 Notwithstanding any provision in this code to the contrary, the Inspector General shall
2 promulgate legislative rules, in compliance with the provisions of §29A-3-1 *et seq.* of this code,
3 pertaining to nursing homes, when those rules are required for compliance with federal law or
4 regulations. The rules may be filed as emergency rules.

§16B-4-18. Hospice palliative care required to be offered.

1 (a) When the health status of a nursing home facility resident declines to the state of
2 terminal illness or when the resident receives a physician's order for "comfort measures only", the
3 facility shall notify the resident with information about the option of receiving hospice palliative

4 care. If a nursing home resident is incapacitated, the facility shall also notify any person who has
5 been given the authority of guardian, a medical power of attorney, or health care surrogate over
6 the resident, information stating that the resident has the option of receiving hospice palliative
7 care.

8 (b) The facility shall document that it has notified the resident, and any person who has
9 been given a medical power of attorney or health care surrogate over the resident, information
10 about the option of hospice palliative care and maintain the documentation so that the director
11 may inspect the documentation, to verify the facility has complied with this section.

§16B-4-19. Employment restrictions.

1 All personnel of a nursing home by virtue of ownership, employment, engagement, or
2 agreement with a provider or contractor shall be subject to the provisions of the West Virginia
3 Clearance for Access: Registry and Employment Screening Act, §16B-15-1 *et seq.* of this code
4 and the rules promulgated pursuant thereto.

§16B-4-20. Jury trial waiver to be a separate document.

1 (a) Every written agreement containing a waiver of a right to a trial by jury that is entered
2 into between a nursing home and a person for the nursing care of a resident, must have as a
3 separate and stand-alone document any waiver of a right to a trial by jury.

4 (b) Nothing in this section may be construed to require a court of competent jurisdiction to
5 determine that the entire agreement or any portion thereof is enforceable, unenforceable,
6 conscionable, or unconscionable.

ARTICLE 5. ASSISTED LIVING RESIDENCES.

§16B-5-1. Purpose.

1 (a) It is the policy of this state to encourage and promote the development and utilization
2 of resources to ensure the effective care and treatment of persons who are dependent upon the
3 services of others by reason of physical or mental impairment who may require limited and
4 intermittent nursing care, including those individuals who qualify for and are receiving services

5 coordinated by a licensed hospice. Such care and treatment requires a living environment for
6 such persons which, to the extent practicable, will approximate a normal home environment. To
7 this end, the guiding principle for administration of the laws of the state is that such persons shall
8 be encouraged and assisted in securing necessary care and treatment in noninstitutional
9 surroundings.

10 (b) In recognition that for many such persons effective care and treatment can only be
11 secured from proprietary, voluntary and governmental assisted living residences, it is the policy
12 of this state to encourage, promote and require the maintenance of assisted living residences so
13 as to ensure protection of the rights and dignity of those using the services of assisted living
14 residences.

15 (c) The provisions of this article are hereby declared to be remedial and shall be liberally
16 construed to effectuate its purposes and intents.

§16B-5-2. Definitions.

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

2 "Assisted living residence" means any living facility, residence, or place of
3 accommodation, however named, available for four or more residents, in this state which is
4 advertised, offered, maintained, or operated by the ownership or management, whether for a
5 consideration or not, for the express or implied purpose of having personal assistance or
6 supervision, or both, provided to any residents therein who are dependent upon the services of
7 others by reason of physical or mental impairment and who may also require nursing care at a
8 level that is not greater than limited and intermittent nursing care: *Provided*, That the care or
9 treatment in a household, whether for compensation or not, of any person related by blood or
10 marriage, within the degree of consanguinity of second cousin to the head of the household, or
11 his or her spouse, may not be deemed to constitute an assisted living residence within the
12 meaning of this article. Nothing contained in this article applies to hospitals, as defined under
13 §16B-3-1 of this code; or state institutions, as defined under §27-1-6 of this code; or residential

14 care homes operated by the federal government or the state; or institutions operated for the
15 treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or
16 other similar places that furnish to their guests only room and board; or to homes or asylums
17 operated by fraternal orders pursuant to §35-3-1 *et seq.* of this code;

18 "Deficiency" means a statement of the rule and the fact that compliance has not been
19 established and the reasons therefor;

20 "Director" means the Director of the Office of Health Facility Licensure and Certification
21 within the Office of the Inspector General.

22 "Division" means the Office of Health Facility Licensure and Certification within the Office
23 of the Inspector General;

24 "Inspector General" means the Inspector General of the Office of Inspector General as
25 described in §16B-2-1 of this code, or his or her designee.

26 "Limited and intermittent nursing care" means direct hands-on nursing care of an
27 individual who needs no more than two hours of nursing care per day for a period of time no
28 longer than 90 consecutive days per episode: *Provided*, That such time limitations shall not apply
29 to an individual who, after having established a residence in an assisted living residence,
30 subsequently qualifies for and receives services coordinated by a licensed hospice and such time
31 limitations shall not apply to home health services provided by a Medicare-certified home health
32 agency. Limited and intermittent nursing care may only be provided by or under the supervision
33 of a registered professional nurse and in accordance with rules proposed by the Inspector General
34 for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code;

35 "Nursing care" means those procedures commonly employed in providing for the physical,
36 emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical
37 skills and knowledge beyond that which the untrained person possesses, including, but not limited
38 to, such procedures as: Irrigations, catheterization, special procedures contributing to

39 rehabilitation, and administration of medication by any method which involves a level of
40 complexity and skill in administration not possessed by the untrained person;

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

43 "Person" means an individual and every form of organization, whether incorporated or
44 unincorporated, including any partnership, corporation, trust, association, or political subdivision
45 of the state;

46 "Personal assistance" means personal services, including, but not limited to, the following:
47 Help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required
48 because of the age or mental impairment of the resident;

49 "Resident" means an individual living in an assisted living residence for the purpose of
50 receiving personal assistance or limited and intermittent nursing services;

51 "Substantial compliance" means a level of compliance with the rules such that identified
52 deficiencies pose no greater risk to resident health or safety than the potential for causing minimal
53 harm.

54 (b) The Inspector General may define in rules any term used herein which is not expressly
55 defined.

§16B-5-3. Powers, duties, and rights of Inspector General.

1 In the administration of this article, the Inspector General has the following powers, duties,
2 and rights:

3 (a) To enforce rules and standards for assisted living residences which are adopted,
4 promulgated, amended, or modified by the Inspector General;

5 (b) To exercise as sole authority all powers relating to the issuance, suspension, and
6 revocation of licenses of assisted living residences;

7 (c) To enforce rules adopted, promulgated, amended, or modified by the Inspector
8 General governing the qualification of applicants for assisted living residences, including, but not
9 limited to, educational requirements, financial requirements, personal, and ethical requirements;

10 (d) To receive and disburse federal funds and to take whatever action not contrary to law
11 as may be proper and necessary to comply with the requirements and conditions for the receipt
12 of federal funds;

13 (e) To receive and disburse for authorized purposes any moneys appropriated for the
14 division by the Legislature;

15 (f) To receive and disburse for purposes authorized by this article, any funds that may
16 come to the division by gift, grant, donation, bequest, or devise, according to the terms thereof,
17 as well as funds derived from the division's operation or otherwise;

18 (g) To make contracts and to execute all instruments necessary or convenient in carrying
19 out the director's functions and duties; and all such contracts, agreements, and instruments will
20 be executed by the Inspector General;

21 (h) To appoint officers, agents, employees, and other personnel and fix their
22 compensation;

23 (i) To offer and sponsor educational and training programs for assisted living residences'
24 administrative, management, and operational personnel;

25 (j) To undertake survey, research and planning projects, and programs relating to
26 administration and operation of assisted living residences and to the health, care, treatment, and
27 service in general of residents of assisted living residences;

28 (k) To assess civil penalties for violations of assisted living residence standards in
29 accordance with §16B-5-10 of this code;

30 (l) To inspect any assisted living residence and any records maintained therein subject to
31 the provisions of §16B-5-9 and §16B-5-10 of this code;

32 (m) To establish and implement procedures, including informal conferences,
33 investigations and hearings, subject to applicable provisions of §29A-3-1 *et seq.* of this code, and
34 to enforce compliance with the provisions of this article and with rules issued hereunder by the
35 Inspector General;

36 (n) To subpoena witnesses and documents, administer oaths and affirmations, and to
37 examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a
38 person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice
39 to all persons affected thereby, the director may apply to the circuit court of the county in which
40 the hearing is to be held or to the Circuit Court of Kanawha County for an order compelling
41 compliance;

42 (o) To make complaint or cause proceedings to be instituted against any person for the
43 violation of the provisions of this article or of rules issued hereunder by the Inspector General.
44 Such action may be taken by the Inspector General without the sanction of the prosecuting
45 attorney of the county in which proceedings are instituted if the prosecuting attorney fails or
46 refuses to discharge his or her duty. The Circuit Court of Kanawha County or the circuit court of
47 the county in which the conduct has occurred shall have jurisdiction in all civil enforcement actions
48 brought under this article and may order equitable relief without bond. In no such case may the
49 Inspector General or any person acting under the Inspector General's direction be required to
50 give security for costs;

51 (p) To delegate authority to the Inspector General's employees and agents to perform all
52 functions of the Inspector General; and

53 (q) To make available to the Governor, the Legislature, and the public at all times online
54 access through the Office of Health Facility Licensure and Certification website the following
55 information. The online information will describe the assisted living residence licensing and
56 investigatory activities of the division. The online information will include a list of all assisted living
57 residences in the state and such of the following information as the director determines to apply:

58 Whether the assisted living residences are proprietary or nonproprietary; the classification of each
59 assisted living residence; the name of the administrator or administrators; the total number of
60 beds; license type; license number; license expiration date; health investigations information and
61 reports; life safety investigations information and reports; and whether or not those assisted living
62 residences listed accept Medicare and Medicaid residents.

63 (r) The Inspector General designates the director of the Office of Health Facility Licensure
64 and Certification to enforce the provisions of this article, except there otherwise stated.

§16B-5-4. Administrative and inspection staff.

1 The director may, as he or she determines necessary, employ administrative employees,
2 inspectors, or other persons as may be necessary to properly carry out the provisions of this
3 article. All employees of the division will be members of the state civil service system. Inspectors
4 and other employees as may be duly designated by the director will act as the director's
5 representatives and, under the direction of the director, will enforce the provisions of this article
6 and all duly promulgated rules of the director and, in the discharge of official duties, will have the
7 right of entry into any place maintained as an assisted living residence at any time.

§16B-5-5. Rules; minimum standards for assisted living residences.

1 (a) The Inspector General will propose rules for legislative approval in accordance with
2 the provisions of §29A-3-1 *et seq.* of this code to carry out the purposes and intent of this article
3 and to enable the Inspector General to exercise the powers and perform the duties conferred
4 upon the director by this article.

5 (b) The Inspector General will propose rules establishing minimum standards of operation
6 of assisted living residences, including, but not limited to, the following:

7 (1) Administrative policies, including:

8 (A) An affirmative statement of the right of access to assisted living residences by
9 members of recognized community organizations and community legal services programs whose

10 purposes include rendering assistance without charge to residents, consistent with the right of
11 residents to privacy;

12 (B) A statement of the rights and responsibilities of residents;

13 (C) The process to be followed by applicants seeking a license;

14 (D) The clinical, medical, resident, and business records to be kept by the assisted living
15 residence;

16 (E) The procedures for inspections and for the review of utilization and quality of resident
17 care; and

18 (F) The procedures for informal dispute resolution and administrative due process and
19 when such remedies are available.

20 (2) Minimum numbers and qualifications of personnel, including management, medical
21 and nursing, aides, orderlies, and support personnel, according to the size and classification of
22 the assisted living residence;

23 (3) Safety requirements;

24 (4) Sanitation requirements;

25 (5) Protective and personal services to be provided;

26 (6) Dietary services to be provided;

27 (7) Maintenance of health records;

28 (8) Social and recreational activities to be made available;

29 (9) Physical facilities;

30 (10) Requirements related to provision of limited and intermittent nursing;

31 (11) Visitation privileges governing access to a resident by immediate family or other
32 relatives of the resident and by other persons who are visiting with the consent of the resident;
33 and

34 (12) Such other categories as the Inspector General determines to be appropriate to
35 ensure resident's health, safety, and welfare.

36 (c) The Inspector General will include in rules detailed standards for each of the categories
37 of standards established pursuant to §16B-5-5(b) and §16B-5-5(d) of this code and will classify
38 such standards as follows:

39 (1) Class I standards are standards the violation of which, as the Inspector General
40 determines, would present either an imminent danger to the health, safety, or welfare of any
41 resident or a substantial probability that death or serious physical harm would result;

42 (2) Class II standards are standards which the Inspector General determines have a direct
43 or immediate relationship to the health, safety, or welfare of any resident, but which do not create
44 imminent danger;

45 (3) Class III standards are standards which the Inspector General determines have an
46 indirect or a potential impact on the health, safety, or welfare of any resident.

47 (d) An assisted living residence shall attain substantial compliance with standards
48 established pursuant to this section and such other requirements for a license as may be
49 established by rule under this article.

§16B-5-6. License required; application; fees; duration; renewal.

1 (a) There shall be one assisted living residence license for each assisted living residence.
2 No person may establish, operate, maintain, offer, or advertise an assisted living residence within
3 this state unless and until he or she obtains a valid license therefor as provided in this article,
4 which license remains unsuspended, unrevoked, and unexpired. No public official or employee
5 may place any person in, or recommend that any person be placed in, or directly or indirectly
6 cause any person to be placed in any assisted living residence, as defined in §16B-5-2 of this
7 code, which is being operated without a valid license from the director. The licensee shall be
8 responsible for, and shall have complete control of, the operation and premises of the assisted
9 living residence and the personal assistance and supervision provided to the residents: *Provided,*
10 That the director may review any leases or any contracts, subcontracts, agreements, or
11 arrangements for the provision of on-site services to the residents of an assisted living residence

12 to ensure the proper care, safety, and welfare of current or potential residents. Nothing in this
13 article shall be construed to prevent or prohibit the ability of a resident of an assisted living
14 residence to contract or arrange for, and to receive, privately paid nursing care or personal
15 assistance in addition to those services provided by the licensee, subject to the consent and
16 cooperation of the licensee and consistent with the duties and responsibilities imposed by this
17 section.

18 (b) Nothing in this article shall be construed to require the licensing of landlords or property
19 owners who are not involved in the provision of supervision, personal assistance, limited and
20 intermittent nursing care, or other on-site professional services for the residents of an assisted
21 living residence or in the advertising, recruitment of residents, transportation of residents, or other
22 substantial and ongoing services for the operation or maintenance of the assisted living residence.

23 (c) The procedure for obtaining a license shall be as follows:

24 The applicant shall submit an application to the director on a form to be prescribed by the
25 director, containing such information as may be necessary to show that the applicant is in
26 compliance with the standards for assisted living residences as established by this article and the
27 rules lawfully promulgated by the Inspector General hereunder. The application and any exhibits
28 thereto shall provide the following information:

29 (A) The name and address of the applicant;

30 (B) The name, address, and principal occupation:

31 (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10
32 percent or more in the applicant;

33 (ii) Of each officer and director of a corporate applicant;

34 (iii) Of each trustee and beneficiary of an applicant which is a trust; and

35 (iv) Where a corporation has a proprietary interest of 25 percent or more in an applicant,
36 the name, address, and principal occupation of each officer and director of the corporation;

37 (C) The name and address of the owner of the premises of the assisted living residence
38 or proposed assisted living residence, if he or she is a different person from the applicant, and in
39 such case, the name and address:

40 (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10
41 percent or more in the owner;

42 (ii) Of each officer and director of a corporate applicant;

43 (iii) Of each trustee and beneficiary of the owner if it is a trust; and

44 (iv) Where a corporation has a proprietary interest of 25 percent or more in the owner, the
45 name and address of each officer and director of the corporation;

46 (D) Where the applicant is the lessee or the assignee of the assisted living residence or
47 the premises of the proposed assisted living residence, a signed copy of the lease and any
48 assignment thereof;

49 (E) The name and address of the assisted living residence or the premises of the proposed
50 assisted living residence;

51 (F) The proposed bed quota of the assisted living residence and the proposed bed quota
52 of each unit thereof;

53 (G) An organizational plan for the assisted living residence indicating the number of
54 persons employed or to be employed, the positions and duties of all employees;

55 (H) The name and address of the individual who is to serve as administrator;

56 (I) Such evidence of compliance with applicable laws and rules governing zoning,
57 buildings, safety, fire prevention, and sanitation as the director may require; and

58 (J) Such additional information as the director may require.

59 (d) Upon receipt and review of an application for license made pursuant to §16B-5-6(a) of
60 this code and inspection of the applicant assisted living residence pursuant to §16B-5-9 and §16B-
61 5-10 of this code, the director will issue a license if he or she finds:

62 (1) That an individual applicant, and every partner, trustee, officer, director, and controlling
63 person of an applicant which is not an individual, is a person responsible and suitable to operate
64 or to direct or participate in the operation of an assisted living residence by virtue of financial
65 capacity, appropriate business or professional experience, a record of compliance with lawful
66 orders of the department, if any, and lack of revocation of a license during the previous five years;

67 (2) That the assisted living residence is under the supervision of an administrator who is
68 qualified by training and experience; or

69 (3) That the assisted living residence is in substantial compliance with standards
70 established pursuant to §16B-5-5 of this code and such other requirements for a license as the
71 Inspector General may establish by rule under this article.

72 (e) The director, in consultation with the Inspector General, may deny an initial or renewal
73 license if the information provided in an application or report is known by the applicant to be false
74 or the applicant fails to report required information or for any other reason permitted by law or
75 rules promulgated pursuant to this article.

76 (f) Any license granted by the director will state the maximum bed capacity for which it is
77 granted, the date the license was issued, and the expiration date. Licenses will be issued for a
78 period not to exceed one year for assisted living residences: *Provided*, That any such license in
79 effect for which timely application for renewal, together with payment of the proper fee has been
80 made to the department in conformance with the provisions of this article and the rules issued
81 thereunder and prior to the expiration date of the license, shall continue in effect until: (1) One
82 year following the expiration date of the license; or (2) the date of the revocation or suspension of
83 the license pursuant to the provisions of this article; or (3) the date of issuance of a new license,
84 whichever date first occurs. Each license will be issued only for the premises and persons named
85 in the application and is not transferable or assignable: *Provided, however*, That in the case of
86 the transfer of ownership of an assisted living residence with an unexpired license, the application
87 of the new owner for a license shall have the effect of a license for a period of three months when

88 filed with the director. Every license shall be posted in a conspicuous place in the assisted living
89 residence for which it is issued so as to be accessible to and in plain view of all residents and
90 visitors of the assisted living residence.

91 (g) An original license shall be renewable, conditioned upon the licensee filing timely
92 application for the extension of the term of the license accompanied by the fee and contingent
93 upon evidence of compliance with the provisions of this article and rules promulgated by the
94 Inspector General hereunder; the application shall be accompanied by:

95 (1) The information required in §16B-5-6(c)(A) through §16B-5-6(c)(C) of this code.

96 (2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting
97 forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation, and
98 similar accounts;

99 (3) A statement of operations of the assisted living residence as of the end of its fiscal
100 year, setting forth all revenues, expenses, taxes, extraordinary items, and other credits or
101 charges; and

102 (4) A statement of any changes in the name, address, management, or ownership
103 information on file with the director.

104 (h) In the case of an application for a renewal license, if all requirements of §16B-5-5 and
105 §16B-5-6 of this code are not met, the director may in his or her discretion issue a provisional
106 license, provided that care given in the assisted living residence is adequate for resident needs
107 and the assisted living residence has demonstrated improvement and evidences potential for
108 substantial compliance within the term of the license: *Provided*, That a provisional renewal may
109 not be issued for a period greater than one year, may not be renewed, and may not be issued to
110 any assisted living residence with uncorrected violations of any Class I standard, as defined in
111 §16B-5-5(c) of this code.

112 (i) A nonrefundable application fee in the amount of \$65 for an original assisted living
113 residence license shall be paid at the time application is made for the license. An average cost of

114 all direct costs for the initial licensure for the preceding 10 facilities based on the size of the
115 facility's licensed bed capacity shall be borne by the applicant and shall be received by the director
116 prior to the issuance of an initial or amended license. The license fee for renewal of a license shall
117 be at the rate of \$6 per bed per year for assisted living residences except the annual rate per bed
118 may be assessed for licenses issued for less than one year. The director may annually adjust the
119 licensure fees for inflation based upon the consumer price index. The bed capacity for the holder
120 of each license will be determined by the director. All license fees shall be due and payable to the
121 director annually, and in the manner set forth in the rules promulgated by the Inspector General.
122 The fee and application shall be submitted to the director who will retain both the application and
123 fee pending final action on the application. All fees received by the director under the provisions
124 of this article will be deposited in accordance with §16-1-13 of this code.

§16B-5-7. Cost disclosure; surety for residents' funds.

1 (a) Each assisted living residence shall disclose in writing to all prospective residents a
2 complete and accurate list of all costs which may be incurred by them. Residents are not liable
3 for any cost not so disclosed.

4 (b) If the assisted living residence handles any money for residents within the assisted
5 living residence, the licensee or his or her authorized representative shall give a bond in an
6 amount consistent with this subsection and with such surety as the director will approve. The bond
7 shall be upon condition that the licensee shall hold separately and in trust all residents' funds
8 deposited with the licensee, shall administer the funds on behalf of the resident in the manner
9 directed by the depositor, shall render a true and complete account to the depositor and the
10 director when requested, and at least quarterly to the resident, and upon termination of the
11 deposit, shall account for all funds received, expended, and held on hand. The licensee shall file
12 a bond in a sum to be fixed by the director based upon the magnitude of the operations of the
13 applicant, but which sum may not be less than \$2,500.

14 (c) Every person injured as a result of any improper or unlawful handling of the money of
15 a resident of an assisted living residence may bring an action in a proper court on the bond
16 required to be posted by the licensee pursuant to this subsection for the amount of damage
17 suffered as a result thereof to the extent covered by the bond. Whenever the director determines
18 that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately
19 protect the money of residents which is being handled, or whenever the amount of any bond is
20 impaired by any recovery against the bond, the director may require the licensee to file an
21 additional bond in such amount as necessary to adequately protect the money of residents being
22 handled.

23 (d) The provisions of §16B-5-7(b) of this code do not apply if the licensee handles less
24 than \$25 per resident and less than \$500 for all residents in any month.

§16B-5-8. Investigation of complaints.

1 (a) The Inspector General will establish, by rule, procedures for prompt investigation of all
2 complaints of alleged violations by assisted living residences of applicable requirements of state
3 law or rules, except for such complaints that the director determines are willfully intended to
4 harass a licensee or are without any reasonable basis. Such procedures will include provisions
5 for ensuring the confidentiality of the complainant and of any other person so named in the
6 complaint and for promptly informing the complainant and the assisted living residence involved
7 of the results of the investigation.

8 (b) If, after its investigation, the director determines that the complaint has merit, the
9 director will take appropriate disciplinary action and will advise any injured party of the possibility
10 of a civil remedy under this article.

11 (c) No assisted living residence may discharge or in any manner discriminate against any
12 resident or employee for the reason that the resident or employee has filed a complaint or
13 participated in any proceeding specified in this article. Violation of this prohibition by any assisted
14 living residence constitutes grounds for the suspension or revocation of the license of the assisted

15 living residence as provided in §16B-5-11 and §16B-5-12 of this code. Any type of discriminatory
16 treatment of a resident or employee by whom, or upon whose behalf, a complaint has been
17 submitted to the director, or any proceeding instituted under this article, within 120 days of the
18 filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the
19 action was taken by the assisted living residence in retaliation for the complaint or action.

§16B-5-9. Inspections.

1 (a) The director and any duly designated employee or agent thereof will have the right to
2 enter upon and into the premises of any assisted living residence at any time for which a license
3 has been issued, for which an application for license has been filed with the director, or which the
4 director has reason to believe is being operated or maintained as an assisted living residence
5 without a license. If entry is refused by the owner or person in charge of the assisted living
6 residence, the director, in consultation with the Inspector General, will apply to the circuit court of
7 the county in which the assisted living residence is located or the Circuit Court of Kanawha County
8 for an administrative inspection warrant.

9 (b) The director, by the director's authorized employees or agents, will conduct at least
10 one inspection prior to issuance of a license pursuant to §16B-5-6 of this code and will conduct
11 periodic unannounced inspections thereafter to determine compliance by the assisted living
12 residence with applicable statutes and rules promulgated thereunder. All assisted living
13 residences shall comply with rules of the State Fire Commission. The State Fire Marshal, by his
14 or her employees or authorized agents, shall make all fire, safety, and like inspections. The
15 director may provide for such other inspections as the director may deem necessary to carry out
16 the intent and purpose of this article. If after investigating a complaint the director determines that
17 the complaint is substantiated and that an immediate and serious threat to a resident's health or
18 safety exists, the director, in consultation with the Inspector General, may invoke any remedies
19 available pursuant to §16B-5-11 and §16B-5-12 of this code. Any assisted living residence

20 aggrieved by a determination or assessment made pursuant to this section shall have the right to
21 an administrative appeal as set forth in §16B-5-12 of this code.

**§16B-5-10. Reports of inspections; plans of correction; assessment of penalties and use
of funds derived therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to §16B-5-9 of this code will be in writing and
2 will list all deficiencies in the assisted living residence's compliance with the provisions of this
3 article and the rules adopted by the Inspector General hereunder. The director will send a copy
4 of the report to the assisted living residence by physical or electronic method with verifiable
5 delivery, and will specify a time within which the assisted living residence shall submit a plan for
6 correction of deficiencies, which plan will be approved, rejected, or modified by the director. The
7 inspectors will allow audio taping of the exit conference for licensure inspections with all costs
8 directly associated with the taping to be paid by the assisted living residence, provided that an
9 original tape is provided to inspectors at the end of taping.

10 (b) Upon an assisted living residence's failure to submit a plan of correction which is
11 approved by the director, or to correct any deficiency within the time specified in an approved plan
12 of correction, the director, in consultation with the Inspector General, may assess civil penalties
13 as hereinafter provided or may initiate any other legal or disciplinary action as provided by this
14 article.

15 (c) Nothing in this section may be construed to prohibit the Inspector General from
16 enforcing a rule, administratively or in court, without first affording formal opportunity to make
17 correction under this section, where, in the opinion of the director, in consultation with the
18 Inspector General the violation of the rule jeopardizes the health or safety of residents or where
19 the violation of the rule is the second or subsequent violation occurring during a period of 12 full
20 months.

21 (d) Civil penalties assessed against assisted living residences will be classified according
22 to the nature of the violation as defined in §16B-5-5(c) of this code and rules promulgated

23 thereunder by the Inspector General, as follows: For each violation of a Class I standard, a civil
24 penalty of not less than \$50 nor more than \$500 will be imposed; for each violation of a Class II
25 standard, a civil penalty of not less than \$25 nor more than \$50 will be imposed; for each violation
26 of a Class III standard, a civil penalty of not less than \$10 nor more than \$25 will be imposed.
27 Each day a violation continues, after the date of citation, shall constitute a separate violation. The
28 date of citation is the date the facility receives the written statement of deficiencies.

29 (e) The director, in consultation with the Inspector General, will assess a civil penalty not
30 to exceed \$2,000 against any individual who notifies, or causes to be notified, an assisted living
31 residence of the time or date on which an inspection is scheduled to be conducted under this
32 article.

33 (f) If the director, in consultation with the Inspector General, assesses a penalty under this
34 section, the director will cause delivery of notice of the penalty by personal service or by certified
35 mail. The notice will state the amount of the penalty, the action or circumstance for which the
36 penalty is assessed, the requirement that the action or circumstance violates, and the basis upon
37 which the director, in consultation with the Inspector General, assessed the penalty and selected
38 the amount of the penalty.

39 (g) The Inspector General will, in a civil judicial proceeding, recover any unpaid
40 assessment which has not been contested under §16B-5-12 of this code within 30 days of receipt
41 of notice of the assessment or which has been affirmed under the provisions of that section and
42 not appealed within 30 days of receipt of the Board of Review's final order or which has been
43 affirmed on judicial review, as provided in §16B-5-13 of this code. All money collected by
44 assessments of civil penalties or interest will be paid into a special resident benefit account and
45 will be applied by the director only for the protection of the health or property of residents of
46 assisted living residences operated within the state that the director finds to be deficient, including
47 payment for the costs of relocation of residents to other facilities, operation of an assisted living

48 residence pending correction of deficiencies, or closure and reimbursement of residents for
49 personal funds lost.

50 (h) The opportunity for a hearing on an action taken under this section shall be as provided
51 in §16B-5-12 of this code. In addition to any other rights of appeal conferred upon an assisted
52 living residence pursuant to this section, an assisted living residence shall have the right to
53 request a hearing and seek judicial review pursuant to §16B-5-12 and §16B-5-13 of this code to
54 contest the citing by the director of a deficiency on an inspection report, irrespective of whether
55 the deficiency results in the imposition of a civil penalty.

**§16B-5-11. Enforcement actions; assessment of interest; collection of assessments;
hearings.**

1 (a) The director, in consultation with the Inspector General, will, by order, impose a ban
2 on the admission of residents or reduce the bed quota of the assisted living residence, or any
3 combination thereof, where he or she finds upon inspection of the assisted living residence that
4 the licensee is not providing adequate care under the assisted living residence's existing bed
5 quota and that reduction in quota or imposition of a ban on admissions, or any combination
6 thereof, would place the licensee in a position to render adequate care. Any notice to a licensee
7 of reduction in quota or ban on new admissions will include the terms of the order, the reasons
8 therefor, and the date set for compliance.

9 (b) The director, in consultation with the Inspector General, may suspend or revoke a
10 license issued under this article or take other action as set forth in this section if he or she finds
11 upon inspection that there has been a substantial failure to comply with the provisions of this
12 article or the standards or rules promulgated pursuant hereto.

13 (c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of
14 the director, in consultation with the Inspector General, of a license issued by the director or the
15 withdrawal of an application for a license after it has been filed with the director, may not deprive
16 the director of the director's authority to institute or continue an enforcement action or a

17 proceeding for the denial of a license application against the licensee or applicant upon any
18 ground provided by law or to deny the license application or suspend or revoke the license or
19 otherwise take enforcement action on any such ground.

20 (d) In addition to other remedies provided in this article, upon petition from the Inspector
21 General, the circuit court of the county in which the conduct has occurred or is occurring or the
22 Circuit Court of Kanawha County may determine that an assisted living residence's deficiencies
23 under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or
24 rights of its residents and issue an order to:

- 25 (1) Close the assisted living residence;
- 26 (2) Transfer residents in the assisted living residence to other facilities; or
- 27 (3) Appoint temporary management to oversee the operation of the assisted living
28 residence and to assure the health, safety, welfare, and rights of the assisted living residence's
29 residents where there is a need for temporary management while:
 - 30 (A) There is an orderly closure of the assisted living residence; or
 - 31 (B) Improvements are made to bring the assisted living residence into compliance with all
32 the applicable requirements of this article.

33 (e) If the Inspector General petitions a circuit court for the closure of an assisted living
34 residence, the transfer of residents, or the appointment of a temporary management, the circuit
35 court shall hold a hearing no later than seven days thereafter, at which time the Inspector General
36 and the licensee or operator of the assisted living residence may participate and present
37 evidence.

38 (f) A circuit court may divest the licensee or operator of possession and control of an
39 assisted living residence in favor of temporary management. The temporary management shall
40 be responsible to the court and shall have such powers and duties as the court may grant to direct
41 all acts necessary or appropriate to conserve the property and promote the health, safety, welfare,
42 and rights of the residents of the assisted living residence, including, but not limited to, the

43 replacement of management and staff, the hiring of consultants, the making of any necessary
44 expenditures to close the assisted living residence, or to repair or improve the assisted living
45 residence so as to return it to compliance with applicable requirements and the power to receive,
46 conserve, and expend funds, including payments on behalf of the licensee or operator of the
47 assisted living residence. Priority shall be given to expenditures for current direct resident care or
48 the transfer of residents.

49 (g) The person charged with temporary management:

50 (1) Shall be an officer of the court;

51 (2) Shall be paid by the licensee;

52 (3) Is not liable for conditions at the assisted living residence which existed or originated
53 prior to his or her appointment; and

54 (4) Is not personally liable, except for his or her own gross negligence and intentional acts
55 which result in injuries to persons or damage to property at the assisted living residence during
56 his or her temporary management.

57 (h) No person may impede the operation of temporary management. There shall be an
58 automatic stay for a 90-day period subsequent to the establishment of temporary management of
59 any action that would interfere with the functioning of the assisted living residence, including, but
60 not limited to, cancellation of insurance policies, termination of utility services, attachments to
61 working capital accounts, foreclosures, evictions, and repossessions of equipment used in the
62 assisted living residence.

63 (i) A temporary management established for the purpose of making improvements to bring
64 the assisted living residence into compliance with applicable requirements may not be terminated
65 until the court has determined that the assisted living residence has the management capability
66 to ensure continued compliance with all applicable requirements: *Provided*, That if the court has
67 not made such determination within six months of the establishment of the temporary
68 management, the temporary management terminates by operation of law at that time, and the

69 assisted living residence shall be closed. After the termination of the temporary management, the
70 person who was responsible for the temporary management shall make an accounting to the
71 court and after deducting from receipts the costs of the temporary management, expenditures,
72 and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid
73 to the licensee or operator of the assisted living residence.

74 (j) The assessments for penalties and for costs of actions taken under this article shall
75 have interest assessed at five percent per year beginning 30 days after receipt of notice of the
76 assessment or 30 days after receipt of the Board of Review's final order following a hearing,
77 whichever is later. All assessments against an assisted living residence that are unpaid shall be
78 added to the assisted living residence's licensure fee and may be filed as a lien against the
79 property of the licensee or operator of the assisted living residence. Funds received from
80 assessments shall be deposited as funds received as provided in §16B-5-10 of this code.

81 (k) The opportunity for a hearing on an action by the director taken under this section shall
82 be as provided in §16B-5-12 of this code.

§16B-5-12. License denial; limitation, suspension, or revocation.

1 (a) The director, in consultation with the Inspector General, shall issue an order denying,
2 limiting, suspending, or revoking a license issued pursuant to this article if the provisions of this
3 article or of the rules promulgated pursuant to this article are violated. The director, in consultation
4 with the Inspector General, may issue an order revoking a program's license and prohibit all
5 licensed disciplines associated with the assisted living residence from practicing at the assisted
6 living residence based upon an annual, periodic, complaint, verification, or other inspection and
7 evaluation.

8 (b) Before any order is issued by the director, in consultation with the Inspector General,
9 denying, limiting, suspending, or revoking a license, written notice will be given to the licensee,
10 stating the grounds for such denial, limitation, suspension, or revocation.

11 (c) An applicant or licensee has 10 working days after receipt of the director's order
12 denying, limiting, suspending, or revoking a license to request a formal hearing contesting the
13 denial, limitation, suspension, or revocation under this article. If a formal hearing is requested, the
14 applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-
15 1 *et seq.* of this code.

16 (d) If a license is denied or revoked as herein provided, a new application for license will
17 be considered by the director if, when, and after the conditions upon which the denial was based
18 have been corrected and evidence of this fact has been furnished. A new license will then be
19 granted after proper inspection, if applicable, has been made and all provisions of this article and
20 rules promulgated pursuant to this article have been satisfied.

21 (e) Any applicant or licensee who is dissatisfied with the decision as a result of the formal
22 hearing provided in this section may, within 30 days after receiving notice of the decision, petition
23 the West Virginia Intermediate Court of Appeals for judicial review of the decision.

24 (f) If the license of an assisted living residence is denied, limited, suspended, or revoked,
25 the administrator, any owner of the assisted living residence, or owner or lessor of the assisted
26 living residence property shall cease to operate the facility as an assisted living residence as of
27 the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the
28 assisted living residence property is responsible for removing all signs and symbols identifying
29 the premises as an assisted living residence within 30 days. Any administrative appeal of such
30 denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or
31 revocation.

32 (g) Upon the effective date of the denial, limitation, suspension, or revocation, the
33 administrator of the assisted living residence shall advise the director and the Board of Pharmacy
34 of the disposition of all medications located on the premises. The disposition is subject to the
35 supervision and approval of the director. Medications that are purchased or held by an assisted
36 living residence that is not licensed may be deemed adulterated.

37 (h) If the license of an assisted living residence is suspended or revoked, any person
38 named in the licensing documents of the assisted living residence, including persons owning or
39 operating the assisted living residence, may not, as an individual or as part of a group, apply to
40 operate another assisted living residence for up to five years after the date of suspension or
41 revocation.

42 (i) The period of suspension for the license of an assisted living residence will be
43 prescribed by the director, in consultation with the Inspector General, but may not exceed one
44 year.

§16B-5-13. Judicial review.

1 (a) Any applicant or licensee or the Inspector General who is adversely affected by the
2 decision as a result of the formal hearing provided for in §16-5D-12 of this code may, within 30
3 days after receiving notice of the decision, petition the West Virginia Intermediate Court of
4 Appeals for judicial review of the decision.

5 (b) The court may affirm, modify, or reverse the decision of the Board of Review and either
6 the applicant, licensee, or the Inspector General may appeal from the court's decision to the
7 Supreme Court of Appeals.

8 (c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless
9 reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with
10 the provisions of §29A-6-1 *et seq.* of this code.

§16B-5-14. Legal counsel and services for the Inspector General.

1 (a) Legal counsel and services for the Inspector General in all administrative hearings and
2 all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the
3 Attorney General, his or her assistants, or an attorney employed by the Office of the Inspector
4 General in proceedings in any circuit court by the prosecuting attorney of the county as well, all
5 without additional compensation.

6 (b) The Governor may appoint counsel for the Inspector General who shall perform such
7 legal services in representing the interests of residents in assisted living residences in matters
8 under the jurisdiction of the Inspector General as the Governor shall direct. It shall be the duty of
9 such counsel to appear for the residents in all cases where they are not represented by counsel.
10 The compensation of such counsel shall be fixed by the Governor.

§16B-5-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever advertises, announces, establishes, or maintains or is engaged in
2 establishing or maintaining an assisted living residence without a license granted under §16B-5-
3 6 of this code, or who prevents, interferes with, or impedes in any way the lawful enforcement of
4 this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for
5 the first offense by a fine of not more than \$100 or by imprisonment in jail for a period of not more
6 than 90 days, or by both such fine and imprisonment, at the discretion of the court. For each
7 subsequent offense, the fine may be increased to not more than \$250, with imprisonment in jail
8 for a period of not more than 90 days, or both such fine and imprisonment at the discretion of the
9 court. Each day of a continuing violation after conviction shall be considered a separate offense.

10 (b) The Inspector General may in his or her discretion bring an action to enforce
11 compliance with this article or any rule, or order hereunder, whenever it appears to the Inspector
12 General that any person has engaged in, or is engaging in, an act or practice in violation of this
13 article or any rule or order hereunder, or whenever it appears to the Inspector General that any
14 person has aided, abetted, or caused or is aiding, abetting, or causing such an act or practice.
15 Upon application by the Inspector General, the circuit court of the county in which the conduct
16 has occurred or is occurring, or the Circuit Court of Kanawha County shall have jurisdiction to
17 grant without bond a permanent or temporary injunction, decree, or restraining order.

18 (c) Whenever the director, in consultation with the Inspector General, refuses to grant or
19 renew a license or revokes a license required by law to operate or conduct an assisted living
20 residence or orders a person to refrain from conduct violating the rules of the Inspector General,

21 and the person deeming himself or herself aggrieved by the refusal, revocation, or order appeals
22 the action of the director, the court may, during pendency of the appeal, issue a restraining order
23 or injunction upon proof that the operation of the assisted living residence or its failure to comply
24 with the order of the director adversely affects the well-being or safety of the residents of the
25 assisted living residence. Should a person who is refused a license or the renewal of a license to
26 operate or conduct an assisted living residence or whose license to operate is revoked or who
27 has been ordered to refrain from conduct or activity which violates the rules of the Inspector
28 General, fails to appeal or should such appeal be decided favorably to the director, then the court
29 shall issue a permanent injunction upon proof that the person is operating or conducting an
30 assisted living residence without a license as required by law or has continued to violate the rules
31 of the Inspector General.

32 (d) Any assisted living residence that deprives a resident of any right or benefit created or
33 established for the well-being of the resident by the terms of any contract, by any state statute or
34 rule, or by any applicable federal statute or regulation shall be liable to the resident for injuries
35 suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such
36 a right or benefit and that the resident has been injured as a result of the deprivation and unless
37 there is a finding that the assisted living residence exercised all care reasonably necessary to
38 prevent and limit the deprivation and injury to the resident, compensatory damages shall be
39 assessed in an amount sufficient to compensate the resident for the injury. In addition, where the
40 deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful
41 rights of the resident, punitive damages may be assessed. A resident may also maintain an action
42 pursuant to this section for any other type of relief, including injunctive and declaratory relief,
43 permitted by law. Exhaustion of any available administrative remedies may not be required prior
44 to commencement of suit hereunder.

45 (e) The amount of damages recovered by a resident, in an action brought pursuant to this
46 section, are exempt for purposes of determining initial or continuing eligibility for medical

47 assistance pursuant to §9-5-1 *et seq.* of this code and may neither be taken into consideration
48 nor required to be applied toward the payment or part payment of the cost of medical care or
49 services available pursuant to §9-5-1 *et seq.* of this code.

50 (f) Any waiver by a resident or his or her legal representative of the right to commence an
51 action under this section, whether oral or in writing, shall be null and void as contrary to public
52 policy.

53 (g) The penalties and remedies provided in this section are cumulative and shall be in
54 addition to all other penalties and remedies provided by law.

**§16B-5-16. Separate accounts for residents' personal funds; consent for use; records;
penalties.**

1 (a) Each assisted living residence subject to the provisions of this article shall hold in a
2 separate account and in trust each resident's personal funds deposited with the assisted living
3 residence.

4 (b) No person may use or cause to be used for any purpose the personal funds of any
5 resident admitted to any assisted living residence unless consent for the use thereof has been
6 obtained from the resident or from a committee or guardian or relative.

7 (c) Each assisted living residence shall maintain a true and complete record of all receipts
8 for any disbursements from the personal funds account of each resident in the assisted living
9 residence, including the purpose and payee of each disbursement, and shall render a true
10 account of the record to the resident or his or her representative upon demand and upon
11 termination of the resident's stay in the assisted living residence.

12 (d) Any person or corporation who violates any provision of this section is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned in
14 jail not more than one year, or both fined and imprisoned.

**ARTICLE 6. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN
LEGALLY UNLICENSED HEALTH CARE HOMES.**

§16B-6-1. Purpose.

1 It is the policy of this state to encourage the availability of appropriate noninstitutional
2 surroundings for the elderly and for the care of persons in need of limited and intermittent nursing
3 care or personal assistance. The registration of providers of services to such residents in
4 unlicensed homes will help to identify where the services are available and to ensure that
5 individuals in unlicensed homes are receiving care appropriate to their needs.

§16B-6-1a. Powers, rights, and duties of the Inspector General.

1 In the administration of this article, the Inspector General shall have the following powers,
2 duties and rights:

3 (a) To promulgate and enforce rules governing complaint investigations within the homes
4 of legally unlicensed health care providers registered under this article. Such rules shall include
5 the minimum health, safety and welfare standards in the following areas:

6 (1) Physical environment;

7 (2) Nutrition;

8 (3) Requirements related to limited and intermittent nursing care;

9 (4) Medication administration;

10 (5) Protective and personal services to be provided;

11 (6) Treatment;

12 (7) Visitation privileges governing access to a resident by immediate family or other
13 relatives of the resident and by other persons who are visiting with the consent of the resident;
14 and

15 (8) Such other categories as the director determines to be appropriate to ensure residents'
16 health, safety, and welfare.

17 (b) To exercise as sole authority all powers relating to issuance, suspension, and
18 revocation of registration of legally unlicensed homes providing health care;

19 (c) To issue directed plans of correction for deficiencies identified during complaint
20 investigations;

21 (d) To order closure of any home for failure to comply with a directed plan of corrections;

22 (e) To take all actions required under the provisions of sections §16B-6-3, §16B-6-4, §16B-
23 6-5, and §16B-6-6 of this code; and

24 (f) To deny registration to any operator of a legally unlicensed home who is listed on the
25 state abuse registry.

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

§16B-6-2. Definitions.

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

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

4 "Inspector General" means the Inspector General of the Office of the Inspector General
5 as described in §16B-2-1 of this code or his or her designee.

6 "Limited and intermittent nursing care" means direct hands on nursing care of an individual
7 who needs no more than two hours of nursing care per day for a period of no longer than 90
8 consecutive days per episode, which may only be provided when the need for such care meets
9 the following factors: (1) The resident requests to remain in the home; (2) the resident is advised
10 of the availability of other specialized health care facilities to treat his or her condition; and (3) the
11 need for such care is the result of a medical pathology or a result of normal aging process. Limited
12 and intermittent nursing care shall be provided under the supervision of a registered professional
13 nurse and in accordance with rules promulgated by the director.

14 "Nursing care" means those procedures commonly employed in providing for the physical,
15 emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical
16 skills and knowledge beyond that which the untrained person possesses, including, but not limited
17 to, such procedures as: Irrigations, catheterization, special procedures contributing to
18 rehabilitation, and administration of medication by any method prescribed by a physician which
19 involves a level of complexity and skill in administration not possessed by the untrained person.

20 "Personal assistance" means personal services, including, but not limited to, the following:
21 Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required
22 because of the age or physical or mental impairment of the resident.

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

25 "Resident" means an individual who is provided services, whether or not for a fee, by a
26 service provider, but resident does not include a person receiving services provided by another
27 who is related to him or her or the spouse thereof by blood or marriage, within the degree of
28 consanguinity of the second cousin. Residents, who are incapable of self-preservation, shall be
29 housed only on a ground floor level of the home with direct egress to the outside. A registered
30 unlicensed health care home shall: (1) Provide residents at the time of admission with the name,
31 address, and telephone number of the Offices of Health Facility Licensure and Certification, the
32 state long-term care ombudsman, and adult protective services; and (2) advise residents both
33 orally and in writing of their right to file a complaint with the aforementioned entities.

34 "Self-preservation" means that a person is at least capable of removing him or herself from
35 situations involving imminent danger, such as fire.

36 "Service provider" means the individual administratively responsible for providing to
37 consumers for a period of more than 24 hours, whether for compensation or not, services of
38 personal assistance for one to three residents and who may require limited and intermittent
39 nursing care, including those individuals who qualify for and are receiving services coordinated

40 by a licensed hospice: *Provided*, That services utilizing equipment which requires auxiliary
41 electrical power in the event of a power failure may not be used unless the home has a backup
42 power generator.

§16B-6-3. Registration of service providers required; form of registration; information to be provided.

1 (a) Service providers shall register with the director. No fee may be charged for
2 registration. Registration information shall be provided on a registration form or may be verbally
3 communicated to the director for placement by the director on the form, but no provision of
4 information may be deemed to meet the registration requirement until the signature of the service
5 provider is recorded on the registration form.

6 (b) Information required for registration shall include the following:

7 (1) Name, address, and telephone number of the service provider;

8 (2) Address and telephone numbers where services are provided to residents and the
9 number of residents provided service;

10 (3) The services, such as nursing care or personal assistance, provided to residents; and

11 (4) Other information required by rules promulgated by the director.

12 (c) The director may deny registration if the information provided in an application is known
13 by the applicant to be false or the applicant fails to report required information.

14 (d) A legally unlicensed provider may operate no more than one legally unlicensed home.

§16B-6-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.

1 (a) The provisions of this article do not apply to any home or facility approved and annually
2 reviewed by the United States Department of Veterans Affairs as a Medical Foster Home,
3 pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

4 (b) The West Virginia Department of Veterans Affairs shall report annually by December
5 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program
6 for veterans in West Virginia.

§16B-6-4. Public availability of registry.

1 The director shall publish and make available to the public on an annual basis a list of
2 service providers registered in accordance with §16B-6-3 of this code.

§16B-6-5. Inspections; right of entry.

1 The director may employ inspectors to enforce the provisions of this article. These
2 inspectors shall have the right of entry into any place where services are provided by a service
3 provider, to determine the number of residents therein, and the adequacy of services being
4 provided to them. The director may obtain a search warrant to inspect those premises that the
5 director has reason to believe are being used to provide services. The inspectors shall have
6 access to all parts of the home and grounds, including, but not limited to, all areas of all buildings
7 on the grounds of a home, food supplies, resident medications, and resident medical records.
8 Inspectors shall also be permitted to conduct private interviews with all residents and staff of a
9 home.

10 If after investigating a complaint, the director determines that the complaint is
11 substantiated and that an immediate and serious threat to a resident's health or safety exists, the
12 director may petition the circuit court for an injunction, order of abatement or other appropriate
13 action or proceeding to: (1) Close the home; (2) transfer residents in the home to other facilities;
14 or (3) appoint temporary management to oversee the operation of the home to assure the health,
15 safety, welfare, and rights of the home's residents where there is a need for temporary
16 management to ensure compliance with the court's order. Any home aggrieved by a determination
17 or assessment made pursuant to this section shall have the right to an administrative appeal as
18 set forth in §16B-4-12 of this code.

§16B-6-6. Enforcement; criminal penalties.

1 (a) Any service provider who fails to register with the director shall be guilty of a
2 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 or more than \$2,500,
3 or imprisoned in jail not less than 10 days, or more than 30 days after notice by certified mail by
4 the director to such service provider of the requirements of this article.

5 (b) Any person who interferes with or impedes in any way the lawful enforcement of the
6 provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined
7 not less than \$500 or more than \$2,500, or imprisoned in the jail not less than 10 days, or more
8 than 30.

9 (c) If after investigating a complaint, the director determines that the home is housing more
10 than three residents, the director, in consultation with the Inspector General, shall assess a civil
11 penalty of \$50 per day per the number of residents exceeding three. Each day the violation
12 continues, after the date of citation shall constitute a separate violation. The date of citation is the
13 date the facility receives the written statement of deficiencies.

14 (d) The Inspector General may in his or her discretion bring an action to enforce
15 compliance with the provisions of this article.

16 (e) The Circuit Court of Kanawha County or the circuit court of the county in which the
17 conduct occurred shall have jurisdiction in all civil enforcement actions brought under this article
18 and may order equitable relief without bond.

ARTICLE 7. CHRONIC PAIN CLINIC LICENSING ACT.

§16B-7-1. Purpose and short title.

1 This article shall be known as the Chronic Pain Clinic Licensing Act. The purpose of this
2 act is to establish licensing requirements for facilities that treat patients for chronic pain
3 management in order to ensure that patients may be lawfully treated for chronic pain by physicians
4 in facilities that comply with oversight requirements developed by the Office of the Inspector
5 General.

§16B-7-2. Definitions.

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

2 (1) "Chronic pain" means pain that has persisted after reasonable medical efforts have
3 been made to relieve the pain or cure its cause and that has continued, either continuously or
4 episodically, for longer than three continuous months. For purposes of this article, "chronic pain"
5 does not include pain directly associated with a terminal condition.

6 (2) "Director" means the Director of the Office of Health Facility Licensure and Certification,
7 or his or her designee.

8 (3) "Inspector General" means the Inspector General of the Office of the Inspector General
9 as described in §16B-2-1 of this code, or his or her designee.

10 (4) "Office of Health Facility Licensure and Certification" means the West Virginia Office
11 of Health Facility Licensure and Certification within the Office of the Inspector General.

12 (5) "Owner" means any person, partnership, association, or corporation listed as the
13 owner of a pain management clinic on the licensing forms required by this article.

14 (6) "Pain management clinic" means all privately-owned pain management clinics,
15 facilities, or offices not otherwise exempted from this article and which meet both of the following
16 criteria:

17 (A) Where in any month more than 50 percent of patients of the clinic are prescribed or
18 dispensed Schedule II opioids or other Schedule II controlled substances specified in rules
19 promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal;
20 and

21 (B) The facility meets any other identifying criteria established by the Inspector General
22 by rule.

23 (7) "Physician" means an individual authorized to practice medicine or surgery or
24 osteopathic medicine or surgery in this state.

25 (8) "Prescriber" means an individual who is authorized by law to prescribe drugs or drug
26 therapy related devices in the course of the individual's professional practice, including only a

27 medical or osteopathic physician authorized to practice medicine or surgery; a physician
28 assistant, or osteopathic physician assistant who holds a certificate to prescribe drugs; or an
29 advanced nurse practitioner who holds a certificate to prescribe.

30 (b) The Inspector General may define in rules any term or phrase used in this article which
31 is not expressly defined.

§16B-7-3. Pain management clinics to obtain license; application; fees and inspections.

1 (a) The Inspector General designates the Director of the Office of Health Facility Licensure
2 and Certification to enforce the provisions of this article, except where otherwise stated.

3 (b) No person, partnership, association, or corporation may operate a pain management
4 clinic without first obtaining a license from the director in accordance with the provisions of this
5 article and the rules lawfully promulgated pursuant to this article.

6 (c) Any person, partnership, association, or corporation desiring a license to operate a
7 pain management clinic in this state shall file with the Office of Health Facility Licensure and
8 Certification an application in such form as the director shall prescribe and furnish accompanied
9 by a fee to be determined by the director.

10 (d) The Director of the Office of Health Facility Licensure and Certification or his or her
11 designee shall inspect each facility prior to issuing a license and review all documentation
12 submitted with the application. The director shall issue a license if the facility is in compliance with
13 the provisions of this article and with the rules lawfully promulgated pursuant to this article.

14 (e) A license shall expire one year from the date of issuance. Sixty days prior to the
15 expiration date, an application for renewal shall be submitted on forms furnished by the director.
16 A license shall be renewed if the director determines that the applicant is in compliance with this
17 article and with all rules promulgated pursuant to this article. A license issued to one facility
18 pursuant to this article is not transferable or assignable. A change of ownership of a licensed pain
19 management clinic requires submission of a new application.

20 (f) The director or his or her designee shall inspect on a periodic basis all pain
21 management clinics that are subject to this article and all rules adopted pursuant to this article to
22 ensure continued compliance.

§16B-7-4. Operational requirements.

1 (a) Any person, partnership, association, or corporation that desires to operate a pain
2 management clinic in this state must submit to the director documentation that the facility meets
3 all of the following requirements:

4 (1) The clinic shall be licensed in this state with the director, the Secretary of State, the
5 State Tax Department, and all other applicable business or license entities.

6 (2) The application shall list all owners of the clinic. At least one owner shall be a physician
7 actively licensed to practice medicine, surgery, or osteopathic medicine or surgery in this state.
8 The clinic shall notify the director of any change in ownership within 10 days of the change and
9 must submit a new application within the time frame prescribed by the director.

10 (3) Each pain management clinic shall designate a physician owner who shall practice at
11 the clinic and who will be responsible for the operation of the clinic. Within 10 days after
12 termination of a designated physician, the clinic shall notify the director of the identity of another
13 designated physician for that clinic. Failing to have a licensed designated physician practicing at
14 the location of the clinic may be the basis for a suspension or revocation of the clinic license. The
15 designated physician shall:

16 (A) Have a full, active, and unencumbered license to practice medicine, surgery, or
17 osteopathic medicine or surgery in this state:

18 (B) Meet one of the following training requirements:

19 (i) Complete a pain medicine fellowship that is accredited by the Accreditation Council for
20 Graduate Medical Education or such other similar program as may be approved by the director;

21 or

22 (ii) Hold current board certification by the American Board of Pain Medicine or current
23 board certification by the American Board of Anesthesiology or such other board certification as
24 may be approved by the director.

25 (C) Practice at the licensed clinic location for which the physician has assumed
26 responsibility;

27 (D) Be responsible for complying with all requirements related to the licensing and
28 operation of the clinic;

29 (E) Supervise, control, and direct the activities of each individual working or operating at
30 the facility, including any employee, volunteer, or individual under contract, who provides
31 treatment of chronic pain at the clinic or is associated with the provision of that treatment. The
32 supervision, control, and direction shall be provided in accordance with rules promulgated by the
33 Inspector General.

34 (4) All persons employed by the facility shall comply with the requirements for the
35 operation of a pain management clinic established by this article or by any rule adopted pursuant
36 to this article.

37 (5) No person may own or be employed by or associated with a pain management clinic
38 who has previously been convicted of, or pleaded guilty to, any felony in this state or another state
39 or territory of the United States. All owners, employees, volunteers, or associates of the clinic
40 shall undergo a criminal records check prior to operation of the clinic or engaging in any work,
41 paid or otherwise, pursuant to §16B-15-1 *et seq.* of this code.

42 (6) The clinic may not be owned by, nor may it employ or associate with, any physician or
43 prescriber:

44 (A) Whose Drug Enforcement Administration number has ever been revoked;

45 (B) Whose application for a license to prescribe, dispense, or administer a controlled
46 substance has been denied by any jurisdiction; or

47 (C) Who, in any jurisdiction of this state or any other state or territory of the United States,
48 has been convicted of or plead guilty or nolo contendere to an offense that constitutes a felony
49 for receipt of illicit and diverted drugs, including controlled substances, as defined by §60A-1-101
50 of this code.

51 (7) A person may not dispense any medication, including a controlled substance, as
52 defined by section §60A-1-101 of this code, on the premises of a licensed pain management clinic
53 unless he or she is a physician or pharmacist licensed in this state. Prior to dispensing or
54 prescribing controlled substances, as defined by §60A-1-101 of this code, at a pain management
55 clinic, the treating physician must access the Controlled Substances Monitoring Program
56 database maintained by the Board of Pharmacy to ensure the patient is not seeking controlled
57 substances from multiple sources. If the patient receives ongoing treatment, the physician shall
58 also review the Controlled Substances Monitoring Program database at each patient examination
59 or at least every 90 days. The results obtained from the Controlled Substances Monitoring
60 Program database shall be maintained with the patient's medical records.

61 (8) Each clinic location shall be licensed separately, regardless of whether the clinic is
62 operated under the same business name or management as another clinic.

63 (9) A pain management clinic shall not dispense to any patient more than a 72-hour supply
64 of a controlled substance, as defined by §60A-1-101 of this code.

65 (10) The pain management clinic shall develop patient protocols, treatment plans, and
66 profiles, as prescribed by the Inspector General by rule, and which shall include, but not be limited
67 by, the following guidelines:

68 (A) When a physician diagnoses an individual as having chronic pain, the physician may
69 treat the pain by managing it with medications in amounts or combinations that may not be
70 appropriate when treating other medical conditions. The physician's diagnosis shall be made after
71 having the individual evaluated by one or more other physicians who specialize in the treatment
72 of the area, system, or organ of the body perceived as the source of the pain unless the individual

73 has been previously diagnosed as suffering from chronic pain and is referred to the pain
74 management clinic by such diagnosing physician. The physician's diagnosis and treatment
75 decisions shall be made according to accepted and prevailing standards for medical care.

76 (B) The physician shall maintain a record of all of the following:

77 (i) Medical history and physical examination of the individual;

78 (ii) The diagnosis of chronic pain, including signs, symptoms, and causes;

79 (iii) The plan of treatment proposed, the patient's response to the treatment, and any
80 modification to the plan of treatment;

81 (iv) The dates on which any medications were prescribed, dispensed, or administered, the
82 name and address of the individual to or for whom the medications were prescribed, dispensed,
83 or administered and the amounts and dosage forms for the drugs prescribed, dispensed, or
84 administered; and

85 (v) A copy of the report made by the physician to whom referral for evaluation was made.

86 (C) A physician, physician assistant, certified registered nurse anesthetist, or advanced
87 nurse practitioner shall perform a physical examination of a patient on the same day that the
88 physician initially prescribes, dispenses or administers a controlled substance to a patient, and at
89 least four times a year thereafter at a pain management clinic according to accepted and
90 prevailing standards for medical care.

91 (D) A physician authorized to prescribe controlled substances who practices at a pain
92 management clinic is responsible for maintaining the control and security of his or her prescription
93 blanks and any other method used for prescribing controlled substance pain medication. The
94 physician shall comply with all state and federal requirements for tamper-resistant prescription
95 paper. In addition to any other requirements imposed by statute or rule, the physician shall notify
96 the director in writing within 24 hours following any theft or loss of a prescription blank or breach
97 of any other method for prescribing pain medication.

98 (c) Upon satisfaction that an applicant has met all of the requirements of this article, the
99 director may issue a license to operate a pain management clinic. An entity that obtains this
100 license may possess, have custody or control of, and dispense drugs designated as Schedule II
101 or Schedule III in §60A-2-206 or §60A-2-208 of this code.

§16B-7-5. Exemptions.

1 (a) The following facilities are not pain management clinics subject to the requirements of
2 this article:

3 (1) A facility that does not prescribe or dispense controlled substances for the treatment
4 of chronic pain;

5 (2) A hospital licensed in this state, a facility located on the campus of a licensed hospital
6 that is owned, operated, or controlled by that licensed hospital, and an ambulatory health care
7 facility as defined by §16-2D-2 of this code that is owned, operated, or controlled by a licensed
8 hospital;

9 (3) A physician practice owned or controlled, in whole or in part, by a licensed hospital or
10 by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

11 (4) A hospice program licensed in this state;

12 (5) A nursing home licensed in this state;

13 (6) An ambulatory surgical facility as defined by §16-2D-2 of this code; and

14 (7) A facility conducting clinical research that may use controlled substances in studies
15 approved by a hospital-based institutional review board or an institutional review board accredited
16 by the association for the accreditation of human research protection programs.

17 (b) Any facility that is not included in this section may petition to the director for an
18 exemption from the requirements of this article. All such petitions are subject to the administrative
19 procedures requirements of §29A-1-1 *et seq.* of this code.

§16B-7-6. Inspection.

1 (a) The Office of Health Facility Licensure and Certification shall inspect each pain
2 management clinic annually, including a review of the patient records, to ensure that it complies
3 with this article and the applicable rules.

4 (b) During an onsite inspection, the inspector shall make a reasonable attempt to discuss
5 each violation with the designated physician or other owners of the pain management clinic before
6 issuing a formal written notification.

7 (c) Any action taken to correct a violation shall be documented in writing by the designated
8 physician or other owners of the pain management clinic and verified by follow-up visits by the
9 Office of Health Facility Licensure and Certification.

§16B-7-7. Suspension; revocation.

1 (a) The director, in consultation with the Inspector General, may suspend or revoke a
2 license issued pursuant to this article if the provisions of this article or of the rules promulgated
3 pursuant to this article are violated. The director, in consultation with the Inspector General, may
4 revoke a clinic's license and prohibit all physicians associated with that pain management clinic
5 from practicing at the clinic location based upon an annual or periodic inspection and evaluation.

6 (b) Before any such license is suspended or revoked, however, written notice shall be
7 given to the licensee, stating the grounds of the complaint and shall provide notice of the right to
8 request a hearing. The notice shall be sent by certified mail to the licensee at the address where
9 the pain management clinic concerned is located. The licensee shall be entitled to be represented
10 by legal counsel at the hearing.

11 (c) If a license is revoked pursuant to this article, a new application for a license may be
12 considered by the director if, when, and after the conditions upon which revocation was based
13 have been corrected, and evidence of this fact has been furnished to the director. A new license
14 may then be granted after proper inspection has been made and all provisions of this article and
15 rules promulgated pursuant to this article have been satisfied.

16 (d) All of the pertinent provisions of §29A-5-1 *et seq.* of this code shall apply and govern
17 any hearing authorized and required by the provisions of this article and the administrative
18 procedure in connection therewith.

19 (e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review
20 as a result of the hearing provided in this section may, within 30 days after receiving notice of the
21 decision, appeal the decision to West Virginia Intermediate Court of Appeals for judicial review of
22 the decision.

23 (f) The court may affirm, modify, or reverse the decision of the Board of Review and either
24 the applicant or licensee or the Inspector General may appeal from the court's decision to the
25 Supreme Court of Appeals.

26 (g) If the license of a pain management clinic is revoked or suspended, the designated
27 physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property
28 shall cease to operate the facility as a pain management clinic as of the effective date of the
29 suspension or revocation. The owner or lessor of the clinic property is responsible for removing
30 all signs and symbols identifying the premises as a pain management clinic within 30 days.

31 (h) Upon the effective date of the suspension or revocation, the designated physician of
32 the pain management clinic shall advise the director and the Board of Pharmacy of the disposition
33 of all drugs located on the premises. The disposition is subject to the supervision and approval of
34 the director. Drugs that are purchased or held by a pain management clinic that is not licensed
35 may be deemed adulterated.

36 (i) If the license of a pain management clinic is suspended or revoked, any person named
37 in the licensing documents of the clinic, including persons owning or operating the pain
38 management clinic, may not, as an individual or as part of a group, apply to operate another pain
39 management clinic for five years after the date of suspension or revocation.

40 (j) The period of suspension for the license of a pain management clinic shall be prescribed
41 by the director, in consultation with the Inspector General, but may not exceed one year.

§16B-7-8. Violations; penalties; injunction.

1 (a) Any person, partnership, association, or corporation which establishes, conducts,
2 manages, or operates a pain management clinic without first obtaining a license therefor as herein
3 provided, or which violates any provisions of this article or any rule lawfully promulgated pursuant
4 to this article, shall be assessed a civil penalty by the director, in consultation with the Inspector
5 General, in accordance with this subsection. Each day of continuing violation after conviction shall
6 be considered a separate violation:

7 (1) If a pain management clinic or any owner or designated physician is found to be in
8 violation of any provision of this article, unless otherwise noted herein, the director, in consultation
9 with the Inspector General, may suspend or revoke the clinic's license.

10 (2) If the clinic's designated physician knowingly and intentionally misrepresents actions
11 taken to correct a violation, the director, in consultation with the Inspector General, may impose
12 a civil penalty not to exceed \$10,000, and, in the case of an owner-operated pain management
13 clinic, revoke or deny a pain management clinic's license.

14 (3) If an owner or designated physician of a pain management clinic concurrently operates
15 an unlicensed pain management clinic, the director, in consultation with the Inspector General,
16 may impose a civil penalty upon the owner or physician, or both, not to exceed \$5,000 per day.

17 (4) If the owner of a pain management clinic that requires a license under this article fails
18 to apply for a new license for the clinic upon a change-of-ownership and operates the clinic under
19 the new ownership, the director, in consultation with the Inspector General, may impose a civil
20 penalty not to exceed \$5,000.

21 (5) If a physician knowingly operates, owns, or manages an unlicensed pain management
22 clinic that is required to be licensed pursuant to this article; knowingly prescribes or dispenses or
23 causes to be prescribed or dispensed, controlled substances in an unlicensed pain management
24 clinic that is required to be licensed; or licenses a pain management clinic through
25 misrepresentation or fraud; procures or attempts to procure a license for a pain management

26 clinic for any other person by making or causing to be made any false representation, the director,
27 in consultation with the Inspector General, may assess a civil penalty of not more than \$20,000.
28 The penalty may be in addition to or in lieu of any other action that may be taken by the director,
29 in consultation with the Inspector General, or any other board, court, or entity.

30 (b) Notwithstanding the existence or pursuit of any other remedy, the director, in
31 consultation with the Inspector General, may, in the manner provided by law, maintain an action
32 in the name of the state for an injunction against any person, partnership, association, or
33 corporation to restrain or prevent the establishment, conduct, management, or operation of any
34 pain management clinic or violation of any provisions of this article, or any rule lawfully
35 promulgated thereunder without first obtaining a license therefor in the manner hereinbefore
36 provided.

37 (c) In determining whether a penalty is to be imposed and in fixing the amount of the
38 penalty, the director, in consultation with the Inspector General, shall consider the following
39 factors:

40 (1) The gravity of the violation, including the probability that death or serious physical or
41 emotional harm to a patient has resulted, or could have resulted, from the pain management
42 clinic's actions or the actions of the designated or practicing physician, the severity of the action
43 or potential harm, and the extent to which the provisions of the applicable laws or rules were
44 violated;

45 (2) What actions, if any, the owner or designated physician took to correct the violations;

46 (3) Whether there were any previous violations at the pain management clinic; and

47 (4) The financial benefits that the pain management clinic derived from committing or
48 continuing to commit the violation.

49 (d) Upon finding that a physician has violated the provisions of this article or rules adopted
50 pursuant to this article, the director, in consultation with the Inspector General, shall provide notice
51 of the violation to the applicable licensing board.

§16B-7-9. Rules.

1 (a) The Inspector General, in collaboration with the West Virginia Board of Medicine and
2 the West Virginia Board of Osteopathy, shall promulgate rules in accordance with the provisions
3 of §29A-1-1 *et seq.* of this code for the licensure of pain management clinics to ensure adequate
4 care, treatment, health, safety, welfare, and comfort of patients at these facilities. These rules
5 shall include, at a minimum:

6 (1) The process to be followed by applicants seeking a license;

7 (2) The qualifications and supervision of licensed and nonlicensed personnel at pain
8 management clinics and training requirements for all facility health care practitioners who are not
9 regulated by another board;

10 (3) The provision and coordination of patient care, including the development of a written
11 plan of care;

12 (4) The management, operation, staffing, and equipping of the pain management clinic;

13 (5) The clinical, medical, patient, and business records kept by the pain management
14 clinic;

15 (6) The procedures for inspections and for the review of utilization and quality of patient
16 care;

17 (7) The standards and procedures for the general operation of a pain management clinic,
18 including facility operations, physical operations, infection control requirements, health and safety
19 requirements, and quality assurance;

20 (8) Identification of drugs that may be used to treat chronic pain that identify a facility as a
21 pain management clinic, including, at a minimum, tramadol and carisoprodol;

22 (9) Any other criteria that identify a facility as a pain management clinic;

23 (10) The standards and procedures to be followed by an owner in providing supervision,
24 direction, and control of individuals employed by or associated with a pain management clinic;

25 (11) Data collection and reporting requirements; and

26 (12) Such other standards or requirements as the Inspector General determines are
27 appropriate.

28 (b) The rules authorized by this section may be filed as emergency rules if deemed
29 necessary to promptly effectuate the purposes of this article. The Legislature finds that the
30 changes made to this article during the 2024 regular session of the Legislature constitute an
31 emergency for the purposes of filing any amendment to existing rules.

§16B-7-10. Advertisement disclosure.

1 Any advertisement made by or on behalf of a pain management clinic through public
2 media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor
3 advertising, radio, or television, or through written or recorded communication, concerning the
4 treatment of chronic pain, as defined in §16B-7-2 of this code, shall include the name of, at a
5 minimum, one physician owner responsible for the content of the advertisement.

ARTICLE 8. HOSPICE LICENSURE ACT.

§16B-8-1. Purpose and short title.

1 This article shall be known as the Hospice Licensure Act. The purpose of this Act is to
2 establish licensing requirements for hospices. It is the intent of the Legislature to establish,
3 promote and make available within this state a comprehensive hospice care program for the
4 treatment of physical, emotional, and mental symptoms of terminal illness.

§16B-8-2. Definitions.

1 "Bereavement services" means support services designed to assist individuals to
2 experience, respond emotionally to, and adjust to the death of another person.

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

5 "Hospice" means a coordinated program of home and inpatient care provided directly or
6 through an agreement under the direction of an identifiable hospice administration which provides
7 palliative and supportive medical and other health services to terminally ill individuals and their

8 families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care
9 provides care to meet the physical, psychological, social, spiritual, and other special needs which
10 are experienced during the final stages of illness and during dying and bereavement.

11 "Inspector General" means the Inspector General of the Office of the Inspector General
12 as described in §16B-2-1 of this code, or his or her designee.

13 "Interdisciplinary team" means the hospice patient and the patient's family, the attending
14 physician and the following hospice personnel: Physician, nurse, social worker, clergy and trained
15 volunteer. Providers of supportive services such as mental health, pharmaceutical, and any other
16 appropriate allied health services may also be included on the team as the needs of the individual
17 dictate.

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

20 "Palliative services" means treatment directed at controlling pain, relieving other
21 symptoms, and focusing on the special needs of the individual and family as they experience the
22 stress of the dying process, rather than treatment designed for investigation and intervention for
23 the purpose of cure or prolongation of life.

24 "Terminally ill" means that an individual has a medical prognosis that his or her life
25 expectancy is six months or less or another length of time determined by the centers for Medicare
26 and Medicaid services and designated in federal hospice regulations.

27 The Inspector General may define in regulation any term or phrase used in this article
28 which is not expressly defined.

§16B-8-3. Hospices to obtain license; application; fees and inspections.

1 (a) The Inspector General designates the Director of the Office of Health Facility Licensure
2 and Certification to enforce the provisions of this article, except where otherwise state.

3 (b) No person, partnership, association, or corporation or any governmental unit or any
4 division, department, board, or agency thereof may operate a hospice without first obtaining a

5 license from the director in accordance with the provisions of this article and the rules lawfully
6 promulgated hereunder.

7 (c) Any person, partnership, association, or corporation or any governmental unit or any
8 division, department, board, or agency thereof desiring a license hereunder shall file with the
9 director an application in such form as the director shall prescribe and furnish accompanied by a
10 fee to be determined by the director, based upon the number of persons served by the hospice.
11 The director shall inspect the hospice prior to issuing a license. Upon receipt and review of an
12 application for license, the director shall issue a license if the hospice is in compliance with the
13 provisions of this article and with the rules lawfully promulgated hereunder. The license is not
14 transferable or assignable.

15 (d) A license shall expire one year from the date of issuance. Sixty days prior to the
16 expiration date, an application for renewal shall be submitted on forms furnished by the director.
17 A license shall be renewed if the director determines that the applicant is in compliance with this
18 article and with all rules promulgated hereunder.

19 (e) The director or his or her designee shall inspect all hospices that are subject to rules
20 adopted pursuant to this article periodically and at least as often as required by the Centers for
21 Medicare and Medicaid Services in order to determine compliance with the provisions of this
22 article and with rules adopted hereunder, and regulations promulgated by the Centers for
23 Medicare and Medicaid Services.

§16B-8-4. Suspension; revocation.

1 (a) The director, in consultation with the Inspector General, is authorized to suspend or
2 revoke a license issued hereunder if the provisions of this article or of the rules are violated.

3 (b) Before any such license is suspended or revoked, however, written notice shall be
4 given the licensee, stating the grounds of the complaint, and the date, time, and place set for the
5 hearing on the complaint, which date shall not be less than 30 days from the time notice is given.
6 Such notice shall be sent by registered mail to the licensee at the address where the hospice

7 concerned is located. The licensee shall be entitled to be represented by legal counsel at the
8 hearing.

9 (c) If a license is revoked as herein provided, a new application for a license shall be
10 considered by the director, in consultation with the Inspector General, if, when and after the
11 conditions upon which revocation was based have been corrected and evidence of this fact has
12 been furnished. A new license shall then be granted after proper inspection has been made and
13 all provisions of this article and rules promulgated hereunder have been satisfied.

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

18 (e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review
19 as a result of the hearing provided in this section may, within 30 days after receiving notice of the
20 decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the
21 decision.

22 (f) The court may affirm, modify, or reverse the decision of the Board of Review and either
23 the applicant or licensee or the Inspector General may appeal from the court's decision to the
24 Supreme Court of Appeals.

§16B-8-5. Inspector General to establish rules.

1 The Inspector General may promulgate rules in accordance with the provisions of §29A-
2 1-1 *et seq.* of this code for the licensure of hospice programs to ensure adequate care, treatment,
3 health, safety, welfare, and comfort of hospice patients. Such rules shall include, but not be limited
4 to:

5 (a) The qualifications and supervision of licensed and nonlicensed personnel;

6 (b) The provision and coordination of inpatient care and in-home treatment services,
7 including the development of a written plan of care;

- 8 (c) The management, operation, staffing, and equipping of the hospice program;
- 9 (d) The clinical and business records kept by the hospice;
- 10 (e) The procedures for the review of utilization and quality of patient care; and
- 11 (f) Such other requirements as the director determines to be appropriate.

§16B-8-6. Violations; penalties; injunction.

1 (a) Any person, partnership, association, or corporation, and any local governmental unit
2 or any division, department, board, or agency thereof which establishes, conducts, manages, or
3 operates a hospice without first obtaining a license therefor as herein provided, or which violates
4 any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be
5 assessed a civil penalty by the director, in consultation with the Inspector General, not to exceed
6 \$50 for each violation. Each day of continuing violation after conviction shall be considered a
7 separate violation.

8 (b) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
9 may, in the manner provided by law, maintain an action in the name of the state for an injunction
10 against any person, partnership, association, corporation, or any governmental unit or any
11 division, department, board, or agency thereof to restrain or prevent the establishment, conduct,
12 management, or operation of any hospice or violation of any provisions of this article or any rule
13 or regulation lawfully promulgated thereunder without first obtaining a license therefor in the
14 manner hereinbefore provided.

ARTICLE 9. RESIDENTIAL CARE COMMUNITIES.

§16B-9-1. Purpose.

1 It is the policy of this state to encourage and promote the development and utilization of
2 quality residential communities for persons who desire to live independently in an apartment, who
3 are or may be dependent upon the services of others by reason of physical or mental impairment,
4 and who may require limited and intermittent nursing care and who are capable of self-
5 preservation and are not bedfast. Individuals may not be disqualified for residency solely because

6 they qualify for or receive services coordinated by a licensed hospice. This care and treatment
7 requires a living environment for these persons which, to the extent practicable, approximates a
8 normal home environment. To this end, it is the policy of this state to encourage and promote the
9 development and maintenance of residential care communities.

10 The provisions of this article are remedial and shall be liberally construed to effectuate its
11 purposes and intents. This article is intended to apply only to residential communities in which
12 apartments are rented on a month-to-month basis. All residential care community rental contracts
13 shall specify in bold-faced type, under the conspicuous caption "NOTICE TO RESIDENT", that
14 residents of the residential community must be capable of self-preservation, or substantially
15 similar words clearly conveying the same meaning. This article may not be construed to require
16 that any person be required to vacate any property in which that person has an ownership or a
17 leasehold interest, except for a month-to-month tenancy, because that person is disabled and
18 incapable of self-preservation. Nothing in this article is intended to supersede the provisions of
19 §5-11A-1 *et seq.* of this code.

§16B-9-2. Definitions.

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

2 (1) "Capable of self-preservation" means that a person is, at a minimum, physically
3 capable of removing himself or herself from situations involving imminent danger such as fire;

4 (2) "Deficiency" means a statement of the rule and the fact that compliance has not been
5 established and the reasons therefor;

6 (3) "Director" means the director of the Office of Health Facility Licensure and Certification,
7 or his or her designee;

8 (4) "Division" means the Office of Health Facility Licensure and Certification;

9 (5) "Inspector General" means the Inspector General of the Office of the Inspector General
10 as described in §16B-2-1 of this code, or his or her designee;

11 (6) "Limited and intermittent nursing care" means direct hands-on nursing care of a
12 resident who needs no more than two hours of nursing care per day for a period of time no longer
13 than 90 consecutive days per episode, which care may be provided only when the need for it
14 meets these requirements: The resident requests that he or she remain in the residential care
15 community, the resident is advised of the availability of other specialized health care facilities to
16 treat his or her condition, and the need for care results from a medical pathology or the normal
17 aging process. Limited and intermittent nursing care may be provided only by or under the
18 supervision of a registered professional nurse and in accordance with legislative rules.

19 (7) "Nursing care" means those procedures commonly employed in providing for the
20 physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require
21 technical skills and knowledge beyond those that untrained persons possess, including,
22 irrigations, catheterizations, and special procedures that contribute to rehabilitation and
23 administration of medication by any method involving a level of complexity and skill not possessed
24 by untrained persons;

25 (8) "Office of Health Facility Licensure and Certification" means the West Virginia Office
26 of Health Facility Licensure and Certification within the Office of the Inspector General.

27 (9) "Person" means a natural person and every form of organization, whether incorporated
28 or unincorporated, including partnerships, corporations, trusts, associations, and political
29 subdivisions of the state;

30 (10) "Personal assistance" means services of a personal nature, including help in walking,
31 bathing, dressing, toileting, getting in or out of bed, and supervision that is required because of
32 the age or mental impairment of a resident;

33 (11) "Resident" means an individual who lives in a residential care community for the
34 purpose of receiving personal assistance or limited and intermittent nursing services from the
35 community;

36 (12) "Residential care community" means any group of 17 or more residential apartments,
37 however named, which are part of a larger independent living community and which are
38 advertised, offered, maintained, or operated by an owner or manager, regardless of consideration
39 or the absence thereof, for the express or implied purpose of providing residential
40 accommodations, personal assistance, and supervision on a monthly basis to 17 or more persons
41 who are or may be dependent upon the services of others by reason of physical or mental
42 impairment or who may require limited and intermittent nursing care but who are capable of self-
43 preservation and are not bedfast. Individuals may not be disqualified for residency solely because
44 they qualify for or receive services coordinated by a licensed hospice. Each apartment in a
45 residential care community shall be at least 300 square feet in size, have doors capable of being
46 locked and contain at least: One bedroom; one kitchenette that includes a sink and a refrigerator;
47 and one full bathroom that includes a bathing area, toilet, and sink. Services utilizing equipment
48 which requires auxiliary electrical power in the event of a power failure may not be used unless
49 the residential care community has a backup power generator. Nothing contained in this article
50 applies to hospitals, as defined under §16B-3-1 of this code, state institutions, as defined under
51 §27-1-6, residential care communities operated as continuing care retirement communities or
52 housing programs operated under rules of the federal department of housing and urban
53 development and/or the office of rural economic development, residential care communities,
54 operated by the federal government or the state government, institutions operated for the
55 treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other
56 similar places that furnish only room and board, or to homes or asylums operated by fraternal
57 orders pursuant to §35-3-1 of this code;

58 (13) "Substantial compliance" means a level of compliance with the rules promulgated
59 hereunder that identified deficiencies pose a risk to resident health or safety no greater than a
60 potential for causing minimal harm.

61 (b) The Inspector General may by rule define terms pertinent to this article which are not
62 defined.

§16B-9-3. Powers, duties, and rights of Inspector General.

1 In the administration of this article, the Inspector General may:

2 (1) Enforce rules and standards for residential care communities as adopted, proposed,
3 amended, or modified by the Inspector General;

4 (2) Exercise all powers granted herein relating to the issuance, suspension, and
5 revocation of licenses of residential care communities;

6 (3) Enforce rules governing the qualification of applicants for residential care community
7 licenses, including, but not limited to, educational, financial, personal, and ethical requirements,
8 as adopted, proposed, amended, or modified by the Inspector General;

9 (4) Receive and disburse federal funds and to take any lawful action that is necessary or
10 appropriate to comply with the requirements and conditions for the receipt or expenditure of
11 federal funds;

12 (5) Receive and disburse funds appropriated by the Legislature to the division for any
13 authorized purpose;

14 (6) Receive and disburse funds obtained by the division by way of gift, grant, donation,
15 bequest, or devise, according to the terms thereof, funds derived from the division's operation,
16 and funds from any other source, no matter how derived, for any authorized purpose;

17 (7) Negotiate and enter into contracts, and to execute all instruments necessary or
18 convenient in carrying out the functions and duties of the position of Inspector Director, and all of
19 these contracts, agreements, and instruments shall be executed by the Inspector Director;

20 (8) Appoint officers, agents, employees, and other personnel and establish the duties and
21 fix the compensation thereof;

22 (9) Offer and sponsor education and training programs for residential care communities'
23 administrative, managerial, and operations personnel;

24 (10) Undertake survey, research, and planning projects and programs relating to the
25 administration and operation of residential care communities and to the health, care, treatment,
26 and service in general of residents of these communities;

27 (11) Establish by legislative rule in accordance with §16B-9-10 of this code and to assess
28 reasonable civil penalties for violations of residential care community standards;

29 (12) Inspect any residential care community and any of the records maintained therein,
30 subject to the provisions of §16B-9-10 of this code;

31 (13) Establish legislative rules in accordance with §29A-3-1 *et seq.* of this code, setting
32 forth procedures for implementing the provisions of this article, including informal conferences,
33 investigations and hearings, and for enforcing compliance with the provisions of this article and
34 the rules promulgated hereunder;

35 (14) Subpoena witnesses and documents, administer oaths and affirmations, and examine
36 witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to give
37 testimony and upon reasonable notice to all persons affected thereby, the Inspector General may
38 apply to the circuit court of the county in which the hearing is to be held or to the circuit court of
39 Kanawha County for an order compelling compliance;

40 (15) Make a complaint or cause proceedings to be instituted against any person or persons
41 for the violation of the provisions of this article or of the rules promulgated hereunder. An action
42 may be taken by the Inspector General in the absence of concurrence or participation by the
43 prosecuting attorney of the county in which the proceedings are instituted. The Circuit Court of
44 Kanawha County or the circuit court of the county in which the violation has occurred has
45 jurisdiction in any civil enforcement action brought pursuant to this article and may order equitable
46 relief. In these cases, the court may not require that a bond be posted, nor may the Inspector
47 General or any person acting under his or her authority be required to give security for costs;

48 (16) Delegate authority to his or her employees and agents in the performance of any
49 power or duty granted in this article, except the issuance of final decisions in any adjudicatory
50 matter; and

51 (17) Make available at all times online access through the Office of Health Facility
52 Licensure and Certification website the following information. The online information shall
53 describe the residential care community licensing and investigatory activities of the division. The
54 online information shall include a list of all residential care communities and the following
55 information: Whether the residential care communities are proprietary or nonproprietary, the name
56 of the administrator or administrators, the total number of beds; license type, license number,
57 license expiration date, health investigations information and reports, life safety investigations
58 information and reports, and whether those residential care communities listed accept Medicare
59 or Medicaid residents.

60 (18) The Inspector General designates the Director of the Office of Health Facility
61 Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

§16B-9-4. Administrative and inspection staff.

1 The director may, at any time he or she considers necessary, employ administrative
2 employees, inspectors, or other persons to properly implement the provisions of this article.
3 Employees of the division shall be members of the state civil service system and shall enforce
4 the provisions of this article and the rules promulgated hereunder. In discharging their official
5 duties, employees of the division have the right of entry into any place maintained as a residential
6 care community.

§16B-9-5. Rules; minimum standards for residential care communities.

1 (a) The Inspector General shall propose all rules that may be necessary or proper to
2 implement or effectuate the purposes and intent of this article and to enable the director to
3 exercise the powers and perform the duties conferred herein. All rules authorized or required

4 pursuant to this article shall be proposed by the Inspector General and promulgated in accordance
5 with the provisions governing legislative rules, contained in §29A-3-1 of this code.

6 (b) The Inspector General shall propose rules establishing minimum standards for the
7 operation of residential care communities, including, but not limited to, the following:

8 (1) Administrative policies, including: (i) An affirmative statement of the right of access to
9 residential care communities by members of recognized community organizations and community
10 legal services programs whose purposes include rendering assistance without charge to
11 residents, consistent with the right of residents to privacy; and (ii) a statement of the rights and
12 responsibilities of residents;

13 (2) Minimum numbers and qualifications of residential care community personnel
14 according to the size, classification and health care needs of the residential care community;

15 (3) Safety requirements, except for those fire and life safety requirements under the
16 jurisdiction of the state Fire Marshal;

17 (4) Sanitation requirements;

18 (5) Protective and personal services required to be provided;

19 (6) Dietary services required to be provided;

20 (7) Maintenance of health records, including confidentiality;

21 (8) Social and recreational activities required to be made available;

22 (9) Physical facilities;

23 (10) Requirements related to limited and intermittent nursing care;

24 (11) Visitation privileges governing access to a resident by immediate family or other
25 relatives of the resident and by other persons who are visiting with the consent of the resident;

26 and

27 (12) Other items or considerations that the director considers appropriate to ensure the
28 health, safety and welfare of residents of residential care communities.

29 (c) The Inspector General shall propose rules that include detailed specifications for each
30 category of standards required under subsections (b) and (d) of this section, and shall classify
31 these standards as follows:

32 (1) Class I standards, the violation of which presents either an imminent danger to the
33 health, safety, or welfare of a resident or a substantial probability that death or serious physical
34 harm may result;

35 (2) Class II standards, the violation of which directly implicates the health, safety or welfare
36 of a resident, but which does not present imminent danger thereto; and

37 (3) Class III standards, the violation of which has an indirect or potential impact on the
38 health, safety, or welfare of any resident.

39 (d) A residential care community shall attain substantial compliance in every category of
40 standard enumerated in this section in order to be considered as being in substantial compliance
41 with the requirements of this article and the rules promulgated hereunder.

42 (e) Until such time as the Inspector General proposes rules governing residential care
43 communities under this section, existing rules governing residential board and care homes shall
44 apply to residential care communities and shall be construed so as to conform with the provisions
45 of this article in their application to residential care communities: *Provided*, That to the extent any
46 provisions of the rule governing residential board and care homes conflict with the provisions of
47 this article, the provisions of this article shall govern.

§16B-9-6. License required; application; fees; duration; renewal.

1 No person may establish, operate, maintain, offer, or advertise a residential care
2 community within this state unless he or she first obtains a license therefor as provided in this
3 article, which license remains unsuspended, unrevoked, and unexpired. No public official or
4 employee may place any person in, or recommend that any person be placed in, or directly or
5 indirectly cause any person to be placed in, any residential care community which is being

6 operated without a valid license from the director. The procedure for obtaining a license is as
7 follows:

8 (a) The applicant shall submit an application to the director on a form prescribed by the
9 director, containing information as may be necessary to show that the applicant is in compliance
10 with the standards for residential care communities as established by this article and the rules
11 promulgated hereunder. The application and any exhibits thereto shall provide the following
12 information:

13 (1) The name and address of the applicant;

14 (2) The name, address, and principal occupation: (i) Of each person who, as a stockholder
15 or otherwise, has a proprietary interest of 10 percent or more in the applicant; (ii) of each officer
16 and director of a corporate applicant; (iii) of each trustee and beneficiary of an applicant which is
17 a trust; and (iv) where a corporation has a proprietary interest of 25 percent or more in an
18 applicant, the name, address, and principal occupation of each officer and director of the
19 corporation;

20 (3) The name and address of the owner of the premises of the residential care community
21 or proposed residential care community, if different from the applicant, and if so, the name and
22 address: (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10
23 percent or more in the owner of the premises; (ii) of each officer and director of a corporate
24 applicant; (iii) of each trustee and beneficiary of the owner if it is a trust; and (iv) where a
25 corporation has a proprietary interest of 25 percent or more in the owner, the name and address
26 of each officer and director of the corporation;

27 (4) Where the applicant is the lessee or the assignee of the residential care community or
28 the premises of the proposed residential care community, a signed copy of the lease and any
29 assignment thereof;

30 (5) The name and address of the residential care community or the premises of the
31 proposed residential care community;

32 (6) The proposed number of apartments in the residential care community;

33 (7) (A) An organizational plan for the residential care community indicating the number of
34 persons employed or to be employed, and the positions and duties of all employees; (B) the name
35 and address of the individual who is to serve as administrator; and (C) evidence of compliance
36 with applicable laws and rules governing zoning, building, safety, fire prevention, and sanitation,
37 as the director may require; and

38 (8) Additional information as the director may require.

39 (b) Upon receipt and review of an application for license made pursuant to subdivision (a)
40 of this section and inspection of the applicant pursuant to §16B-9-10 of this code, the director
41 shall issue a license if he or she finds:

42 (1) That an applicant which is an individual and every partner, trustee, officer, director,
43 and person with a controlling interest of an applicant which is not an individual, is a person
44 responsible and suitable to operate or to direct or participate in the operation of a residential care
45 community by virtue of financial capacity, appropriate business or professional experience, a
46 record of compliance with lawful orders of the department (if any) and a history of nonrevocation
47 of a license during the five years immediately preceding the application;

48 (2) That the residential care community is under the supervision of an administrator
49 qualified for that position by training and experience;

50 (3) That the residential care community is in substantial compliance with standards
51 established pursuant to section five of this article, and other requirements as the Inspector
52 General may establish by rule under this article.

53 Any license granted by the director shall state the maximum number of apartments for
54 which it is granted, the date of issuance and the date of expiration. Residential care community
55 licenses shall be issued for a period not to exceed one year: *Provided*, That any license which is
56 unexpired, for which timely application for renewal has been made, together with payment of the
57 proper fee, as required by the provisions of this article and the rules promulgated hereunder,

58 continues in effect until: (i) One year after the original expiration date of the license; (ii) the date
59 that the license is revoked or suspended pursuant to the provisions of this article; or (iii) the date
60 of issuance of a new license, whichever date first occurs. Each license issued is only for the
61 premises and applicant named in the application and may not be transferred or assigned:
62 *Provided, however,* That if the ownership of a residential care community with an unexpired
63 license is transferred, the filing of an application for a license with the director by the new owner
64 shall have the effect of licensing the operation of the residential care community under the new
65 owner for a period not to exceed three months. Every residential care community license shall be
66 displayed in a conspicuous place at the facility for which it is issued so as to be accessible to and
67 in plain view of residents and visitors.

68 (c) An original license may be renewed upon the timely filing of an application therefor,
69 accompanied by the required fee and contingent upon the licensee's submission of evidence
70 satisfactorily demonstrating compliance with the provisions of this article and the rules
71 promulgated hereunder together with the following:

72 (1) A balance sheet as of the end of the residential care community's fiscal year, setting
73 forth its assets and liabilities as of that date, including all capital, surplus, reserve, depreciation,
74 and similar accounts;

75 (2) A statement of operations of the residential care community as of the end of its fiscal
76 year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges;
77 and

78 (3) A statement of any changes in the name, address, management, or ownership
79 information on file with the director.

80 (d) In the case of an application for license renewal, if all the requirements of section five
81 of this article are not met, the director may issue a provisional license, provided that care given in
82 the residential care community is adequate for resident needs and the residential care community
83 has demonstrated improvement and evidences potential for substantial compliance during the

84 term of the provisional license: *Provided*, That a provisional license is effective for a period not to
85 exceed one year, may not be renewed, and may not be issued to any residential care community
86 with uncorrected violations of any Class I standard, as defined in subsection (c), section five of
87 this article.

88 (e) A nonrefundable application fee in the amount of \$75 for an original residential care
89 community license shall be paid at the time an application for license is made. The average cost
90 of all direct costs for initial licensure inspections of all residential care communities for the
91 preceding year shall be assessed against and paid by the applicant to the director before an initial
92 or amended license may be issued. The fee for license renewal shall be computed at the rate of
93 \$4 per apartment in the community per year: *Provided*, That the rate per apartment may be
94 assessed against applicants for whom a license is issued for a period of less than one year. The
95 director may annually adjust licensure fees for inflation, based upon the consumer price index. All
96 license fees are due and payable to the director, annually, in the manner set forth in the rules
97 promulgated hereunder. The director shall retain each application and licensure fee pending final
98 action on the application. All fees received by the director under the provisions of this article shall
99 be deposited in accordance with §16B-1-13 of this code.

§16B-9-7. Cost disclosure; residents' funds; nursing care; fire code.

1 (a) Each residential care community shall disclose in writing to all prospective residents a
2 complete and accurate list of all costs which may be incurred by them as residents of the
3 community. Residents may not be held liable for any cost that was not disclosed.

4 (b) Residential care communities may not manage the personal finances or funds of its
5 residents.

6 (c) A residential care community may be required to have registered nurses on its staff to
7 the extent that it provides limited and intermittent nursing care.

8 (d) Residential care communities shall comply with the applicable provisions of the current
9 edition of the life safety code as promulgated by the national fire protection association and
10 adopted by the state Fire Commission.

§16B-9-8. Investigation of complaints.

1 The director shall by rule establish procedures for the prompt investigation of all
2 complaints of alleged violations of applicable requirements of state law or rules by residential care
3 communities, except those complaints that the director determines are without any reasonable
4 basis or are made with the sole intention to willfully harass a licensee. These procedures shall
5 include provisions for ensuring the confidentiality of the complainant and of any other person
6 named in the complaint, and for promptly informing the complainant and the residential care
7 community involved of the results of the investigation.

8 If, after its investigation, the director determines that the complaint has merit, the director
9 shall take appropriate disciplinary action and shall advise any injured party of the possibility of a
10 civil remedy under this article.

11 No residential care community may discharge or in any manner discriminate or retaliate
12 against any employee or resident for filing a complaint or participating in any proceeding provided
13 for in this article. Violation of this prohibition by any residential care community constitutes
14 grounds for the suspension or revocation of its license as provided in §16B-9-11 of this code. Any
15 type of adverse action taken by a residential care community against a resident who has
16 submitted a complaint to the director or upon whose behalf a complaint has been submitted or
17 who has instituted any proceeding under this article, if taken within 120 days of the filing of the
18 complaint or the institution of the proceeding, shall raise a rebuttable presumption that the adverse
19 action was taken in retaliation for filing the complaint or instituting the proceeding.

§16B-9-9. Inspections.

1 The director and any duly designated employee or agent thereof is authorized to enter
2 upon and into the premises of any residential care community for which a license has been issued,

3 for which an application for license has been filed, or which the director has reason to believe is
4 being operated or maintained as a residential care community without a license. If entry is refused
5 by the owner or person in charge of the residential care community, the director shall apply to the
6 circuit court of the county in which the residential care community is located or the Circuit Court
7 of Kanawha County for an order authorizing inspection, and the court shall issue an appropriate
8 order if it finds good cause for inspection.

9 The director, by and through his or her agents or employees, shall conduct at least one
10 inspection of a residential care community before issuing a license to it and shall conduct periodic
11 unannounced inspections thereafter to determine if it is in compliance with all applicable statutory
12 requirements and rules. All residential care communities shall comply with applicable rules of the
13 state Fire Commission. The State Fire Marshal, by and through his or her agents or employees,
14 shall make all fire, safety, and similar inspections of residential care communities. The director
15 may provide for other inspections he or she considers necessary to effectuate the intent and
16 purpose of this article. If the director determines upon investigation that a complaint is
17 substantiated and that an immediate and serious threat to health or safety exists at a residential
18 care community, he or she may invoke any remedy available pursuant to §16B-9-11 of this code.
19 Any residential care community aggrieved by a determination or assessment made pursuant to
20 this section shall have the right to an administrative appeal as set forth in §16B-9-12 of this code.

§16B-9-10. Reports of inspections; plans of correction; assessment of penalties, fees, and costs; use of funds derived therefrom; hearings.

1 (a) Reports of all inspections made pursuant to §16B-9-9 of this code shall be in writing
2 and filed with the director, and shall list all deficiencies in the residential care community's
3 compliance with the provisions of this article and the rules promulgated hereunder. The director
4 shall send a copy of the report to the residential care community and shall specify a time within
5 which the residential care community shall submit a plan for correction of any listed deficiencies,
6 which plan shall be approved, rejected, or modified by the director. Inspectors shall allow audio

7 taping of the exit conference that follows a licensure or certification inspection, with all costs
8 incurred as a result of the taping to be paid by the residential care community. A copy of the audio
9 tape shall be provided to the inspector.

10 (b) Upon the failure of a residential care community to submit a plan of correction as
11 required or to correct any deficiency within the time specified, the director, in consultation with the
12 Inspector General, may assess a civil penalty or initiate other appropriate legal or disciplinary
13 action, as provided by this article.

14 (c) Nothing in this section may be construed to require the director to afford a formal
15 opportunity for a residential care community to correct a deficiency before initiating an
16 enforcement action in either an administrative or judicial forum, where, in the opinion of the
17 director, in consultation with the Inspector General, the deficiency jeopardizes the health or safety
18 of the community's residents or where the deficiency is the second or subsequent violation to
19 occur within a 12-month period.

20 (d) Civil penalties assessed against residential care communities shall be classified
21 according to the nature of the violation, as provided in §16B-9-5(c) and rules promulgated
22 thereunder, consistent with the following: For each violation of a Class I standard, the civil penalty
23 imposed shall be not less than \$50 nor more than \$500; for each violation of a Class II standard,
24 the civil penalty imposed shall be not less than \$25 nor more than \$50; for each violation of a
25 Class III standard, the civil penalty imposed shall be not less than \$10 nor more than \$25. Each
26 day that a violation continues after the date of citation constitutes a separate violation. The date
27 of the citation is the date the facility receives the written statement of deficiencies.

28 (e) The director, in consultation with the Inspector General, shall assess a civil penalty not
29 to exceed \$2,000 against any individual who notifies a residential care community, or causes it to
30 be notified, in advance, of the time or date on which an inspection is scheduled to be conducted
31 under this article.

32 (f) If the director, in consultation with the Inspector General, assesses a penalty under this
33 section, he or she shall cause a notice of penalty to be delivered to the residential care community
34 by personal service or by certified mail. This notice shall state the amount of the penalty, the
35 action, deficiency or other circumstance for which the penalty is assessed, the statutory
36 requirement or rule which has been violated and the basis upon which the director, in consultation
37 with the Inspector General, determined the amount of the penalty.

38 (g) The Inspector General shall recover in a judicial proceeding any civil penalty which: (i)
39 Remains uncontested and unpaid for 30 days after its receipt; or (ii) if contested, has been
40 affirmed by the Board of Review and remains unappealed for 30 days after receipt of the Board
41 of Review's final order; or (iii) if appealed, has been affirmed upon judicial review of the Board of
42 Review's final order. All funds received in the form of civil penalties or interest thereon pursuant
43 to this article shall be deposited in a special resident benefit account which is hereby established
44 and applied by the director exclusively for the protection of the health or property of residents of
45 residential care communities operated within this state that the director determines to be deficient,
46 which may include payment of costs to relocate residents of a deficient residential care community
47 to other facilities, operation costs of a residential care community pending correction of
48 deficiencies or closure and reimbursement of residents for personal funds lost.

49 (h) The opportunity for a hearing on any action taken under this section is as provided in
50 §16B-9-12 of this code. In addition to any other rights of appeal conferred upon a residential care
51 community under this section, it may also request a hearing and seek judicial review pursuant to
52 §16B-9-12 and §16B-9-13 of this code to contest the director's citing of a deficiency in an
53 inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

**§16B-9-11. License limitation, suspension, and revocation; ban on admissions;
continuation of disciplinary proceedings; closure, transfer of residents,
appointment of temporary management; assessment of interest; collection of
assessments; hearing.**

1 (a) The director, in consultation with the Inspector General, shall by order impose a ban
2 on the admission of additional residents or reduce the number of apartments permitted in a
3 residential care community, or any combination thereof, where it is determined upon inspection
4 that a licensee is not providing adequate care to its residents under its existing quota and, further,
5 that a reduction in the quota or the imposition of a ban on additional admissions, or a combination
6 thereof, would enable the licensee to render adequate care to its residents. A notice to a licensee
7 of a reduction in its quota or a ban on additional admissions shall include the terms of the order,
8 the reasons therefor, and the date by which it must comply.

9 (b) The director, in consultation with the Inspector General, may suspend or revoke a
10 license issued under this article if it is determined upon inspection that there has been a
11 substantial failure to comply with the provisions of this article or the standards or rules
12 promulgated hereunder.

13 (c) Whenever a license is limited, suspended, or revoked pursuant to this section, the
14 director, in consultation with the Inspector General, shall file an administrative complaint stating
15 facts constituting the grounds therefor. Upon the filing of this administrative complaint, the
16 director, in consultation with the Inspector General, shall notify the licensee in writing, enclose a
17 copy of the administrative complaint, and advise the licensee of its opportunity for a hearing
18 pursuant to §16B-9-12 of this code. The notice and copy of the administrative complaint shall be
19 served on the licensee by certified mail, return receipt requested.

20 (d) The suspension, revocation, or expiration of a license, or the withdrawal of an
21 application for a license after it has been filed with the director, in consultation with the Inspector
22 General, may not deprive the director, in consultation with the Inspector General, of his or her
23 authority to institute or continue a disciplinary proceeding or to deny an application for a license.

24 (e) In addition to other remedies provided in this article, upon petition from the Inspector
25 General, a circuit court may determine that a residential care community's deficiencies under this

26 article constitute an emergency immediately jeopardizing the health, safety, welfare or rights of
27 its residents, and issue an order to:

28 (1) Close the residential care community;

29 (2) Transfer residents of the residential care community to other facilities; or

30 (3) Appoint a temporary manager to oversee the operation of the residential care
31 community and to assure the health, safety, welfare and rights of the residential care community's
32 residents, where there is a need for temporary management while:

33 (A) There is an orderly closure of the residential care community; or

34 (B) Corrections are made in order to bring the residential care community into compliance
35 with all applicable requirements of this article and the rules promulgated hereunder.

36 If the Inspector General petitions a circuit court for the closure of a residential care
37 community, for the transfer of residents, or for the appointment of a temporary manager, the circuit
38 court shall hold a hearing no later than seven days thereafter, at which time the Inspector General
39 and the licensee or operator of the residential care community may participate and present
40 evidence.

41 A circuit court may divest the licensee or operator of possession and control of a residential
42 care community in favor of temporary management. The temporary management is accountable
43 to the court and has those powers and duties that the court may grant to direct all acts necessary
44 or appropriate to conserve the property and promote the health, safety, welfare and rights of the
45 residents, including, but not limited to, replacing managerial and other staff, hiring consultants,
46 making necessary expenditures to close the residential care community or to repair or improve
47 the residential care community so as to return it to compliance with applicable requirements, and
48 receiving, conserving and expending funds, including making payments on behalf of the licensee
49 or operator. Priority in making payments shall be given to expenditures for current direct resident
50 care and the transfer of residents, if necessary.

51 The person charged with temporary management shall be an officer of the court and paid
52 by the residential care community if resources are available; he or she may not be held liable in
53 any capacity for conditions at the residential care community that originated or existed before his
54 or her appointment nor may he or she be held personally liable for any act or omission, except
55 those constituting gross negligence or intentional acts that result in injuries to persons or damage
56 to property during his or her tenure as temporary manager.

57 It is unlawful for any person to impede the operation of temporary management as
58 appointed by the court. For 90 days after the appointment of temporary management at a
59 residential care community, any legal action that would interfere with its functioning or operation
60 shall be automatically stayed. These actions include, but are not limited to, cancellation of
61 insurance policies, termination of utility services, attachments to working capital accounts,
62 foreclosures, evictions and repossessions of equipment used in the residential care community.

63 Temporary management appointed by the court for purposes of making improvements to
64 bring a residential care community into compliance with applicable requirements may not be
65 terminated until the court has determined that the residential care community has the
66 management capability to ensure continued compliance with all applicable requirements:
67 *Provided*, That if the court does not make such a determination within six months of the
68 appointment of the temporary management, the temporary management terminates by operation
69 of law at that time, and the residential care community shall be closed. After the termination of
70 the temporary management, the person who was appointed as the temporary management shall
71 make an accounting to the court, and after deducting the costs of the temporary management,
72 expenditures and civil penalties and interest no longer subject to appeal, in that order, from
73 receipts, the remainder, if any, shall be paid to the licensee or operator of the residential care
74 community.

75 (f) Assessments for civil penalties and costs of actions taken under this article, including
76 attorney fees, shall accrue interest at the rate of five percent per annum, beginning on the 30th

77 day after receipt of notice of the assessment or the 30th day after receipt of the director's final
78 order following a hearing, whichever later occurs. All assessments against a residential care
79 community that remain unpaid shall be added to its licensure fee next due and may be filed as a
80 lien against the property of the licensee or operator of the residential care community. Funds
81 received from these assessments shall be deposited in the same manner as are funds received
82 pursuant to §16B-9-10 of this code.

83 (g) The Inspector General is authorized to propose emergency rules, if necessary, to
84 expand the powers of the Inspector General beyond those provided in this article, to the extent
85 required to comply with federal requirements: *Provided*, That the Inspector General's powers may
86 be expanded only to the extent required by federal requirements. Emergency rules proposed
87 pursuant to this subsection are subject to the provisions governing legislative rules contained in
88 §29A-3-1, *et seq.* of this code.

89 (h) The opportunity for a hearing on any action taken by the director under this section is
90 as provided in §16B-9-12 of this code.

**§16B-9-12. Administrative appeals from civil penalty assessment, license limitation,
suspension, or revocation.**

1 (a) Any licensee or applicant aggrieved by an order issued pursuant to §16B-9-5, §16B-
2 9-6, §16B-9-10 or §16B-9-11 of this code shall, upon timely written request, be afforded an
3 opportunity for a hearing by the Board of Review at which the order may be contested as contrary
4 to law, unwarranted by the facts, or both. The provisions of §29A-5-1 *et seq.* of this code governing
5 contested cases apply to and govern hearings conducted pursuant to this section and the
6 administrative procedures in connection therewith. A licensee or applicant may also request an
7 informal meeting with the director before requesting a hearing.

8 (b) After a hearing conducted pursuant to this section, the Board of Review shall make
9 and enter a written order either dismissing the complaint or taking whatever action is authorized
10 and appropriate pursuant to this article. This written order shall be served upon the licensee and

11 his or her attorney of record, if any, by certified mail, return receipt requested, accompanied by
12 the director's findings of fact and conclusions of law as specified in §29A-5-3 of this code. If the
13 director, in consultation with the Inspector General, suspends a residential care community's
14 license, the order directing the suspension shall specify the grounds for the suspension and the
15 time by which the conditions or circumstances giving rise to the suspension must be corrected in
16 order for the licensee to be entitled to reinstatement of its license. If the director, in consultation
17 with the Inspector General, revokes a license, he or she may stay the effective date of the
18 revocation upon a showing that a delay is necessary to assure appropriate placement of the
19 licensee's residents: *Provided*, That the effective date of revocation may not be stayed for more
20 than 90 days. The Board of Review's order is final unless it is vacated, reversed or modified by
21 the West Virginia Intermediate Court of Appeals upon judicial review in accordance with the
22 provisions of §16B-9-13 of this code.

§16B-9-13. Judicial review.

1 Any licensee adversely affected by an order of the director rendered after a hearing held
2 in accordance with the provisions of §16B-9-12 of this code is entitled to judicial review thereof.
3 All of the pertinent provisions of section §29A-5-4 of this code apply to and govern these
4 proceedings with like effect as if those provisions were set forth in extenso herein.

5 The judgment of the West Virginia Intermediate Court is final unless reversed, vacated, or
6 modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-
7 6-1 of this code.

§16B-9-14. Legal counsel and services for the Inspector General.

1 (a) Legal counsel and legal services for the Inspector General in all administrative
2 hearings and all proceedings in any circuit court and the Supreme Court of Appeals shall be
3 provided by the Attorney General or his or her assistants, an attorney employed by the Inspector
4 General or, in proceedings in any circuit court, by the prosecuting attorney of the county wherein
5 the action is instituted, all without additional compensation.

6 (b) The Governor may appoint counsel for the Inspector General, who shall perform legal
7 services in representing the interests of residents in residential care communities in matters under
8 the jurisdiction of the director, as the Governor shall direct. It is the duty of counsel so appointed
9 to appear for the residents in all cases where they are not represented by counsel. The
10 compensation of counsel so appointed shall be fixed by the Governor.

§16B-9-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever advertises, announces, establishes or maintains, or is engaged in
2 establishing or maintaining a residential care community without a license granted under §16B-
3 9-6 of this code, or who prevents, interferes with or impedes in any way the lawful enforcement
4 of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the
5 first offense by a fine of not more than \$100, or by confinement in the regional or county jail for a
6 period of not more than 90 days, or both, at the discretion of the court. For a second or subsequent
7 offense, the fine may be increased to not more than \$250, with confinement in the regional or
8 county jail for a period of not more than 90 days, or both, at the discretion of the court. Each day
9 that a violation continues after conviction therefor constitutes a separate offense.

10 (b) The Inspector General may bring an action to enforce compliance with this article, any
11 rule promulgated hereunder, or order issued hereunder, whenever it appears to the director in
12 consultation with the Inspector General, that a person has engaged in or is engaging in an act or
13 practice in violation of this article or any rule or order hereunder, or whenever it appears to the
14 director, in consultation with the Inspector General, that a person has aided, abetted or caused,
15 or is aiding, abetting or causing such an act or practice. Upon application by the director, the
16 circuit court of the county in which the conduct has occurred or is occurring has jurisdiction to
17 grant without bond a permanent or temporary injunction, decree or restraining order.

18 Whenever the director, in consultation with the Inspector General, has refused to grant or
19 renew a license, revoked a license that is required to operate a residential care community, or
20 ordered a person to refrain from actions that violate the rules promulgated pursuant to this article,

21 and the person has appealed the action of the director, the court may, during the pendency of the
22 appeal, issue a restraining order or injunction upon proof that the operation of the residential care
23 community or its failure to comply with the order of the director adversely affects the well-being
24 or safety of the residents of the residential care community. Should a person who appeals an
25 order of the director fail to appear or should the appeal be decided in favor of the director, the
26 court shall issue a permanent injunction upon proof that the person is operating or conducting a
27 residential care community without a license as required by law, or has continued to violate the
28 rules promulgated pursuant to this article.

29 (c) Any residential care community that deprives a resident of any right or benefit created
30 or established for the well-being of the resident by the terms of any contract, any state statute or
31 rule, or by any applicable federal statute or regulation, is liable to that resident in a civil action for
32 any injuries suffered as a result of the deprivation. Upon a finding that a resident has been
33 deprived of a right or benefit and suffered an injury thereby, compensatory damages shall be
34 assessed in an amount sufficient to compensate the resident for the injury, unless there is a
35 finding that the residential care community exercised due care reasonably necessary to prevent
36 and limit the deprivation and injury to the resident. In addition, if the deprivation by a residential
37 care community of a right or benefit is found to have been willful or in reckless disregard, punitive
38 damages may be assessed. A resident may also maintain an action pursuant to this section for
39 any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of
40 available administrative remedies may not be required prior to commencing an action hereunder.

41 The amount of damages recovered by a resident in an action brought pursuant to this
42 section is exempt for purposes of determining initial or continuing eligibility for medical assistance
43 under §9-5-1 *et seq.* of this code, and may not be taken into consideration or required to be
44 applied toward the payment or part payment of the cost of medical care or services available
45 under that article.

46 Any waiver by a resident or his or her legal representative of the right to commence an
47 action under this section, whether oral or in writing, is null and void as contrary to public policy.

48 (d) The penalties and remedies provided in this section are cumulative and are in addition
49 to all other penalties and remedies provided by law.

§16B-9-16. Availability of reports and records.

1 The director shall make available for public inspection and provide copies at a nominal
2 cost of all inspection reports and other reports of residential care communities filed with or issued
3 by the director. Nothing contained in this section may be construed to allow the public disclosure
4 of confidential medical, social, personal, or financial records of any resident. The Inspector
5 General shall adopt rules that are reasonably necessary to effectuate the provisions of this section
6 and preserve the confidentiality of medical, social, personal, or financial records of residents.

ARTICLE 10. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16B-10-1. Short title.

1 This article may be cited as the "Ken Ervin Community Living Act."

§16B-10-2. Definitions.

1 As used in this article the following definitions apply:

2 (a) "Administration of medication" means:

3 (1) Assisting a person in the ingestion, application, or inhalation of medications, including
4 prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of
5 medication, according to the legibly written or printed directions of the attending physician or the
6 health care professional in accordance with §30-5-4 of this code, or as written on the prescription
7 label; and

8 (2) Making a written record of such assistance with regard to each medication
9 administered, including the time, route and amount taken. However, for purposes of this article,
10 "administration" does not include judgment, evaluation, assessments, injections of medication

11 (except for prefilled insulin or insulin pens), or monitoring of medication or self-administration of
12 medications, such as prescription drugs and self-injection of medication by the resident.

13 (b) "Approved medication assistive personnel (AMAP)" means unlicensed facility staff
14 member, who meets eligibility requirements, has successfully completed the required training and
15 competency testing, and is considered competent by the authorized registered professional nurse
16 to administer medications or perform health maintenance tasks, or both, to residents of the facility
17 in accordance with this article.

18 (c) "Authorized practitioner" means a physician licensed under the provisions of §30-3-1
19 *et seq.* of this code or §30-14-1 *et seq.* of this code.

20 (d) "Authorized registered professional nurse" means a person who holds an
21 unencumbered license pursuant to §30-7-1 *et seq.* of this code and meets the requirements to
22 train and supervise approved medication assistive personnel pursuant to this article, and has
23 completed and passed the facility trainer/instructor course developed by the authorizing agency.

24 (e) "Authorizing agency" means the Office of Health Facility Licensure and Certification.

25 (f) "Delegation" means transferring to a competent individual, as determined by the
26 authorized registered professional nurse, the authority to perform a selected task in a selected
27 situation.

28 (g) "Delegation decision model" means the process the authorized registered professional
29 nurse must follow to determine whether or not to delegate a nursing task to an approved
30 medication assistive personnel. The delegation decision model is approved by the West Virginia
31 Board of Examiners for Registered Professional Nurses.

32 (h) "Director" means the director of the Office of Health Facility Licensure and Certification,
33 or his or her designee.

34 (i) "Facility" means an intermediate care facility for individuals with an intellectual disability,
35 assisted living, behavioral health group home, private residence in which health care services and

36 health maintenance tasks are provided under the supervision of a registered professional nurse
37 as defined in §30-7-1 *et seq.* of this code.

38 (j) "Facility staff member" means an individual employed by a facility but does not include
39 a health care professional acting within his or her scope of practice.

40 (k) "Family" means biological parents, adoptive parents, foster parents, or other immediate
41 family members living within the same household.

42 (l) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist,
43 registered professional nurse, practical nurse, advanced practice registered nurse, physician's
44 assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this
45 code.

46 (m) "Health maintenance tasks" means performing the following tasks according to the
47 legibly written or printed directions of a health care professional or as written on the prescription
48 label, and making a written record of that assistance with regard to each health maintenance task
49 administered, including the time, route and amount taken:

50 (1) Administering glucometer tests;

51 (2) Administering gastrostomy tube feedings;

52 (3) Administering enemas;

53 (4) Performing ostomy care which includes skin care and changing appliances; and

54 (5) Performing tracheostomy and ventilator care for residents in a private residence who
55 are living with family and/or natural supports.

56 (n) "Health maintenance tasks" do not include judgment, evaluation, assessments,
57 injections of medication, except for prefilled insulin or insulin pens, or monitoring of medication or
58 self-administration of medications, such as prescription drugs and self-injection of medication by
59 the resident.

60 (o) "Immediate family" means mother, stepmother, father, stepfather, sister, stepsister,
61 brother, stepbrother, spouse, child grandparent and grandchildren.

62 (p) "Inspector General" means the Inspector General of the Office of Inspector General as
63 described in §16B-2-1 of this code, or his or her designee.

64 (q) "Location of medication administration or location where health maintenance tasks are
65 performed" means a facility or location where the resident requires administration of medication
66 or assistance in taking medications or the performance of health maintenance tasks.

67 (r) "Medication" means a drug, as defined in §60A-1-101 of this code, which has been
68 prescribed by a health care professional to be ingested through the mouth, inhaled through the
69 nose or mouth, administered through a gastrostomy tube, applied to the outer skin, eye or ear, or
70 applied through nose drops, vaginal or rectal suppositories.

71 (s) "Natural supports" means family, friends, neighbors or anyone who provides
72 assistance and support to a resident but is not reimbursed.

73 (t) "Office of Health Facility Licensure and Certification" means the West Virginia Office of
74 Health Facility Licensure and Certification within the Office of the Inspector General.

75 (u) "Registered professional nurse" means a person who holds a valid license pursuant to
76 §30-7-1, *et seq.* of this code.

77 (v) "Resident" means a resident of a facility who for purposes of this article, is in a stable
78 condition.

79 (w) "Self-administration of medication" means the act of a resident, who is independently
80 capable of reading and understanding the labels of drugs ordered by an authorized practitioner,
81 in opening and accessing prepackaged drug containers, accurately identifying and taking the
82 correct dosage of the drugs as ordered by the health care professional, at the correct time and
83 under the correct circumstances.

84 (x) "Self-administration of medication with assistance" means assisting residents who are
85 otherwise able to self-administer their own medications except their physical disabilities prevent
86 them from completing one or more steps in the process.

87 (y) "Stable" means the individual's health condition is predictable and consistent as
88 determined by the registered professional nurse.

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

**§16B-10-3. Administration of medications; performance of health maintenance tasks;
maintenance of liability insurance in facilities.**

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

3 (b) The director shall continue a program for the administration of medications and
4 performance of health maintenance tasks in locations covered by this article. The program shall
5 be developed and conducted in cooperation with the appropriate agencies, advisory bodies and
6 boards.

7 (c) Administration of medication or performance of health maintenance tasks shall be
8 performed only by:

9 (1) Licensed health care professionals; or

10 (2) Facility staff members who have been trained and retrained every two years and who
11 are subject to the supervision of and approval by an authorized registered professional nurse.

12 (d) After assessing the health status of an individual resident, a registered professional
13 nurse, in collaboration with the resident's health care professional and the facility staff member,
14 may recommend that the facility authorize a facility staff member to administer medication or
15 perform health maintenance tasks if the staff member:

16 (1) Has been trained pursuant to the requirements of this article;

17 (2) Is considered by the authorized registered professional nurse to be competent;

18 (3) Consults with the authorized registered professional nurse on a regular basis; and

19 (4) Is monitored or supervised by the authorized registered professional nurse.

20 (e) An agency or facility employing personnel for the purposes of supervising the
21 administration of medication or the performance of health maintenance tasks shall maintain
22 liability insurance for the licensed health care provider, any facility staff member who has been
23 trained and is employed to administer medication or perform health maintenance tasks and if
24 applicable the health care provider's collaborative supervising physician.

25 (f) Nothing in this article may be construed to prohibit any facility staff member from
26 administering medications or performing health maintenance tasks, or providing any other prudent
27 emergency assistance to aid any person who is in acute physical distress or requires emergency
28 assistance.

29 (g) Supervision of self-administration of medication by facility staff members who are not
30 licensed health care professionals may be permitted in certain circumstances, when the
31 substantial purpose of the setting is other than the provision of health care.

§16B-10-4. Exemption from licensure; statutory construction.

1 (a) Any individual who is not otherwise authorized by law to administer medication or
2 perform health maintenance tasks may administer medication or perform health maintenance
3 tasks in locations covered by this article if he or she meets the requirements of this article and is
4 exempt from the licensing requirements of §30-1-1 of this code.

5 (b) Licensed health care professionals remain subject to their respective licensing laws.

6 (c) Notwithstanding any other provision of law to the contrary, this article shall not be
7 construed to violate or be in conflict with §30-7-1 *et seq.* or §30-7A-1 *et seq.* of this code.

8 (d) Any parent or guardian may administer medication to, or perform health maintenance
9 tasks for, his or her adult or minor child regardless of whether or not the parent or guardian
10 receives compensation for caring for said child.

§16B-10-5. Instruction and training.

1 (a) The authorizing agency shall establish a council of nurses to represent the facilities
2 and registered professional nurses affected by this article. The council shall prepare a procedural
3 manual and recommendations regarding a training course to the director. The council shall meet
4 every two years to review and make recommendations to the training curricula, competency
5 evaluation procedures and rules implemented by the director.

6 (b) The Office of Health Facility Licensure and Certification shall develop and approve
7 training curricula and competency evaluation procedures for facility staff members who administer
8 medication or perform health maintenance tasks. The Office of Health Facility Licensure and
9 Certification shall consider the recommendations of the council and shall consult with the West
10 Virginia Board of Examiners for Registered Nurses in developing the training curricula and
11 competency evaluation procedures.

12 (c) The authorizing agency shall coordinate and collaborate with the Board of Respiratory
13 Care to develop the training and testing component for health maintenance tasks related to
14 respiratory care, including but not limited to inhaled medications, tracheostomy care and ventilator
15 care. This includes modifying and updating the existing curriculum for an authorized registered
16 professional nurse and the approved medication assistive persons.

17 (1) The authorizing agency shall develop and approve training curricula and competency
18 evaluation. The authorizing agency shall establish a council of nurses to assist with the
19 development of the training and evaluation process.

20 (2) The curriculum, training competency and testing components related to respiratory
21 care shall be approved by the Respiratory Care Board pursuant to §30-34-15(e).

22 (d) The program developed by the Office of Health Facility Licensure and Certification
23 shall require that any person who applies to act as a facility staff member authorized to administer
24 medications or perform health maintenance tasks shall:

25 (1) Hold a high school diploma or general education diploma;

26 (2) Be certified in cardiopulmonary resuscitation and first aid;

27 (3) Participate in the initial training program developed by the department;

28 (4) Pass a competency evaluation developed by the department; and

29 (5) Participate in a retraining program every two years.

30 (e) Any facility may offer the training and competency evaluation program developed by
31 the Office of Health Facility Licensure and Certification to its facility staff members. The training
32 and competency programs shall be provided by the facility through a registered professional
33 nurse.

34 (f) A registered professional nurse who is authorized to train facility staff members to
35 administer medications or perform health maintenance tasks in facilities shall:

36 (1) Possess a current active license as set forth in §30-7-1 *et seq.* of this code in good
37 standing to practice as a registered nurse;

38 (2) Have practiced as a registered professional nurse in a position or capacity requiring
39 knowledge of medications and the performance of health maintenance tasks for the immediate
40 two years prior to being authorized to train facility staff members;

41 (3) Be familiar with the nursing care needs of residents of facilities as described in this
42 article; and

43 (4) Have completed and passed the facility trainer/instructor course developed by the
44 authorizing agency.

45 (g) After successfully completing the initial training and testing for the AMAP program,
46 registered professional nurses and AMAPs shall have competencies for health maintenance tasks
47 reassessed and documented annually by the employer of record to ensure continued
48 competence.

§16B-10-6. Availability of records; eligibility requirements of facility staff.

1 (a) Any facility which authorizes unlicensed staff members to administer medications or
2 perform health maintenance tasks shall make available to the authorizing agency a list of the

3 individual facility staff members authorized to administer medications or perform health
4 maintenance tasks.

5 (b) Any facility may permit a facility staff member to administer medications or perform
6 health maintenance tasks in a single specific agency only after compliance with all of the following:

7 (1) The staff member has successfully completed a training program and received a
8 satisfactory competency evaluation as required by this article;

9 (2) The facility determines there is no statement on the state administered nurse aide
10 registry indicating that the staff member has been the subject of finding of abuse or neglect of a
11 long-term care facility resident or convicted of the misappropriation of a resident's property;

12 (3) The facility staff member has had a criminal background check or if applicable, a check
13 of the State Police Abuse Registry, establishing that the individual has not been convicted of
14 crimes against persons or drug related crimes by utilizing and following the provisions of §16B-
15 15-1 *et seq.* of this code;

16 (4) The medication to be administered is received and maintained by the facility staff
17 member in the original container in which it was dispensed by a pharmacist or the physician; and

18 (5) The facility staff member has complied with all other applicable requirements of this
19 article, the legislative rules adopted pursuant to this article and other criteria, including minimum
20 competency requirements, as are specified by the authorizing agency.

**§16B-10-7. Oversight of medication administration and performance of health
maintenance tasks by the approved medication assistive personnel.**

1 (a) Any facility in which medication is administered or health maintenance tasks performed
2 by the approved medication assistive personnel shall establish an administrative monitoring
3 system in administrative policy. The specific requirements of the administrative policy shall be
4 established by the Inspector General, through legislative rules. These rules shall be developed in
5 consultation with the West Virginia Board of Examiners for Registered Nurses, the West Virginia

6 Nurses Association, the West Virginia Statewide Independent Living Council, and the West
7 Virginia Board of Respiratory Care. These rules are required to include, at a minimum:

8 (1) Instructions on protocols for contacting an appropriate healthcare professional in
9 situations where a condition arises which may create a risk to the resident's health and safety;

10 (2) The type and frequency of monitoring and training requirements for management of
11 these occurrences; and

12 (3) Procedures to prevent drug diversion.

13 (b) Monitoring of facility staff members authorized pursuant to this article shall be
14 performed by a registered professional nurse employed or contracted by the facility, who shall
15 exercise judgment, evaluate and assess the patient, inject medicine, except prefilled insulin and
16 insulin pens if this task is delegated to an approved medication assistive person, and monitor
17 medications, self-administration of medications and self-injections by the resident in accordance
18 with his or her scope of practice.

§16B-10-8. Withdrawal of authorization.

1 The registered professional nurse who monitors or supervises the facility staff members
2 authorized to administer medication or perform health maintenance tasks may withdraw
3 authorization for a facility staff member if the nurse determines that the facility staff member is not
4 performing medication administration or health maintenance tasks in accordance with the training
5 and written instructions. The withdrawal of the authorization shall be documented and relayed to
6 the facility and the Office of Health Facility Licensure and Certification in order to remove the
7 facility staff member from the list of authorized individuals. The Office of Health Facility Licensure
8 and Certification shall maintain a list of the names of persons whose authorization to administer
9 medication or perform health maintenance tasks has been withdrawn, and the reasons for
10 withdrawal of authorization. The list may be accessed by registered professional nurses or
11 facilities.

§16B-10-9. Fees.

1 The Office of Health Facility Licensure and Certification may set and collect fees
2 necessary for the implementation of the provisions of this article pursuant to rules authorized by
3 §16B-10-11 of this code.

**§16B-10-10. Limitations on medication administration or performance of health
maintenance tasks.**

1 The following limitations apply to the administration of medication or performance of health
2 maintenance tasks by facility staff members:

3 (a) Injections or any parenteral medications may not be administered, except that prefilled
4 insulin or insulin pens may be administered;

5 (b) Irrigations or debriding agents used in the treatment of a skin condition or minor
6 abrasions may not be administered;

7 (c) No verbal medication orders may be accepted, no new medication orders shall be
8 transcribed and no drug dosages may be converted and calculated;

9 (d) No medications ordered by the health care professional to be given "as needed" may
10 be administered unless the order is written with specific parameters which preclude independent
11 judgment; and,

12 (e) Health maintenance tasks for the performance of tracheostomy care and ventilator
13 care is not permitted in an intermediate care facility for individuals with an intellectual disability,
14 assisted living, behavioral health group home, private residence where the resident is not residing
15 with family and/or natural supports.

§16B-10-11. Rules.

1 The director shall propose rules for legislative approval in accordance with the provisions
2 of §29A-3-1 *et seq.* of this code as may be necessary to implement the provision of this article.

§16B-10-12. Advisory Committee.

1 (a) There is continued an advisory committee to assist with the development of polices
2 and procedures regarding health maintenance care in order to safeguard the well-being and to

3 preserve the dignity of persons who need assistance to live in their communities and avoid
4 institutionalization.

5 (b)(1) The advisory committee shall consist of 11 voting members as follows:

6 (A) The Olmstead Coordinator within the Office of Inspector General;

7 (B) One physician with expertise in respiratory medicine to be chosen by the West Virginia
8 Board of Respiratory Care.

9 (C) A representative chosen by AARP West Virginia;

10 (D) A representative chosen by the West Virginia Statewide Independent Living Council;

11 (E) A representative chosen by the West Virginia Developmental Disabilities Council;

12 (F) A representative chosen by the West Virginia Board of Respiratory Care;

13 (G) A representative chosen by the West Virginia Society for Respiratory Care.

14 (H) One representative of the West Virginia Board of Examiners for Registered
15 Professional Nurses;

16 (I) One representative of the West Virginia Nurses Association;

17 (J) One representative of the Fair Shake Network; and

18 (K) The Director of the Office of Health Facility Licensure and Certification.

19 (c) A chairman shall be selected from the voting members of the advisory committee.

20 (d) The advisory committee shall meet at least four times annually, upon the call of the
21 chairman, or at the request of the authorizing agency. A simple majority of the members shall
22 constitute a quorum.

23 (e) All members of the committee shall be reimbursed reasonable expenses pursuant to
24 the rules promulgated by the Department of Administration for the reimbursement of expenses of
25 state officials and employees and shall receive no other compensation for their services.

ARTICLE 11. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16B-11-1. Name of act.

1 This act shall be known and may be cited as the "Alzheimer's Special Care Standards
2 Act."

§16B-11-2. Findings and declarations.

1 The Legislature finds and declares that:

2 (a) Certain nursing homes and related facilities, adult congregate living facilities, adult day
3 care centers, hospices and adult foster homes claim to provide special care units and services
4 for persons who have Alzheimer's disease;

5 (b) It is in the public interest to provide for the protection of consumers by ensuring the
6 accuracy and authenticity of such claims; and

7 (c) The provisions of this article are intended to require the facilities to actually provide the
8 care they claim to offer, require written disclosure of special services provided, require the
9 appropriate state licensing agency to examine the performance of such facilities in providing
10 special services for persons who have Alzheimer's disease, and provide penalties for failure to
11 provide the services claimed as the agency considers appropriate.

§16B-11-3. Definition of Alzheimer's special care unit/program.

1 For the purposes of this article, the following definitions apply:

2 "Alzheimer's disease" means a diagnosis of presenile dementia or senile dementia-
3 Alzheimer type (SDAT), characterized by confusion, memory failure, disorientation, restlessness,
4 agnosia, speech disturbances, inability to carry out purposeful movements and hallucinosis.

5 "Alzheimer's Special Care Unit or Program," means any facility that secures, segregates
6 or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's
7 disease or a related disorder and that advertises, markets or otherwise promotes the facility as
8 providing specialized Alzheimer's or dementia care services.

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

11 "Facility" means any nursing home or facility, residential board and care home, personal
12 care home, assisted living facility, adult congregate living facility, home health agency, adult day
13 care center, hospice or adult foster home situate or operating in this state.

14 "Inspector General" means the Inspector General of the Office of Inspector General as
15 described in §16B-2-1 of this code, or his or her designee.

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

18 "Resident" means an individual living in a facility that offers an Alzheimer's special care
19 unit or program.

§16B-11-4. Alzheimer's special care disclosure required.

1 (a) Any facility which offers to provide or provides care for a person with Alzheimer's
2 disease through an Alzheimer's special care unit or special care program shall disclose in writing
3 the form of care or treatment that distinguishes the unit or program as being especially applicable
4 to or suitable for such persons. The disclosure shall be provided to the Office of Health Facility
5 Licensure and Certification, to any person seeking placement within an Alzheimer's special care
6 unit or program, and to any legal guardian or relative acting on behalf of a resident or person
7 seeking placement.

8 (b) The Office of Health Facility Licensure and Certification shall examine all disclosures
9 provided to it as part of the facility's license renewal procedure and verify the accuracy of the
10 disclosures.

11 (c) The disclosure required by this section shall include the following information:

12 (1) A statement of the overall treatment philosophy and mission of the special care unit or
13 program which reflects the needs of residents afflicted with Alzheimer's disease or dementia;

14 (2) A description of the facility's screening, admission and discharge procedures,
15 assessment, care planning and implementation, staffing patterns and training ratios unique to the
16 program or unit;

17 (3) A description of the physical environment and design features and an explanation of
18 how they are appropriate to support the functioning of cognitively impaired adult residents;

19 (4) A description of activities available to residents, the frequency and types of resident
20 activities, and how they are specialized for residents who suffer from Alzheimer's disease;

21 (5) A statement that describes the involvement of families in the care of residents and the
22 availability of family support programs;

23 (6) The costs of care and any additional fees unique to the Alzheimer's special care unit
24 or program.

§16B-11-5. Standards for care; rules.

1 (a) The Inspector General shall propose rules for legislative approval in accordance with
2 the provisions of §29A-3-1 *et seq.* of this code, setting minimum standards for the care and
3 treatment of persons with Alzheimer's disease and other dementia in facilities offering Alzheimer's
4 special care units or programs.

5 (b) The standards established pursuant to this section shall apply to all facilities offering
6 Alzheimer's special care units or program and shall be in addition to any other statutory
7 requirements, rules or standards that are applicable to the facility.

8 (c) The Inspector General shall enforce the rules and standards for Alzheimer's special
9 care units or programs and shall exercise all powers necessary for such enforcement, including
10 investigation and reporting of violation of the rules, issuance of notices or warnings to facilities
11 found in violation of the standards, assessment of civil penalties in accordance with the applicable
12 licensing provisions of the facility, and suspension or revocation of licenses.

13 (d) The Inspector General designates the Director of the Office of Health Facility Licensure
14 and Certification to enforce the provisions of this article, except where otherwise indicated.

15 (e) If a facility advertising, marketing or otherwise promoting the facility as providing
16 specialized Alzheimer or dementia care services does not meet the standards established by the

17 director, the Office of Health Facility Licensure and Certification shall instruct the facility to cease
18 such advertising, marketing, or promoting.

§16B-11-6. Alzheimer's and dementia care training; rules.

1 (a) For the purposes of this section, "resident" means an individual receiving care or
2 services in an adult day care facility, nursing home, assisted living facility or residential care
3 community.

4 (b) The Inspector General shall propose rules for legislative approval in accordance with
5 the provisions of §29A-3-1 *et seq.* of this code, setting minimum standards for Alzheimer's and
6 dementia care training of all staff, employees and contractors that come in regular and direct
7 contact with residents.

8 (c) The standards established in this section shall apply to adult day care facilities, nursing
9 homes, assisted living facilities and residential care communities who provide services under the
10 supervision of a licensed operator.

§16B-11-7. Establishment of a central registry.

1 (a) To the extent funds are available, the Governing Board of the West Virginia University
2 shall establish an Alzheimer's Disease Registry to collect information concerning Alzheimer's
3 disease and related disorders. The purpose of the registry shall be to provide a central database
4 of information to assist in the development of public policy and planning. The information collected
5 by the registry shall be analyzed to prepare reports and perform studies as necessary when such
6 data identifies information useful in developing policy.

7 (b) All reporting sources, including hospitals, physicians, facilities, clinics, or other similar
8 units diagnosing or providing treatment or care for Alzheimer's disease and related disorders,
9 shall provide a report of each case to the Alzheimer's Disease Registry in the format specified.

10 (c) All information reported pursuant to this section is confidential and shall be used only
11 for the purposes set forth herein. A report provided to the Alzheimer's Disease Registry that
12 discloses the identity of the individual being treated shall only be released in accordance with the

13 provisions of the Health Insurance Portability and Accountability Act of 1996. No liability of any
14 kind or character for damages or other relief shall arise or be enforced against any reporting
15 source by reason of having provided the information or material to the Alzheimer's Disease
16 Registry.

17 (d) The governing board shall propose rules pursuant to the provisions of §29A-3-1 *et seq.*
18 of this code to implement this section. The rules shall include, but not be limited to: (1) The content
19 and design of all forms and reports required by this section; (2) the type of information to be
20 collected and maintained; (3) the procedures for disclosure of nonidentifying data to other
21 appropriate research entities; (4) the manner in which reporting entities or individuals, including
22 families, may be contacted by the registry for additional relevant information; and (5) any other
23 matter necessary to the administration of this section.

ARTICLE 12. REGULATION OF BEHAVIORAL HEALTH.

§16B-12-1. Reporting.

1 (a) The Office of the Inspector General shall send to county prosecutors any findings that
2 may be subject to criminal prosecution in cases of abuse and neglect with
3 Intellectual/Developmental Disability (IDD). The Office of the Inspector General shall send to the
4 Protection and Advocacy (P&A) the findings of any cases involving instances of substantiated
5 abuse or neglect involving a person with a developmental disability.

6 (b) An annual report shall be submitted to the Legislative Oversight Commission on Health
7 and Human Resources Accountability including:

8 (1) All instances where abuse and neglect cases involving IDD at any location has been
9 substantiated by the Office of the Inspector General.

10 (2) The county or region where the substantiated abuse or neglect occurred;

11 (3) The descriptive category of the abuse and neglect;

12 (4) The type of setting where the abuse and neglect occurred;

13 (5) Whether the abuse and neglect information was turned over to the county prosecutor
14 and law enforcement;

15 (6) The name of the provider, if the provider is involved, who is charged with the care of
16 the individual; and

17 (7) The age range and gender of the individual.

18 (c) In instances where abuse and/or neglect leads to the death of an individual, the
19 department shall send a letter, within 30 days after the findings where substantiated, to the Senate
20 President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above
21 about the case.

§16B-12-2. Independent Mental Health Ombudsman.

1 (a) (1) The Office of the Inspector General shall continue an independent mental health
2 ombudsman;

3 (2) The duties of the mental health ombudsman shall include, but are not limited to, the
4 following:

5 (A) Advocating for the well-being, treatment, safety, and rights of consumers of mental
6 health care facilities or psychiatric hospital;

7 (B) Participating in any procedure to investigate, and resolve complaints filed on behalf of
8 a consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or
9 decisions of providers of mental and behavioral health, of public agencies, or social service
10 agencies, which may adversely affect the health, safety, welfare, and rights of a consumer of a
11 mental health care facility or psychiatric hospital; and

12 (C) Monitoring the development and implementation of federal, state, and local legislation,
13 regulations, and policies with respect to mental and behavioral health care and services;

14 (3) The mental health ombudsman shall participate in ongoing training programs related
15 to his or her duties or responsibilities;

16 (4)(A) Information relating to any investigation of a complaint that contains the identity of
17 the complainant or consumer shall remain confidential except:

18 (i) Where imminent risk of serious harm is communicated directly to the mental health
19 ombudsman or his or her staff; or

20 (ii) Where disclosure is necessary to the Office of Health Facility Licensure and
21 Certification in order for such office to determine the appropriateness of initiating an investigation
22 to determine facility compliance with applicable rules of licensure, certification, or both;

23 (B) The mental health ombudsman shall maintain confidentiality with respect to all matters
24 including the identities of complainants, witnesses, or others from whom information is acquired,
25 except insofar as disclosures may be necessary to enable the mental health care ombudsman to
26 carry out duties of the office or to support recommendations;

27 (C) All information, records, and reports received by or developed by the mental health
28 ombudsman program which relate to a consumer of a mental health care facility or psychiatric
29 hospital, including written material identifying a consumer are confidential, and are not subject to
30 the provisions of §29-1-1, *et seq.* of this code, and may not be disclosed or released by the mental
31 health ombudsman program, except under the circumstances enumerated in this section;

32 (D) Nothing in this section prohibits the preparation and submission by the mental health
33 ombudsman of statistical data and reports, as required to implement the provisions of this section
34 or any applicable federal law, exclusive of any material that identifies any consumer or
35 complainant; and

36 (E) The Inspector General shall have access to the records and files of the mental health
37 ombudsman program to verify its effectiveness and quality.

§16B-12-3. Annual capitation rate review.

1 (a) The Bureau for Medical Services shall conduct an annual study reviewing the
2 adequacy and appropriateness of the reimbursement rates to providers in the IDDW Program.
3 The bureau shall also include a recommendation for any adjustment deemed appropriate,

4 including, but not limited to, annual inflationary costs, costs arising from amendments to existing
5 contracts, costs relating to recruiting and retaining personnel, and any other costs necessitating
6 additional payments to IDW providers. The bureau may require, and contracted providers shall
7 provide financial data to the bureau to assist in the study. Without limiting the generality of the
8 foregoing in conducting this study, the bureau shall review and compare equivalent programs
9 both in and out of state in order to determine appropriate rates.

10 (b) Upon completion of the study, Bureau for Medical Services shall provide the report to
11 the Joint Committee on Finance beginning July 1, 2024, and annually thereafter, on its findings,
12 conclusions, and recommendations, together with drafts of any legislation necessary to effectuate
13 its recommendations.

ARTICLE 13. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16B-13-1. Purpose.

1 The purpose of this act is to establish licensing and registration requirements for facilities
2 and physicians that treat patients with substance use disorders to ensure that patients may be
3 lawfully treated by the use of medication and drug screens, in combination with counseling and
4 behavioral therapies, to provide a holistic approach to the treatment of substance use disorders
5 and comply with oversight requirements developed by the Inspector General. The Legislature
6 recognizes the problem of substance use disorders in West Virginia and the need for quality, safe
7 treatment of substance use disorders to adequately protect the people of West Virginia.

§16B-13-2. Definitions.

1 "Addiction" means a primary, chronic disease of brain reward, motivation, memory, and
2 related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological,
3 social, and spiritual manifestations which is reflected in an individual pathologically pursuing
4 reward or relief by substance use, or both, and other behaviors. Addiction is characterized by
5 inability to consistently abstain; impairment in behavioral control; craving; diminished recognition
6 of significant problems with one's behaviors; interpersonal problems with one's behaviors and

7 interpersonal relationships; a dysfunctional emotional response; and as addiction is currently
8 defined by the American Society of Addiction Medicine.

9 "Administrator" means an individual designated by the governing body to be responsible
10 for the day-to-day operation of the opioid treatment programs.

11 "Advanced alcohol and drug abuse counselor" means an alcohol and drug abuse
12 counselor who is certified by the West Virginia Certification Board for Addiction and Prevention
13 Professionals who demonstrates a high degree of competence in the addiction counseling field.

14 "Alcohol and drug abuse counselor" means a counselor certified by the West Virginia
15 Certification Board for Addiction and Prevention Professionals for specialized work with patients
16 who have substance use problems.

17 "Biopsychosocial" means relating to, or concerned with, biological, psychological, and
18 social aspects in contrast to the strictly biomedical aspects of disease.

19 "Center for Substance Abuse Treatment" means the center under the Substance Abuse
20 and Mental Health Services Administration that promotes community-based substance abuse
21 treatment and recovery services for individuals and families in the community and provides
22 national leadership to improve access, reduce barriers, and promote high quality, effective
23 treatment and recovery services.

24 "Controlled Substances Monitoring Program Database" means the database maintained
25 by the West Virginia Board of Pharmacy pursuant to §60A-9-3 of this code that monitors and
26 tracks certain prescriptions written or dispensed by dispensers and prescribers in West Virginia.

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

29 "Dispense" means the preparation and delivery of a medication-assisted treatment
30 medication in an appropriately labeled and suitable container to a patient by a medication-assisted
31 treatment program or pharmacist.

32 "Governing body" means the person or persons identified as being legally responsible for
33 the operation of the opioid treatment program. A governing body may be a board, a single entity
34 or owner, or a partnership. The governing body must comply with the requirements prescribed in
35 rules promulgated pursuant to this article.

36 "Inspector General" means the Inspector General of the Office of Inspector General as
37 described in §16B-2-1 of this code, or his or her designee.

38 "Medical director" means a physician licensed within the State of West Virginia who
39 assumes responsibility for administering all medical services performed by the medication-
40 assisted treatment program, either by performing them directly or by delegating specific
41 responsibility to authorized program physicians and health care professionals functioning under
42 the medical director's direct supervision and functioning within their scope of practice.

43 "Medication-assisted treatment" means the use of medications and drug screens, in
44 combination with counseling and behavioral therapies, to provide a holistic approach to the
45 treatment of substance use disorders.

46 "Medication-assisted treatment program" means all publicly and privately owned opioid
47 treatment programs and office-based, medication-assisted treatment programs, which prescribe
48 medication-assisted treatment medications and treat substance use disorders, as those terms are
49 defined in this article.

50 "Medication-assisted treatment medication" means any medication that is approved by the
51 United States Food and Drug Administration under Section 505 of the Federal Food, Drug and
52 Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an
53 opioid agonist or partial opioid agonist and is listed on the Schedule of Controlled Substances in
54 §60A-2-2201 *et seq.* of this code.

55 "Office-based, medication-assisted treatment" means all publicly or privately owned
56 clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals

57 with substance use disorders through the prescription, administration, or dispensing of a
58 medication-assisted treatment medication in the form of a partial opioid agonist.

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

61 "Opioid agonist" means substances that bind to and activate the opiate receptors resulting
62 in analgesia and pain regulation, respiratory depression, and a wide variety of behavioral
63 changes. As used in this article, the term "opioid agonist" does not include partial agonist
64 medications used as an alternative to opioid agonists in the treatment of opioid addiction.

65 "Opioid treatment program" means all publicly- or privately-owned medication-assisted
66 treatment programs in clinics, facilities, offices, or programs that provide medication-assisted
67 treatment to individuals with substance use disorders through on-site administration or dispensing
68 of a medication-assisted treatment medication in the form of an opioid agonist or partial opioid
69 agonist.

70 "Owner" means any person, partnership, association, or corporation listed as the owner
71 of a medication-assisted treatment program on the licensing or registration forms required by this
72 article.

73 "Partial opioid agonist" means a Federal Drug Administration approved medication that is
74 used as an alternative to opioid agonists for the treatment of substance use disorders and that
75 binds to and activates opiate receptors, but not to the same degree as full agonists.

76 "Physician" means an individual licensed in this state to practice allopathic medicine or
77 surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West
78 Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

79 "Prescriber" means a person authorized in this state, working within their scope of practice,
80 to give direction, either orally or in writing, for the preparation and administration of a remedy to
81 be used in the treatment of substance use disorders.

82 "Program sponsor" means the person named in the application for the certification and
83 licensure of an opioid treatment program who is responsible for the administrative operation of
84 the opioid treatment program and who assumes responsibility for all of its employees, including
85 any practitioners, agents, or other persons providing medical, rehabilitative, or counseling
86 services at the program.

87 "State opioid treatment authority" means the agency or individual designated by the
88 Governor to exercise the responsibility and authority of the state for governing the treatment of
89 substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid
90 drugs.

91 "State oversight agency" means the agency or office of state government identified by the
92 Inspector General to provide regulatory oversight of medication-assisted treatment programs on
93 behalf of the State of West Virginia.

94 "Substance" means the following:

95 (1) Alcohol;

96 (2) Controlled substances defined by §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-
97 210 of this code; or

98 (3) Any chemical, gas, drug, or medication consumed which causes clinically and
99 functionally significant impairment, such as health problems, disability, and failure to meet major
100 responsibilities at work, school, or home.

101 "Substance Abuse and Mental Health Services Administration" means the agency under
102 the United States Department of Health and Human Services responsible for the accreditation
103 and certification of medication-assisted treatment programs and that provides leadership,
104 resources, programs, policies, information, data, contracts, and grants for the purpose of reducing
105 the impact of substance abuse and mental or behavioral illness.

106 "Substance use disorder" means patterns of symptoms resulting from use of a substance
107 that the individual continues to take, despite experiencing problems as a result; or as defined in

108 the most recent edition of the American Psychiatric Association's Diagnostic and Statistical
109 Manual of Mental Disorders.

110 "Telehealth" means the mode of delivering health care services and public health via
111 information and communication technologies to facilitate the diagnosis, consultation, treatment
112 education, care management, and self-management of a patient's health care while the patient is
113 at the originating site and the health care provider is at a distant site.

114 "Variance" means written permission granted by the Inspector General, or designee, to a
115 medication-assisted treatment program that a requirement of this article or rules promulgated
116 pursuant to this article may be accomplished in a manner different from the manner set forth in
117 this article or associated rules.

118 "Waiver" means a formal, time-limited agreement between the designated oversight
119 agency and the medication-assisted treatment program that suspends a rule, policy, or standard
120 for a specific situation so long as the health and safety of patients is better served in the situation
121 by suspension of the rule, policy, or standard than by enforcement.

§16B-13-3. Opioid treatment programs to obtain license; application; fees and inspections.

1 (a) No person, partnership, association, or corporation may operate an opioid treatment
2 program without first obtaining a license from the director in accordance with the provisions of this
3 article and the rules lawfully promulgated pursuant to this article.

4 (b) Any person, partnership, association, or corporation desiring a license to operate an
5 opioid treatment program in this state shall file with the Office of Health Facility Licensure and
6 Certification an application in such form and with such information as the director shall prescribe
7 and furnish accompanied by an application fee.

8 (c) The Director of the Office of Health Facility Licensure and Certification or his or her
9 designee shall inspect each facility and review all documentation submitted with the application.
10 The director shall then approve or deny the application for a license. The director shall issue a

11 license if the facility is in compliance with the provisions of this article and with the rules lawfully
12 promulgated pursuant to this article.

13 (d) A license shall be issued in one of three categories:

14 (1) An initial 12 month license shall be issued to an opioid treatment program establishing
15 a new program or service for which there is insufficient consumer participation to demonstrate
16 substantial compliance with this article and with all rules promulgated pursuant to this article;

17 (2) A provisional license shall be issued when an opioid treatment program seeks a
18 renewal license, or is an existing program as of the effective date of this article and is seeking an
19 initial license, and the opioid treatment program is not in substantial compliance with this article
20 and with all rules promulgated pursuant to this article, but does not pose a significant risk to the
21 rights, health and safety of a consumer. It shall expire not more than six months from the date of
22 issuance, and may not be consecutively reissued; or

23 (3) A renewal license shall be issued when an opioid treatment program is in substantial
24 compliance with this article and with all rules promulgated pursuant to this article. A renewal
25 license shall expire not more than one year from the date of issuance.

26 (e) At least 60 days prior to the license expiration date, an application for renewal shall be
27 submitted by the opioid treatment program to the director on forms furnished by the director. A
28 license shall be renewed if the director determines that the applicant is in compliance with this
29 article and with all rules promulgated pursuant to this article. A license issued to one program
30 location pursuant to this article is not transferrable or assignable. Any change of ownership of a
31 licensed medication-assisted treatment program requires submission of a new application. The
32 medication-assisted treatment program shall notify the director of any change in ownership within
33 10 days of the change and must submit a new application within the time frame prescribed by the
34 director.

35 (f) Any person, partnership, association, or corporation that seeks to obtain or renew a
36 license for an opioid treatment program in this state must submit to the director the following
37 documentation:

38 (1) Full operating name of the program as advertised;

39 (2) Legal name of the program as registered with the West Virginia Secretary of State;

40 (3) Physical address of the program;

41 (4) Preferred mailing address for the program;

42 (5) Email address to be used as the primary contact for the program;

43 (6) Federal Employer Identification Number assigned to the program;

44 (7) All business licenses issued to the program by this state, the State Tax Department,
45 the Secretary of State and all other applicable business entities;

46 (8) Brief description of all services provided by the program;

47 (9) Hours of operation;

48 (10) Legal Registered Owner Name – name of the person registered as the legal owner
49 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal
50 owner separately, indicating the percentage of ownership;

51 (11) Medical director's full name, medical license number, Drug Enforcement
52 Administration registration number, and a list of all current certifications;

53 (12) For each employee of the program, provide the following:

54 (A) Employee's role and occupation within the program;

55 (B) Full legal name;

56 (C) Medical license, if applicable;

57 (D) Drug Enforcement Administration registration number, if applicable;

58 (E) Drug Enforcement Administration identification number to prescribe buprenorphine for
59 addiction, if applicable; and

60 (F) Number of hours per week worked at program;

61 (13) Name and location address of all programs owned or operated by the applicant;

62 (14) Notarized signature of applicant;

63 (15) Check or money order for licensing fee and inspection fee;

64 (16) Verification of education and training for all physicians, counselors and social workers
65 practicing at or used by referral by the program such as fellowships, additional education,
66 accreditations, board certifications and other certifications;

67 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber
68 practicing at the program for the three months preceding the date of application; and

69 (18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the
70 West Virginia Health Care Authority.

71 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the
72 director shall issue a license to operate an opioid treatment program. An entity that obtains this
73 license may possess, have custody, or control of, and dispense drugs indicated and approved by
74 the United States Food and Drug Administration for the treatment of substance use disorders.

75 (h) The opioid treatment program shall display the current license in a prominent location
76 where services are provided and in clear view of all patients.

77 (i) The director or his or her designee shall inspect on a periodic basis all opioid treatment
78 programs that are subject to this article and all rules adopted pursuant to this article to ensure
79 continued compliance.

**§16B-13-4. Office-based, medication-assisted treatment programs to obtain registration;
application; fees and inspections.**

1 (a) No person, partnership, association, or corporation may operate an office-based,
2 medication-assisted treatment program without first obtaining a registration from the director in
3 accordance with the provisions of this article and the rules lawfully promulgated pursuant to this
4 article.

5 (b) Any person, partnership, association, or corporation desiring a registration to operate
6 an office-based, medication-assisted treatment program in this state shall file with the Office of
7 Health Facility Licensure and Certification an application in such form and with such information
8 as the director shall prescribe and furnish accompanied by an application fee.

9 (c) The Director of the Office of Health Facility Licensure and Certification or his or her
10 designee shall inspect and review all documentation submitted with the application. The director
11 shall approve or deny the application for registration. The director shall issue a registration if the
12 facility is in compliance with the provisions of this article and with the rules lawfully promulgated
13 pursuant to this article.

14 (d) A registration shall be issued in one of three categories:

15 (1) An initial 12-month registration shall be issued to an office-based, medication-assisted
16 treatment program establishing a new program or service for which there is insufficient consumer
17 participation to demonstrate substantial compliance with this article and with all rules promulgated
18 pursuant to this article;

19 (2) A provisional registration shall be issued when an office-based, medication-assisted
20 treatment program seeks a renewal registration, or is an existing program as of the effective date
21 of this article and is seeking an initial registration, and the office-based, medication-assisted
22 treatment program is not in substantial compliance with this article and with all rules promulgated
23 pursuant to this article, but does not pose a significant risk to the rights, health, and safety of a
24 consumer. It shall expire not more than six months from the date of issuance, and may not be
25 consecutively reissued; or

26 (3) A renewal registration shall be issued when an office-based, medication-assisted
27 treatment program is in substantial compliance with this article and with all rules promulgated
28 pursuant to this article. A renewal registration shall expire not more than one year from the date
29 of issuance.

30 (e) At least 60 days prior to the registration expiration date, an application for renewal shall
31 be submitted by the office-based, medication-assisted treatment program to the director on forms
32 furnished by the director. A registration shall be renewed if the director determines that the
33 applicant is in compliance with this article and with all rules promulgated pursuant to this article.
34 A registration issued to one program location pursuant to this article is not transferrable or
35 assignable. Any change of ownership of a registered office-based, medication-assisted treatment
36 program requires submission of a new application. The office-based, medication-assisted
37 treatment program shall notify the director of any change in ownership within 10 days of the
38 change and must submit a new application within the time frame prescribed by the director.

39 (f) Any person, partnership, association, or corporation seeking to obtain or renew a
40 registration for an office-based, medication-assisted treatment program in this state must submit
41 to the director the following documentation:

- 42 (1) Full operating name of the program as advertised;
- 43 (2) Legal name of the program as registered with the West Virginia Secretary of State;
- 44 (3) Physical address of the program;
- 45 (4) Preferred mailing address for the program;
- 46 (5) Email address to be used as the primary contact for the program;
- 47 (6) Federal Employer Identification Number assigned to the program;
- 48 (7) All business licenses issued to the program by this state, the state Tax Department,
49 the Secretary of State, and all other applicable business entities;
- 50 (8) Brief description of all services provided by the program;
- 51 (9) Hours of operation;
- 52 (10) Legal Registered Owner Name – name of the person registered as the legal owner
53 of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal
54 owner separately, indicating the percentage of ownership;

55 (11) Medical director's full name, medical license number, Drug Enforcement
56 Administration registration number, and a listing of all current certifications;

57 (12) For each physician, counselor, or social worker of the program, provide the following:

58 (A) Employee's role and occupation within the program;

59 (B) Full legal name;

60 (C) Medical license, if applicable;

61 (D) Drug Enforcement Administration registration number, if applicable;

62 (E) Drug Enforcement Administration identification number to prescribe buprenorphine for
63 addiction, if applicable; and

64 (F) Number of hours worked at program per week;

65 (13) Name and location address of all programs owned or operated by the applicant;

66 (14) Notarized signature of applicant;

67 (15) Check or money order for registration fee;

68 (16) Verification of education and training for all physicians, counselors, and social
69 workers practicing at or used by referral by the program such as fellowships, additional education,
70 accreditations, board certifications, and other certifications; and

71 (17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber
72 practicing at the program for the three months preceding the date of application.

73 (g) Upon satisfaction that an applicant has met all of the requirements of this article, the
74 director shall issue a registration to operate an office-based, medication-assisted treatment
75 program. An entity that obtains this registration may possess, have custody or control of, and
76 dispense drugs indicated and approved by the United States Food and Drug Administration for
77 the treatment of substance use disorders.

78 (h) The office-based, medication-assisted treatment program shall display the current
79 registration in a prominent location where services are provided and in clear view of all patients.

80 (i) The director or his or her designee shall perform complaint and verification inspections
81 on all office-based, medication-assisted treatment programs that are subject to this article and all
82 rules adopted pursuant to this article to ensure continued compliance.

83 (j) Any person, partnership, association, or corporation operating an office-based,
84 medication-assisted treatment program shall be permitted to continue operation until the effective
85 date of the new rules promulgated pursuant to this article. At that time a person, partnership,
86 association, or corporation shall file for registration within six months pursuant to the licensing
87 procedures and requirements of this section and the new rules promulgated hereunder. The
88 existing procedures of the person, partnership, association, or corporation shall remain effective
89 until receipt of the registration.

90 (k) A person, partnership, association, or corporation providing office-based, medication-
91 assisted treatment to no more than 30 patients of their practice or program is exempt from the
92 registration requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

93 (1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed
94 by the director that the person, partnership, association, or corporation requires counselling and
95 drug screens, has implemented diversion control measures, has completed medical education
96 training on addiction treatment encompassing all forms of medication-assisted treatment, will
97 provide patient numbers upon request, and will provide any other information required by the
98 director related to patient health and safety; and

99 (2) Is prohibited from establishing an office-based, medication-assisted treatment at any
100 other location or facility after the submission of an attestation submitted pursuant to §16-5Y-
101 4(k)(2) of this code. This subdivision includes any person, partnership, association, or corporation
102 that has an ownership interest in a partnership, association, or corporation or other corporate
103 entity providing office-based, medication-assisted treatment.

104 (l) A licensed behavioral health center, pursuant to Behavioral Health Center Licensure,
105 64 CSR 11, providing office-based medication-assisted treatment is exempt from the registration
106 requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

107 (1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed
108 by the director that the person, partnership, association, or corporation requires counseling and
109 drugs screens, has implemented diversion control measures, will provide patient numbers upon
110 request, and will provide any other information required by the director related to patient health
111 and safety; and

112 (2) Must notify the Office of Health Facility Licensure and Certification prior to establishing
113 or terminating an office-based medication-assisted treatment program at any other licensed
114 behavioral health center location after the submission of an attestation submitted pursuant to §16-
115 5Y-4(l)(1) of this code.

§16B-13-5. Operational requirements.

1 (a) The medication-assisted treatment program shall be licensed and registered in this
2 state with the director, the Secretary of State, the State Tax Department, and all other applicable
3 business or licensing entities.

4 (b) The program sponsor need not be a licensed physician but shall employ a licensed
5 physician for the position of medical director, when required by the rules promulgated pursuant to
6 this article.

7 (c) Each medication-assisted treatment program shall designate a medical director. If the
8 medication-assisted treatment program is accredited by a Substance Abuse and Mental Health
9 Services Administration approved accrediting body that meets nationally accepted standards for
10 providing medication-assisted treatment, including the Commission on Accreditation of
11 Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations,
12 then the program may designate a medical director to oversee all facilities associated with the
13 accredited medication-assisted treatment program. The medical director shall be responsible for

14 the operation of the medication-assisted treatment program, as further specified in the rules
15 promulgated pursuant to this article. He or she may delegate the day-to-day operation of a
16 medication-assisted treatment program as provided in rules promulgated pursuant to this article.
17 Within 10 days after termination of a medical director, the medication-assisted treatment program
18 shall notify the director of the identity of another medical director for that program. Failure to have
19 a medical director practicing at the program may be the basis for a suspension or revocation of
20 the program license. The medical director shall:

21 (1) Have a full, active, and unencumbered license to practice allopathic medicine or
22 surgery from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery
23 from the West Virginia Board of Osteopathic Medicine in this state and be in good standing and
24 not under any probationary restrictions;

25 (2) Meet both of the following training requirements:

26 (A) If the physician prescribes a partial opioid agonist, he or she shall complete the
27 requirements for the Drug Addiction Treatment Act of 2000; and

28 (B) Complete other programs and continuing education requirements as further described
29 in the rules promulgated pursuant to this article;

30 (3) Practice at the licensed or registered medication-assisted treatment program a
31 sufficient number of hours, based upon the type of medication-assisted treatment license or
32 registration issued pursuant to this article, to ensure regulatory compliance, and carry out those
33 duties specifically assigned to the medical director as further described in the rules promulgated
34 pursuant to this article;

35 (4) Be responsible for monitoring and ensuring compliance with all requirements related
36 to the licensing and operation of the medication-assisted treatment program;

37 (5) Supervise, control, and direct the activities of each individual working or operating at
38 the medication-assisted treatment program, including any employee, volunteer, or individual
39 under contract, who provides medication-assisted treatment at the program or is associated with

40 the provision of that treatment. The supervision, control, and direction shall be provided in
41 accordance with rules promulgated by the Inspector General; and

42 (6) Complete other requirements prescribed by the Inspector General by rule.

43 (d) Each medication-assisted treatment program shall designate counseling staff, either
44 employees, or those used on a referral-basis by the program, which meet the requirements of this
45 article and the rules promulgated pursuant to this article. The individual members of the
46 counseling staff shall have one or more of the following qualifications:

47 (1) Be a licensed psychiatrist;

48 (2) Certification as an alcohol and drug counselor;

49 (3) Certification as an advanced alcohol and drug counselor;

50 (4) Be a counselor, psychologist, marriage and family therapist, or social worker with a
51 master's level education with a specialty or specific training in treatment for substance use
52 disorders, as further described in the rules promulgated pursuant to this article;

53 (5) Under the direct supervision of an advanced alcohol and drug counselor, be a
54 counselor with a bachelor's degree in social work or another relevant human services field:
55 *Provided*, That the individual practicing with a bachelor's degree under supervision applies for
56 certification as an alcohol and drug counselor within three years of the date of employment as a
57 counselor;

58 (6) Be a counselor with a graduate degree actively working toward licensure or certification
59 in the individual's chosen field under supervision of a licensed or certified professional in that field
60 and/or advanced alcohol and drug counselor;

61 (7) Be a psych-mental health nurse practitioner or a psych-mental health clinical nurse
62 specialist; or

63 (8) Be a psychiatry CAQ-certified physician assistant.

64 (e) The medication-assisted treatment program shall be eligible for, and not prohibited
65 from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing

66 a patient for any medication-assisted treatment, a medication-assisted treatment program must
67 receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial
68 from a patient's insurer or West Virginia Medicaid denying coverage for such treatment: *Provided*,
69 That the director, in consultation with the Inspector General, may grant a variance from this
70 requirement pursuant to §16B-13-6 of this code. The program shall also document whether a
71 patient has no insurance. At the option of the medication-assisted treatment program, treatment
72 may commence prior to billing.

73 (f) The medication-assisted treatment program shall apply for and receive approval as
74 required from the United States Drug Enforcement Administration, Center for Substance Abuse
75 Treatment, or an organization designated by Substance Abuse and Mental Health and Mental
76 Health Administration.

77 (g) All persons employed by the medication-assisted treatment program shall comply with
78 the requirements for the operation of a medication-assisted treatment program established within
79 this article or by any rule adopted pursuant to this article.

80 (h) All employees of an opioid treatment program shall furnish fingerprints for a state and
81 federal criminal records check by the Criminal Identification Bureau of the West Virginia State
82 Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed
83 authorization for the release of information and retention of the fingerprints by the Criminal
84 Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall
85 be subject to the provisions of §16B-15-1 *et seq.* of this code and subsequent rules promulgated
86 thereunder.

87 (i) The medication-assisted treatment program shall not be owned by, nor shall it employ
88 or associate with, any physician or prescriber:

89 (1) Whose Drug Enforcement Administration number is not currently full, active, and
90 unencumbered;

91 (2) Whose application for a license to prescribe, dispense, or administer a controlled
92 substance has been denied by and is not full, active, and unencumbered in any jurisdiction; or

93 (3) Whose license is anything other than a full, active, and unencumbered license to
94 practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic
95 medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and who is
96 in good standing and not under any probationary restrictions.

97 (j) A person may not dispense any medication-assisted treatment medication, including a
98 controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed
99 medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in
100 this state and employed by the medication-assisted treatment program unless the medication-
101 assisted treatment program is a federally certified narcotic treatment program. Prior to dispensing
102 or prescribing medication-assisted treatment medications, the treating physician must access the
103 Controlled Substances Monitoring Program Database to ensure the patient is not seeking
104 medication-assisted treatment medications that are controlled substances from multiple sources
105 and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing
106 medication-assisted treatment medications, the treating physician shall also ensure that the
107 medication-assisted treatment medication utilized is related to an appropriate diagnosis of a
108 substance use disorder and approved for such usage. The physician shall also review the
109 Controlled Substances Monitoring Program Database no less than quarterly and at each patient's
110 physical examination. The results obtained from the Controlled Substances Monitoring Program
111 Database shall be maintained with the patient's medical records.

112 (k) A medication-assisted treatment program responsible for medication administration
113 shall comply with:

114 (1) The West Virginia Board of Pharmacy regulations;

115 (2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;

116 (3) All applicable federal laws and regulations relating to controlled substances; and

117 (4) Any requirements as specified in the rules promulgated pursuant to this article.

118 (l) Each medication-assisted treatment program location shall be licensed separately,
119 regardless of whether the program is operated under the same business name or management
120 as another program.

121 (m) The medication-assisted treatment program shall develop and implement patient
122 protocols, treatment plans, or treatment strategies and profiles, which shall include, but not be
123 limited by, the following guidelines:

124 (1) When a physician diagnoses an individual as having a substance use disorder, the
125 physician may treat the substance use disorder by managing it with medication in doses not
126 exceeding those approved by the United States Food and Drug Administration as indicated for
127 the treatment of substance use disorders and not greater than those amounts described in the
128 rules promulgated pursuant to this article. The treating physician and treating counselor's
129 diagnoses and treatment decisions shall be made according to accepted and prevailing standards
130 for medical care;

131 (2) The medication-assisted treatment program shall maintain a record of all of the
132 following:

133 (A) Medical history and physical examination of the individual;

134 (B) The diagnosis of substance use disorder of the individual;

135 (C) The plan of treatment proposed, the patient's response to the treatment, and any
136 modification to the plan of treatment;

137 (D) The dates on which any medications were prescribed, dispensed, or administered, the
138 name and address of the individual for whom the medications were prescribed, dispensed, or
139 administered, and the amounts and dosage forms for any medications prescribed, dispensed, or
140 administered;

141 (E) A copy of the report made by the physician or counselor to whom referral for evaluation
142 was made, if applicable; and

143 (F) A copy of the coordination of care agreement, which is to be signed by the patient,
144 treating physician, and treating counselor. If a change of treating physician or treating counselor
145 takes place, a new agreement must be signed. The coordination of care agreement must be
146 updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not
147 updated, this review must be documented in the patient's record. The coordination of care
148 agreement will be provided in a form prescribed and made available by the director;

149 (3) Medication-assisted treatment programs shall report information, data, statistics, and
150 other information as directed in this code, and the rules promulgated pursuant to this article to
151 required agencies and other authorities;

152 (4) A prescriber authorized to prescribe a medication-assisted treatment medication who
153 practices at a medication-assisted treatment program is responsible for maintaining the control
154 and security of his or her prescription blanks and any other method used for prescribing a
155 medication-assisted treatment medication. The prescriber shall comply with all state and federal
156 requirements for tamper-resistant prescription paper. In addition to any other requirements
157 imposed by statute or rule, the prescriber shall notify the director and appropriate law-enforcement
158 agencies in writing within 24 hours following any theft or loss of a prescription blank or breach of
159 any other method of prescribing a medication-assisted treatment medication; and

160 (5) The medication-assisted treatment program shall have a drug testing program to
161 ensure a patient is in compliance with the treatment strategy.

162 (n) Medication-assisted treatment programs shall only prescribe, dispense, or administer
163 liquid methadone to patients pursuant to the restrictions and requirements of the rules
164 promulgated pursuant to this article.

165 (o) The medication-assisted treatment program shall immediately notify the director, or his
166 or her designee, in writing of any changes to its operations that affect the medication-assisted
167 treatment program's continued compliance with the certification and licensure requirements.

168 (p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine
169 then clear medical notes shall be placed in the patient's medical file indicating the clinical reason
170 or reasons for the higher level of dosage.

171 (q) If a physician is not the patient's obstetrical or gynecological provider, the physician
172 shall consult with the patient's obstetrical or gynecological provider to the extent possible to
173 determine whether the prescription is appropriate for the patient.

174 (r) A practitioner providing medication-assisted treatment may perform certain aspects of
175 telehealth if permitted under his or her scope of practice.

176 (s) The physician shall follow the recommended manufacturer's tapering schedule for the
177 medication-assisted treatment medication. If the schedule is not followed, the physician shall
178 document in the patient's medical record and the clinical reason why the schedule was not
179 followed. The director may investigate a medication-assisted treatment program if a high
180 percentage of its patients are not following the recommended tapering schedule.

§16B-13-6. Restrictions; variances and waivers.

1 (a) A medication-assisted treatment program shall not be located, operated, managed or
2 owned at the same location where a chronic pain management clinic licensed and defined in
3 §16B-7-1 *et seq.* of this code is located.

4 (b) Medication-assisted treatment programs shall not have procedures for offering a
5 bounty, monetary, equipment, or merchandise reward, or free services for individuals in exchange
6 for recruitment of new patients into the facility.

7 (c) Medication-assisted treatment programs shall not be located within one-half mile of a
8 public or private licensed day care center or public or private K-12 school.

9 Existing medication-assisted treatment programs, including both opioid treatment
10 programs and office based medication-assisted treatment programs that are located within one-
11 half mile of a public or private licensed day care center or public or private K-12 school, shall be
12 granted a variance, provided that the facility demonstrates adequate patient population controls

13 and that it may otherwise meet the requirements of this article and the rules promulgated pursuant
14 to this article.

15 (d) The director, in consultation with the Inspector General, may grant a waiver or a
16 variance from any licensure or registration standard, or portion thereof, for the period during which
17 the license or registration is in effect.

18 (1) Requests for waivers or variances of licensure or registration standards shall be in
19 writing to the director and shall include:

20 (A) The specific section of this article or rules promulgated pursuant to this article for which
21 a waiver or variance is sought;

22 (B) The rationale for requesting the waiver or variance;

23 (C) Documentation by the medication-assisted treatment program's medical director to the
24 director that describes how the program will maintain the quality of services and patient safety if
25 the wavier or variance is granted; and

26 (D) The consequences of not receiving approval of the requested wavier or variance.

27 (2) The director, in consultation with the Inspector General, shall issue a written statement
28 to the medication-assisted treatment program granting or denying a request for a waiver or
29 variance of program licensure or registration standards.

30 (3) The medication-assisted treatment program shall maintain a file copy of all requests
31 for waivers or variances and the approval or denial of the requests for the period during which the
32 license or registration is in effect.

33 (4) The Office of Health Facility Licensure and Certification shall inspect each medication-
34 assisted treatment program prior to a waiver or variance being granted, including a review of
35 patient records, to ensure and verify that any waiver or variance request meets the spirit and
36 purpose of this article and the rules promulgated pursuant to this article. The Office of Health
37 Facility Licensure and Certification may verify, by unannounced inspection, that the medication-

38 assisted treatment program is in compliance with any waiver or variance granted by the director,
39 in consultation with the Inspector General, for the duration of such waiver or variance.

§16B-13-7. Inspection; inspection warrant.

1 (a) The Office of Health Facility Licensure and Certification shall inspect each opioid
2 treatment program annually, including a review of the patient records, to ensure that the program
3 complies with this article and the applicable rules. A pharmacist, employed or contracted by the
4 director, licensed in this state, and a law-enforcement officer may be present at each inspection.

5 (b) The Office of Health Facility Licensure and Certification shall perform unannounced
6 complaint and verification inspections at office based medication-assisted treatment programs,
7 including a review of the patient records, to ensure that the program complies with this article and
8 the applicable rules. A pharmacist, employed or contracted by the Inspector General, licensed in
9 this state and a law-enforcement officer may be present at each inspection.

10 (c) During an onsite inspection, the inspectors shall make a reasonable attempt to discuss
11 each violation with the medical director or other owners of the medication-assisted treatment
12 program before issuing a formal written notification.

13 (d) Any action taken to correct a violation shall be documented in writing by the medical
14 director or other owners of the medication-assisted treatment program and may be verified by
15 follow-up visits by the Office of Health Facility Licensure and Certification.

16 (e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
17 may, in the manner provided by law, maintain an action in the name of the state for an inspection
18 warrant against any person, partnership, association, or corporation to allow any inspection or
19 seizure of records in order to complete any inspection allowed by this article or the rules
20 promulgated pursuant to this article, or to meet any other purpose of this article or the rules
21 promulgated pursuant to this article.

22 (f) When possible, inspections for annual certification and licensure by the medication-
23 assisted treatment programs will be done consecutively or concurrently. However, this provision
24 does not limit the ability to conduct unannounced inspections pursuant to a complaint.

§16B-13-8. License and registration limitation; denial; suspension; revocation.

1 (a) The director, in consultation with the Inspector General, may, by order, impose a ban
2 on the admission of patients or reduce the patient capacity of the medication-assisted treatment
3 program, or any combination thereof, when he or she finds upon inspection of the medication-
4 assisted treatment program that the licensee or registrant is not providing adequate care under
5 the medication-assisted treatment program's existing patient quota, and that a reduction in quota
6 or imposition of a ban on admissions, or any combination thereof, would place the licensee or
7 registrant in a position to render adequate care. Any notice to a licensee or registrant of reduction
8 in quota or ban on new admissions shall include the terms of the order, the reasons therefor and
9 the date set for compliance.

10 (b) The director, in consultation with the Inspector General, shall deny, suspend, or revoke
11 a license or registration issued pursuant to this article if the provisions of this article or of the rules
12 promulgated pursuant to this article are violated. The director, in consultation with the Inspector
13 General, may revoke a program's license or registration and prohibit all physicians and licensed
14 disciplines associated with that medication-assisted treatment program from practicing at the
15 program location based upon an annual, periodic, complaint, verification or other inspection and
16 evaluation.

17 (c) Before any such license or registration is denied, suspended, or revoked, however,
18 written notice shall be given to the licensee or registrant, stating the grounds for such denial,
19 suspension, or revocation.

20 (d) An applicant, licensee or registrant has 10 working days after receipt of the director's
21 order denying, suspending, or revoking a license or registration to request a formal hearing
22 contesting such denial, suspension, or revocation of a license or registration under this article. If

23 a formal hearing is requested, the applicant, licensee or registrant and the director shall proceed
24 in accordance with the provisions of §29A-5-1 *et seq.* of this code.

25 (e) If a license or registration is denied or revoked as herein provided, a new application
26 for license or registration shall be considered by the director, in consultation with the Inspector
27 General, if, when and after the conditions upon which the denial or revocation was based have
28 been corrected and evidence of this fact has been furnished. A new license or registration shall
29 then be granted after proper inspection, if applicable, has been made and all provisions of this
30 article and rules promulgated pursuant to this article have been satisfied.

31 (f) Any applicant, licensee or registrant who is dissatisfied with the decision of the director
32 as a result of the hearing provided in this section may, within 30 days after receiving notice of the
33 decision, petition the circuit court of Kanawha County, in term or in vacation, for judicial review of
34 the decision.

35 (g) The West Virginia Intermediate Court of Appeals may affirm, modify or reverse the
36 decision of the Board of Review and either the applicant, licensee or registrant, or the director
37 may appeal from the court's decision to the Supreme Court of Appeals.

38 (h) If the license or registration of a medication-assisted treatment program is denied,
39 suspended, or revoked, the medical director of the program, any owner of the program or owner
40 or lessor of the medication-assisted treatment program property shall cease to operate the clinic,
41 facility, office, or program as a medication-assisted treatment program as of the effective date of
42 the denial, suspension, or revocation. The owner or lessor of the medication-assisted treatment
43 program property is responsible for removing all signs and symbols identifying the premises as a
44 medication-assisted treatment program within 30 days. Any administrative appeal of such denial,
45 suspension or revocation shall not stay the denial, suspension, or revocation.

46 (i) Upon the effective date of the denial, suspension or revocation, the medical director of
47 the medication-assisted treatment program shall advise the director and the Board of Pharmacy
48 of the disposition of all medications located on the premises. The disposition is subject to the

49 supervision and approval of the director. Medications that are purchased or held by a medication-
50 assisted treatment program that is not licensed may be deemed adulterated.

51 (j) If the license or registration of a medication-assisted treatment program is suspended
52 or revoked, any person named in the licensing or registration documents of the program, including
53 persons owning or operating the medication-assisted treatment program, may not, as an
54 individual or as part of a group, apply to operate another medication-assisted treatment program
55 for up to five years after the date of suspension or revocation. The director, in consultation with
56 the Inspector General, may grant a variance pursuant to §16B-13-6 of this code to the prohibition
57 of this subsection.

58 (k) The period of suspension for the license or registration of a medication-assisted
59 treatment program shall be prescribed by the director, in consultation with the Inspector General,
60 but may not exceed one year.

§16B-13-9. Violations; penalties; injunction.

1 (a) Any person, partnership, association, or corporation which establishes, conducts,
2 manages, or operates a medication-assisted treatment program without first obtaining a license
3 or registration as herein provided, or who violates any provisions of this article or any rule lawfully
4 promulgated pursuant to this article, shall be assessed a civil penalty by the director, in
5 consultation with the Inspector General, in accordance with this subsection. Each day of
6 continuing violation after conviction shall be considered a separate violation:

7 (1) If a medication-assisted treatment program or any owner or medical director is found
8 to be in violation of any provision of this article, unless otherwise noted herein, the director, in
9 consultation with the Inspector General, may limit, suspend or revoke the program's license or
10 registration;

11 (2) If the program's medical director knowingly and intentionally misrepresents actions
12 taken to correct a violation, the director, in consultation with the Inspector General, may impose
13 a civil money penalty not to exceed \$10,000 and, in the case of any owner-operator medication-

14 assisted treatment program, limit or revoke a medication-assisted treatment program's license or
15 registration;

16 (3) If any owner or medical director of a medication-assisted treatment program
17 concurrently operates an unlicensed or unregistered medication-assisted treatment program, the
18 director, in consultation with the Inspector General, may impose a civil money penalty upon the
19 owner or medical director, or both, not to exceed \$5,000 per day;

20 (4) If the owner of a medication-assisted treatment program that requires a license or
21 registration under this article fails to apply for a new license or registration for the program upon
22 a change of ownership and operates the program under new ownership, the director, in
23 consultation with the Inspector General, may impose a civil money penalty upon the owner, not
24 to exceed \$5,000; or

25 (5) If a physician operates, owns or manages an unlicensed or unregistered medication-
26 assisted treatment program that is required to be licensed or registered pursuant to this article;
27 knowingly prescribes or dispenses or causes to be prescribed or dispensed, a medication-
28 assisted treatment medication through misrepresentation or fraud; procures, or attempts to
29 procure, a license or registration for a medication-assisted treatment program for any other person
30 by making or causing to be made any false representation, the director, in consultation with the
31 Inspector General, may assess a civil money penalty of not more than \$20,000. The penalty may
32 be in addition to or in lieu of any other action that may be taken by the director, in consultation
33 with the Inspector General, or any other board, court or entity.

34 (b) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
35 may, in the manner provided by law, maintain an action in the name of the state for an injunction
36 against any person, partnership, association or corporation to restrain or prevent the
37 establishment, conduct, management or operation of any medication-assisted treatment program
38 or violation of any provision of this article or any rule lawfully promulgated thereunder without first
39 obtaining a license or registration in the manner herein provided.

40 (c) In determining whether a penalty is to be imposed and in fixing the amount of the
41 penalty, the director, in consultation with the Inspector General, shall consider the following
42 factors:

43 (1) The gravity of the violation, including the probability that death or serious physical or
44 emotional harm to a patient has resulted, or could have resulted, from the medication-assisted
45 treatment program's actions or the actions of the medical director or any practicing physician, the
46 severity of the action or potential harm, and the extent to which the provisions of the applicable
47 laws or rules were violated;

48 (2) What actions, if any, the owner or medical director took to correct the violations;

49 (3) Whether there were any previous violations at the medication-assisted treatment
50 program; and

51 (4) The financial benefits that the medication-assisted treatment program derived from
52 committing or continuing to commit the violation.

53 (d) Upon finding that a physician has violated the provisions of this article or rules adopted
54 pursuant to this article, the director shall provide notice of the violation to the applicable licensing
55 board.

§16B-13-10. Advertisement disclosure.

1 Any advertisement made by or on behalf of a medication-assisted treatment program
2 through public media, such as a telephone directory, medical directory, newspaper or other
3 periodical, outdoor advertising, radio or television, or through written or recorded communication,
4 concerning the treatment of substance use disorders, as defined in section two of this article, shall
5 include the name of, at a minimum, the medical director responsible for the content of the
6 advertisement.

§16B-13-11. State Opioid Treatment Authority.

1 (a) Prior to establishing, operating, maintaining, or advertising a medication-assisted
2 treatment program within this state, a medication-assisted treatment program shall be approved

3 by the state opioid treatment authority for operation of a medication-assisted treatment program
4 in this state.

5 (b) The state opioid treatment authority shall act as the state's coordinator for the
6 development and monitoring of medication-assisted treatment programs and it shall serve as a
7 liaison with the appropriate federal agencies.

8 (c) The designated state oversight agency is responsible for licensing, monitoring, and
9 investigating complaints and grievances regarding medication-assisted treatment programs.

10 (d) The powers and duties of the state opioid treatment authority include, but are not
11 limited to, the following:

12 (1) Facilitate the development and implementation of rules, regulations, standards and
13 best practice guidelines to ensure the quality of services delivered by medication-assisted
14 treatment programs;

15 (2) Act as a liaison between relevant state and federal agencies;

16 (3) Be available for consultation regarding medication-assisted treatment guidelines,
17 rules, regulations and recovery models for individualized treatment plans of care developed by
18 the federal government and other nationally recognized authorities;

19 (4) Ensure delivery of technical assistance and informational materials to medication-
20 assisted treatment programs as needed;

21 (5) Perform both scheduled and unscheduled site visits to medication-assisted treatment
22 programs in cooperation with the identified state oversight agency when necessary and
23 appropriate;

24 (6) Consult with the federal government regarding approval or disapproval of requests for
25 exceptions to federal regulations, where appropriate;

26 (7) Review and approve exceptions to federal and state dosage policies and procedures;

27 (8) Receive and refer patient appeals and grievances to the designated state oversight
28 agency when appropriate; and

29 (9) Work cooperatively with other relevant state agencies to determine the services
30 needed and the location of a proposed medication-assisted treatment program.

§16B-13-12. Moratorium; certificate of need.

1 There is a moratorium on the licensure of new opioid treatment programs which do not
2 have a certificate of need as of the effective date of the enactment of this section during the 2016
3 regular session of the Legislature which shall continue until the Legislature determines that there
4 is a necessity for additional opioid treatment programs in West Virginia.

§16B-13-13. Rules; minimum standards for medication-assisted treatment programs.

1 (a) The Inspector General shall promulgate rules in accordance with the provisions of
2 §29A-1-1 *et seq.* of this code for the licensure of medication-assisted treatment programs to
3 ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these
4 facilities. These rules shall include, at a minimum:

5 (1) The process to be followed by applicants seeking a license;

6 (2) The qualifications and supervision of licensed and nonlicensed personnel at
7 medication-assisted treatment programs and training requirements for all facility health care
8 practitioners who are not regulated by another board;

9 (3) The provision and coordination of patient care, including the development of a written
10 plan of care and patient contract;

11 (4) The management, operation, staffing and equipping of the medication-assisted
12 treatment program;

13 (5) The clinical, medical, patient and business records kept by the medication-assisted
14 treatment program;

15 (6) The procedures for inspections and for review of utilization and quality of patient care;

16 (7) The standards and procedures for the general operation of a medication-assisted
17 treatment program, including facility operations, physical operations, infection control
18 requirements, health and safety requirements and quality assurance;

19 (8) Identification of drugs that may be used to treat substance use disorders that identify
20 a facility as a medication-assisted treatment program;

21 (9) Any other criteria that identify a facility as a medication-assisted treatment program;

22 (10) The standards and procedures to be followed by an owner in providing supervision,
23 direction and control of individuals employed by or associated with a medication-assisted
24 treatment program;

25 (11) Data collection and reporting requirements;

26 (12) Criteria and requirements related to specific medication-assisted treatment
27 medications; and

28 (13) Such other standards or requirements as the Inspector General determines are
29 appropriate.

30 (b) The Legislature finds that an emergency exists and, therefore, the Inspector General
31 shall file an emergency rule to implement the provisions of this section pursuant to the provisions
32 of §29A-3-15 of this code.

**ARTICLE 14. MEDICATION ADMINISTERED BY UNLICENSED PERSONNEL IN
NURSING HOMES.**

§16B-14-1. Definitions.

1 For the purposes of this article:

2 "Administration of medication" means assisting a person in the ingestion, application, or
3 inhalation of medications, or the supervision of or the providing of assistance with self-
4 administered medication, both according to the legibly written or printed directions of the health
5 care professional, or as written on the prescription label. "Administration" does not include
6 judgment, evaluation, assessments, or injections of medication.

7 "Approved medication assistive personnel (AMAP)" means a staff member who meets
8 eligibility requirements, has successfully completed a nationally recognized model curriculum for

9 certified medication assistants, has passed a national medication aide certification examination
10 approved by the National Council of State Boards of Nursing, and is considered competent by the
11 authorized registered professional nurse to administer medications to residents of the nursing
12 home in accordance with this article.

13 "Authorized practitioner" means a physician actively licensed under the provisions of §30-
14 3-1 *et seq.* or §30-14-1 *et seq.* of this code, an advanced practice registered nurse with
15 prescriptive authority actively licensed under the provisions of §30-7-1 *et seq.* of this code, a
16 physician's assistant actively licensed under the provisions of §30-3E-1 *et seq.* of this code, an
17 optometrist actively licensed under the provisions of §30-8-1 *et seq.* of this code, or a dentist
18 actively licensed under the provisions of §30-4-1 *et seq.* of this code.

19 "Authorized registered professional nurse" means a person who is actively licensed
20 pursuant to §30-7-1 *et seq.* of this code and meets the requirements to train and supervise
21 approved medication assistive personnel pursuant to this article, and has completed and passed
22 the facility trainer/instructor course developed by the authorizing agency.

23 "Authorizing agency" means the Office of Health Facility Licensure and Certification.

24 "Delegation" means transferring to a competent individual, as determined by the
25 authorized registered professional nurse, the authority to administer medications or perform a
26 health maintenance task.

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

29 "Health care professional" means an allopathic physician, osteopathic physician,
30 registered professional nurse, advanced practice registered nurse, physician's assistant, dentist,
31 optometrist, or respiratory therapist licensed pursuant to the provisions of chapter 30 of this code.

32 "Health maintenance tasks" means: Administering glucometer tests; administering
33 gastrostomy tube feedings; administering enemas; and performing tracheostomy and ventilator
34 care for residents.

35 "Inspector General" means the Inspector General of the Office of the Inspector General
36 as described in §16B-2-1 of this code, or his or her designee.

37 "Medication" means a drug, as defined in §60A-1-101 of this code, which has been
38 prescribed by a health care professional to be ingested through the mouth, inhaled through the
39 nose or mouth using an inhaler or nebulizer, applied to the outer skin, eye, or ear, or applied
40 through nose drops, or applied through vaginal or rectal suppositories. Medication does not mean
41 a controlled substance listed in Schedule I as provided in §60A-2-204 of this code, Schedule II
42 as provided in §60A-2-206 of this code, buprenorphine, or benzodiazepines.

43 "Medication reconciliation" means the process of creating an accurate list of all
44 medications a resident is taking, including drug name, dosage, frequency, and route, so correct
45 medications are being provided to the resident.

46 "Nursing home" means the same as it is defined in §16B-4-1 of this code.

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

49 "Prescribing practitioner" means an individual who has prescriptive authority as provided
50 in chapter 30 of this code.

51 "Registered professional nurse" means a person who is actively licensed pursuant to §30-
52 7-1 *et seq.* of this code.

53 "Resident" means a person living in a nursing home who is in stable condition.

54 "Self-administration of medication" means the act of a resident, who is independently
55 capable of reading and understanding the labels of medication ordered by an authorized
56 practitioner, opening, and accessing prepackaged drug containers, and accurately identifying and
57 taking the correct dosage of the drugs as ordered by the health care professional at the correct
58 time and under the correct circumstances.

59 "Self-administration of medication with assistance" means assisting residents who are
60 otherwise able to self-administer their own medications, except their physical disabilities prevent
61 them from completing one or more steps in the process.

62 "Stable" means the resident's health condition is predictable and consistent as determined
63 by the registered professional nurse, and the resident's medications have been reconciled.

64 "Staff member" means an individual employed by a nursing home but does not include a
65 health care professional acting within his or her scope of practice.

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

§16B-14-2. Administration of medications.

1 (a) The authorizing agency shall create a program for the administration of medications in
2 nursing homes.

3 (b) Administration of medication shall be performed by an approved medication assistive
4 personnel (AMAP) who has been trained and retrained every two years, passed a national
5 medication aide certification examination, and who is subject to the supervision of, and approval
6 by, an authorized registered professional nurse.

7 (c) After assessing the health status of a resident, a registered professional nurse, in
8 collaboration with the resident's prescriber, may allow an AMAP to administer medication.

9 (d) Nothing in this article prohibits a staff member from administering medications or
10 performing health maintenance tasks or providing any other prudent emergency assistance to aid
11 any person who is in acute physical distress or requires emergency assistance.

§16B-14-3. Exemption from licensure; statutory construction.

1 (a) A staff member who is not authorized by law to administer medication may do so in a
2 nursing home if he or she meets the requirements of this article.

3 (b) An approved medication assistive personnel is exempt from the licensing requirements
4 of chapter 30 of this code.

5 (c) A health care professional remains subject to his or her respective licensing laws.

6 (d) This article shall not be construed to violate or conflict with chapter 30 of this code.

§16B-14-4. Instruction and training.

1 (a) The authorizing agency's training curricula shall be based on a nationally recognized
2 model curriculum for certified medication assistants. The authorizing agency shall consult with the
3 West Virginia Board of Respiratory Care Practitioners in developing the training curricula relating
4 to the use of an inhaler or nebulizer. The certification examination must be a national Medication
5 Aide Certification Examination.

6 (b) The program developed by the authorizing agency shall require that a person who
7 applies to act as an approved medication assistive personnel shall:

8 (1) Hold a high school diploma or its equivalent;

9 (2) Be a nurse aide with at least one year of full-time experience;

10 (3) Be certified in cardiopulmonary resuscitation and first aid;

11 (4) Participate in the initial training program as set forth in §16B-14-1 of this code;

12 (5) Pass a national certification examination as set forth in §16B-14-1 of this code;

13 (6) Not have a statement on the stated administered nurse aide registry indicating that the
14 staff member has been the subject of finding of abuse or neglect of a long-term care nursing home
15 resident or convicted of the misappropriation of a resident's property; and

16 (7) Participate in a retraining program every two years.

17 (c) A nursing home may offer the training program developed by the authorizing agency
18 to its staff members. The training shall be provided by the nursing home through a registered
19 professional nurse.

20 (d) A registered professional nurse who is authorized to train staff members to administer
21 medications in nursing homes shall:

22 (1) Possess a current active license as set forth in §30-7-1 *et seq.* of this code to practice
23 as a registered professional nurse;

24 (2) Have practiced as a registered professional nurse in a position or capacity requiring
25 knowledge of medications for the immediate two years prior to being authorized to train staff
26 members;

27 (3) Be familiar with the nursing care needs of the residents as described in this article; and

28 (4) Have completed and passed the nursing home trainer/instructor course developed by
29 the authorizing agency.

§16B-14-5. Eligibility requirements of nursing home staff.

1 In order to administer medication, an approved medication assistive personnel (AMAP)
2 shall:

3 (1) Determine the medication to be administered is in its original container in which it was
4 dispensed by a pharmacist or the physician;

5 (2) Make a written record of assistance of medication with regard to each medication
6 administered, including the time, route, and amount taken;

7 (3) Display the title Approved Medication Assistive Personnel; and

8 (4) Comply with the legislative rules promulgated by the authorizing agency pursuant to
9 §29A-3-1 *et seq.* of this code relating to the provisions of this article, which shall address, at a
10 minimum, the supervision provided by the registered professional nurse to the AMAP.

§16B-14-6. Oversight of approved medication assistive personnel.

1 A nursing home using an approved medication assistive personnel shall establish an
2 administrative monitoring system and shall comply with the applicable provisions of the legislative
3 rules promulgated pursuant to §16B-10-11 of this code.

§16B-14-7. Withdrawal of authorization.

1 (a) The registered professional nurse who supervises an approved medication assistive
2 personnel (AMAP) may withdraw authorization for an AMAP to administer medications if the nurse
3 determines that the AMAP is not performing the function in accordance with the training and
4 written instructions.

5 (b) The withdrawal of the authorization shall be documented and relayed to the nursing
6 home and the authorizing agency. The agency shall remove the AMAP from the list of authorized
7 individuals. The Office of Health Facility Licensure and Certification shall maintain a list of the
8 names of persons whose authorization has been withdrawn and the reasons for withdrawal of
9 authorization. The list may be accessed by registered professional nurses and administrative
10 personnel of nursing homes.

§16B-14-8. Fees.

1 The authorizing agency may set and collect any appropriate fees necessary for the
2 implementation of the provisions of this article pursuant to the legislative rules authorized by this
3 article.

§16B-14-9. Limitations on medication administration.

1 (a) An approved medication assistive personnel (AMAP) may not:
2 (1) Administer the first dose of a medication;
3 (2) Perform an injection;
4 (3) Administer irrigations or debriding agents to treat a skin condition or minor abrasions;
5 (4) Act upon verbal medication orders;
6 (5) Transcribe medication orders;
7 (6) Convert or calculate drug dosages;
8 (7) Administer medications to be given "as needed" as ordered by the health care
9 professional, unless the supervising nurse has first performed and documented a bedside
10 assessment, and then the AMAP may administer the medication based on the written order with
11 specific parameters which preclude independent judgment; or

12 (8) Perform health maintenance tasks.

13 (b) An AMAP may not be assigned to both medication administration duty and typical
14 nurse aide duties related to resident care and assistance with activities of daily living
15 simultaneously. When assigned to medication administration, the AMAP's responsibility shall be
16 to administer medication and tasks related to the administration of medication. An AMAP may be
17 assigned to other resident care and assistance with activities of daily living during such times that
18 the AMAP is not engaged in, or scheduled to be engaged in, the administration of medication.

§16B-14-10. Permissive participation.

1 The provisions of this article are not mandatory upon any nursing home or nursing home
2 employee. A nursing home may not, as a condition of employment, require a nurse aide to
3 become an approved medication assistive personnel (AMAP) or require its health care
4 professionals to use AMAPs.

**ARTICLE 15. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND
EMPLOYMENT SCREENING ACT.**

§16B-15-1. Definitions.

1 As used in this article:

2 "Applicant" means an individual who is being considered for employment or engagement
3 with the department, a covered provider or covered contractor.

4 "Background check" means a prescreening of registries specified by the Inspector General
5 by rule and a fingerprint-based search of state and federal criminal history record information.

6 "Bureau" means a division within the Department of Health, Department of Human
7 Services and Department of Health Facilities.

8 "Covered contractor" means an individual or entity, including their employees and
9 subcontractors, that contracts with a covered provider to perform services that include any direct
10 access services.

11 "Covered provider" means the following facilities or providers:

12 (i) A skilled nursing facility;

13 (ii) A nursing facility;

14 (iii) A home health agency;

15 (iv) A provider of hospice care;

16 (v) A long-term care hospital;

17 (vi) A provider of personal care services;

18 (vii) A provider of adult day care;

19 (viii) A residential care provider that arranges for, or directly provides, long-term care
20 services, including an assisted living facility;

21 (ix) An intermediate care facility for individuals with intellectual disabilities;

22 (x) Any other facility or provider required to participate in the West Virginia Clearance for
23 Access: Registry and Employment Screening program as determined by the Inspector General
24 by legislative rule; and

25 (xi) Excludes medical foster home approved and annually reviewed by the United States
26 Department of Veterans Affairs pursuant to 38 CFR §17.73.

27 "Department" means the Department of Health, Department of Human Services and
28 Department of Health Facilities.

29 "Department employee" means any prospective or current part-time employee, full-time
30 employee, temporary employee, independent contractor, or volunteer of the department.

31 "Direct access" means physical contact with a resident, member, beneficiary, or client, or
32 access to their property, personally identifiable information, protected health information, or
33 financial information.

34 "Direct access personnel" means an individual who has direct access by virtue of
35 ownership, employment, engagement or agreement with the department, a covered provider, or
36 covered contractor. Direct access personnel does not include volunteers or students performing

37 irregular or supervised functions or contractors performing repairs, deliveries, installations or
38 similar services for the covered provider. The director shall determine by legislative rule whether
39 the position in question involves direct access.

40 "Director" means the Director of the West Virginia Clearance for Access: Registry and
41 Employment Screening program.

42 "Disqualifying offense" means:

43 (A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

44 (B) A conviction of any other crime specified by the Inspector General in rule, which shall
45 include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual
46 offenses, and financial crimes.

47 "Negative finding" means a finding in the prescreening that excludes an applicant from
48 direct access personnel positions.

49 "Notice of ineligibility" means a notice pursuant to §16-49-3 of this code that the Inspector
50 General's review of the applicant's criminal history record information reveals a disqualifying
51 offense.

52 "Prescreening" means a mandatory search of databases and registries specified by the
53 Inspector General in legislative rule for exclusions and licensure status prior to the submission of
54 fingerprints for a criminal history record information check.

55 "Rap back" means the notification to the department when an individual who has
56 undergone a fingerprint-based, state, or federal criminal history record information check has a
57 subsequent state or federal criminal history event.

58 "State Police" means the West Virginia State Police Criminal Identification Bureau.

§16B-15-2. Background check program for the department, covered providers, and covered contractors.

1 (a) The director shall create and implement a background check program to facilitate the
2 processing and analysis of the criminal history and background of applicants to the department,

3 covered providers, and covered contractors with direct access. This program shall be called the
4 West Virginia Clearance for Access: Registry and Employment Screening.

5 (b) The purpose of the program is to protect West Virginia's vulnerable populations by
6 requiring registry and criminal background checks for all direct access personnel of the
7 department, covered providers, and covered contractors.

8 (c) The program shall include:

9 (1) A centralized Internet-based system of registries to allow the department, covered
10 providers, and covered contractors to perform a mandatory prescreening of applicants;

11 (2) Fingerprint-based state and federal criminal background checks on all direct access
12 personnel; and

13 (3) An integrated Rap Back Program with the State Police to allow retention of fingerprints
14 and updates of state and federal criminal information on all direct access personnel until such
15 time as the individual is no longer employed or engaged by the department, the covered provider,
16 or covered contractor.

17 (d) The director shall notify applicants subject to a criminal history record check that their
18 fingerprints shall be retained by the State Police Criminal Identification Bureau and the Federal
19 Bureau of Investigation.

§16B-15-3. Prescreening and criminal background checks.

1 (a) Except as otherwise permitted in this article, the department, covered provider, or
2 covered contractor may not employ or engage an applicant prior to completing the background
3 check process.

4 (b) If the applicant has a negative finding on any required prescreening registry or
5 database, the employer shall notify the individual of such finding.

6 (c) If the applicant has a negative finding on any required prescreening registry or
7 database, that individual may not immediately be engaged by the department, covered provider,
8 or covered contractor.

9 (d) If the applicant does not have a negative finding in the prescreening process, the
10 applicant shall submit to fingerprinting for a state and federal criminal history record information
11 check.

12 (e) The State Police shall notify the Inspector General of the results of the criminal history
13 record information check.

14 (f) If the director's review of the criminal history record information reveals that the
15 applicant does not have a disqualifying offense, the director shall provide written notice to the
16 department's bureau, covered provider, or covered contractor that the individual may be engaged.

**§16B-15-4. Notice of ineligibility; prohibited participation as direct access personnel or
department employee.**

1 (a) If the director's review of the applicant's criminal history record information reveals a
2 disqualifying offense, the director shall provide written notice to the department's bureau, covered
3 provider, or covered contractor advising that the applicant is ineligible for work. The director may
4 not disseminate the criminal history record information.

5 (b) The director, covered provider, or covered contractor may not engage an applicant
6 with a disqualifying offense as direct access personnel. If the applicant has been provisionally
7 employed pursuant to §16B-15-6 of this code, the employer shall terminate the provisional
8 employment upon receipt of the notice.

§16B-15-5. Variance; appeals.

1 (a) If the director issues a notice of ineligibility, the applicant, or the employer on the
2 applicant's behalf, may file a written request for a variance with the director not later than 30 days
3 after the date of the notice required by §16B-15-3 or §16B-15-4 of this code.

4 (b) The director may grant a variance if:

5 (1) Mitigating circumstances surrounding the negative finding or disqualifying offense is
6 provided; and

7 (2) The director finds that the individual will not pose a danger or threat to residents,
8 members and their property.

9 (c) The director shall establish in legislative rule factors that qualify as mitigating
0 circumstances.

1 (d) The director shall mail to the applicant and the department's bureau, covered provider,
12 or covered contractor a written decision within 60 days of receipt of the request indicating whether
13 a variance has been granted or denied.

14 (e) If an applicant believes that their criminal history record information within this state is
15 incorrect or incomplete, they may challenge the accuracy of such information by writing to the
16 State Police for a personal review. However, if the discrepancies are at the charge or final
17 disposition level, the applicant must address this with the court or arresting agency that submitted
18 the record to the State Police.

19 (f) If an applicant believes that their criminal history record information outside this state
20 is incorrect or incomplete, they may appeal the accuracy of such information by contacting the
21 Federal Bureau of Investigation for instructions.

22 (g) If any changes, corrections, or updates are made in the criminal history record
23 information, the State Police shall notify the Inspector General that the applicant has appealed
24 the accuracy of the criminal history records and provide the Inspector General with the updated
25 results of the criminal history record information check, which the Inspector General shall review
26 de novo in accordance with the provisions of this article.

§16B-15-6. Provisional employment pending completion of background check.

1 (a) The department, covered provider, or covered contractor may permit an applicant to
2 work on a provisional basis for not more than 60 days pending notification from the director
3 regarding the results of the criminal background check if:

4 (1) The applicant is subject to direct on-site supervision, as specified in rule by the
5 Inspector General, during the course of the provisional period; and

6 (2) In a signed statement the applicant:

7 (A) Affirms that he or she has not committed a disqualifying offense;

8 (B) Acknowledges that a disqualifying offense reported in the required criminal history
9 record information check shall constitute good cause for termination; and

10 (C) Acknowledges that the department, covered provider, or covered contractor may
11 terminate the individual if a disqualifying offense is reported in the background check.

12 (b) Provisional employees who have requested a variance shall not be required to sign
13 such a statement. The department, covered provider, or covered contractor may continue to
14 employ an applicant if an applicant applies for a variance of his or her fitness determination until
15 the variance is resolved.

§16B-15-7. Clearance for subsequent employment.

1 (a) An applicant is not required to submit to fingerprinting and a criminal background check
2 if:

3 (1) The individual previously submitted to fingerprinting and a full criminal background
4 check as required by this article;

5 (2) The prior criminal background check confirmed that the individual did not have a
6 disqualifying offense or the individual received prior approval from the director to work for or with
7 the same type of covered provider or covered contractor; and

8 (3) The Rap Back Program has not identified any criminal activity that constitutes a
9 disqualifying offense.

10 (b) The director shall provide notice of prior clearance for direct access status upon
11 request by a subsequent bureau, covered provider, or covered contractor inquiries.

§16B-15-8. Fees.

1 In order to enforce the requirements and intent of this article, the following fees may be
2 charged:

3 (1) The State Police may assess a fee to the department, applicants, covered providers,
4 or covered contractors for conducting the criminal background check and for collecting and
5 retaining fingerprints for Rap Back as authorized under this article.

6 (2) The director may assess a fee to applicants, the department, covered providers, or
7 covered contractors for the maintenance of the Internet-based system required by this article. The
8 assessment shall be deposited into a special revenue account within the State Treasurer's office
9 to be known as the Office of Inspector General Criminal Background Administration Account.
10 Expenditures from the account shall be made by the director for purposes set forth in this article
11 and are authorized from collections. The account shall be administered by the director and may
12 not be deemed a part of the general revenue of the state.

§16B-15-9. Rules; penalties; confidentiality; immunity.

1 (a) The Inspector General shall propose rules for legislative approval in accordance with
2 §29A-3-1 *et seq.* of this code to implement the provisions of this article. The Inspector General
3 may promulgate emergency rules, if justified, pursuant to §29A-3-15 of this code as may be
4 required.

5 (b) Failure of a covered provider or covered contractor to ensure proper completion of the
6 background check process for each individual employed as direct access personnel may result in
7 the imposition of monetary civil penalties. In addition, engaging individuals knowing that they are
8 ineligible to work may subject the employer to monetary civil penalties.

9 (c) The director shall treat and maintain any criminal background search information
10 obtained under this article as confidential. The director shall limit the use of records solely to the
11 purposes authorized in this article. The criminal history record information in the custody of the
12 director is not subject to subpoena, other than one issued in a criminal action or investigation; is
13 confidential by law and privileged; and is not subject to discovery or admissible in evidence in any
14 private civil action.

15 (d) The Office of the Inspector General and its employees are immune from liability, civil
16 or criminal, that might otherwise be incurred or imposed for good faith conduct in determining
17 eligibility or granting variances permitted by this article.

ARTICLE 16. FOSTER CARE OMBUDSMAN PROGRAM.

§16B-16-1. The Foster Care Ombudsman.

1 (a) There is continued within the Office of the Inspector General the position of the West
2 Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care
3 Ombudsman to affect the purposes of this article. The independent Foster Care Ombudsman
4 shall have experience as a current or former foster parent or experience in the area of child
5 welfare.

6 (b) The duties of the Foster Care Ombudsman include, but are not limited to, the following:

7 (1) Establishing a statewide procedure to receive, investigate, and resolve complaints:

8 (A) Filed on behalf of a child who is subject to a reported allegation of abuse and neglect,
9 a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster
10 child, foster parent, or kinship parent;

11 (B) On the Foster Care Ombudsman's own initiative, of a child who is subject to a reported
12 allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the
13 juvenile justice system; or

14 (C) On the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to
15 action, inaction, or decisions of the state agency, child-placing agency, or residential care facility
16 which may adversely affect the foster child, foster parent, or kinship parent;

17 (2) Participating in any procedure to investigate and resolve complaints filed on behalf of
18 a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect,
19 a child who has died or sustained a critical incident, a child in the juvenile justice system, or a
20 kinship parent, relating to an action, inaction, or decision of providers of managed care services,
21 or the representatives of such providers, of public agencies, or of social service agencies, which

22 may adversely affect the health, safety, welfare, and rights of a foster child, a foster parent, a child
23 who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a
24 critical incident, a child in the juvenile justice system, or a kinship parent.

25 (3) Review periodically and make appropriate recommendations for the policies and
26 procedures established by any state agency providing services to the child welfare system;

27 (4) Pursuant to an investigation, provide assistance to an individual who the Foster Care
28 Ombudsman determines is in need of assistance, including, but not limited to, collaborating with
29 an agency, provider, or others on behalf of the best interests of the child;

30 (5) Advocating for the rights of a foster child, a foster parent, a child who is subject to a
31 reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a
32 child in the juvenile justice system, or a kinship parent.

33 (6) Recommend action when appropriate, including, but not limited to, undertaking
34 legislative advocacy and making proposals for systemic reform and formal legal action, in order
35 to secure and ensure the legal, civil, and special rights of children in the child welfare system and
36 the juvenile justice system;

37 (7) Monitoring the development and implementation of federal, state, and local legislation,
38 regulations, and policies with respect to foster care services.

39 (8) Conduct programs of public education when necessary and appropriate;

40 (9) Participate in ongoing training programs related to his or her duties or responsibilities;

41 (10) Have input into the creation of, and thereafter make recommendations consistent
42 with, the foster children, foster parents, and kinship parents bill of rights;

43 (11) Establishing and maintaining a statewide uniform reporting system to collect and
44 analyze data relating to complaints for the purpose of identifying and resolving significant
45 problems faced by foster children, foster parents, children who are subject to a reported allegation
46 of abuse and neglect, children who have died or sustained a critical incident, children in the
47 juvenile justice system, and kinship parents as a class. The data shall be submitted to the Bureau

48 of Social Services within the Department of Human Services and the Legislative Oversight
49 Commission on Health and Human Resources Accountability on a quarterly basis.

50 (12) Take appropriate steps to advise the public of the services of the Foster Care
51 Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

52 (13) Make inquiries and obtain assistance and information from other state governmental
53 agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her
54 duties.

55 (c) (1) The Foster Care Ombudsman or his or her staff may not be compelled to testify or
56 produce evidence in any judicial or administrative proceeding with respect to the identity of an
57 individual providing information to the ombudsman as part of an official investigation, or the
58 substance of that person's report to the ombudsman as part of an official investigation. All
59 memoranda, work product, notes, or case files developed and maintained as part of an official
60 investigation of the Foster Care Ombudsman Office are confidential and are not subject to
61 discovery, subpoena, or other means of legal compulsion, and are not admissible as evidence in
62 a judicial or administrative proceeding.

63 (2) The ombudsman may be compelled to provide testimony by a court or administrative
64 body of competent jurisdiction related to any action carried out by the office that is unrelated to
65 the substance of a specific official investigation, or reports submitted to the Legislative Oversight
66 Commission on Health and Human Resources Accountability provided for in §9-5-27 and §49-9-
67 102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery,
68 respond to a subpoena, or otherwise divulge testimony or evidence in any judicial, administrative,
69 or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence
70 concerning the identity of any complainant or any individual providing information to the
71 ombudsman as part of an official investigation, or the substance of any complaint or report unless
72 the ombudsman should decline to exercise that privilege. The purpose of this provision is to
73 ensure a level of confidentiality between the ombudsman and a person reporting to, complaining

74 to, or providing other evidence to the ombudsman as part of an official investigation carried out
75 by the office.

76 (3) Any objection by the ombudsman to the disclosure of any testimony, documentary, or
77 physical evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the
78 request of the ombudsman, and the presiding official shall prevent the disclosure of the identity
79 of any complainant, witness, or reporter as well as the substance of their complaint, testimony, or
80 report.

§16B-16-2. Investigation of complaints.

1 (a) Upon receipt of a complaint or by court order within the scope of the Foster Care
2 Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-
3 9-102(c) of this code, any act, practice, policy, or procedure of any state agency, child-placing
4 agency, juvenile facility, or residential care facility which affects the health, safety, welfare, or
5 rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and
6 neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system,
7 or a kinship parent.

8 (b) Investigative activities of the Foster Care Ombudsman include, but are not limited to:
9 information gathering, mediation, negotiation, informing parties of the status of the investigation,
10 notification to any aggrieved party of alternative processes, reporting of suspected violations to a
11 licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate
12 authorities.

13 (c) The Foster Care Ombudsman need not investigate any complaint upon determining
14 that:

15 (1) The complaint is trivial, frivolous, vexatious, or not made in good faith;

16 (2) The complaint has been too long delayed to justify present investigation;

17 (3) The resources available, considering the established priorities, are insufficient for an
18 adequate investigation;

19 (4) The matter complained of is not within the investigatory authority of the Foster Care
20 Ombudsman; or

21 (5) A real or apparent conflict of interest exists and no other person within the office is
22 available to investigate the complaint in an impartial manner.

23 (d) The Office of the Inspector General and other appropriate state governmental agencies
24 may establish and implement cooperative agreements for receiving, processing, responding to,
25 and resolving complaints involving state governmental agencies under the provisions of this
26 section.

27 (e) The Foster Care Ombudsman shall submit an annual written report to the Governor
28 containing:

29 (1) The number of complaints;

30 (2) The types of complaints;

31 (3) The location of the complaints;

32 (4) How the complaints are resolved; and

33 (5) Any other information the Foster Care Ombudsman feels is appropriate.

34 (f) The Foster Care Ombudsman shall summarize the reports and present that information
35 to the Legislative Oversight Commission on Health and Human Resources Accountability.
36 Nothing shall preclude the Foster Care Ombudsman office from submitting data, findings, or
37 reports beyond this annual report.

38 (g) Another office, department, agency, or official may not prohibit the release of an
39 ombudsman's recommendations to the Governor and the Legislature.

§16B-16-3. Access to foster care children.

1 (a) The Foster Care Ombudsman shall, with proper identification, have access to a foster
2 family home, a state agency, a child-placing agency, or a residential care facility for the purposes
3 of investigations of a complaint. The Foster Care Ombudsman may enter a foster family home, a
4 state agency, a child-placing agency, or a residential care facility at a time appropriate to the

5 complaint. The visit may be announced in advance or be made unannounced as appropriate to
6 the complaint under investigation. Upon entry, the Foster Care Ombudsman shall promptly and
7 personally advise the person in charge of his or her presence. If entry is refused by the person in
8 charge, the Foster Care Ombudsman may apply to the magistrate court of the county in which a
9 foster family home, a state agency, a child-placing agency, or a residential care facility is located
10 for a warrant authorizing entry, and the court shall issue an appropriate warrant if it finds good
11 cause therefor.

12 (b) For activities other than those specifically related to the investigation of a complaint,
13 the Foster Care Ombudsman, upon proper identification, shall have access to a foster family
14 home, a state agency, a child-placing agency, or a residential care facility between the hours of
15 8:00 a.m. and 8:00 p.m. in order to:

16 (1) Provide information on the Foster Care Ombudsman Program to a foster child, foster
17 parents, or kinship parents;

18 (2) Inform a foster child, a foster parent, or a kinship parent of his or her rights and
19 entitlements, and his or her corresponding obligations, under applicable federal and state laws;
20 and

21 (3) Direct the foster child, the foster parents, or the kinship parents to appropriate legal
22 resources;

23 (c) Access to a foster family home, a state agency, a child-placing agency, or a residential
24 care facility under this section shall be deemed to include the right to private communication with
25 the foster child, the foster parents, or the kinship parents.

26 (d) A Foster Care Ombudsman who has access to a foster family home, a state agency,
27 a child-placing agency, or a residential care facility under this section shall not enter the living
28 area of a foster child, foster parent, or kinship parent without identifying himself or herself to the
29 foster child, foster parent, or kinship parent. After identifying himself or herself, an ombudsman
30 shall be permitted to enter the living area of a foster child, foster parent, or kinship parent unless

31 that foster child, foster parent, or kinship parent communicates on that particular occasion the
32 foster child, foster parents', or kinship parents' desire to prevent the ombudsman from entering.
33 A foster child, foster parent, or kinship parent has the right to terminate, at any time, any visit by
34 the Foster Care Ombudsman.

35 (e) Access to a foster family home, a state agency, a child-placing agency, or a residential
36 care facility pursuant to this section includes the right to tour the facility unescorted.

§16B-16-4. Access to records.

1 (a) The Foster Care Ombudsman is allowed access to any foster child's, foster parents' or
2 kinship parents' records, including medical records reasonably necessary to any investigation,
3 without fee.

4 (b) The Foster Care Ombudsman is allowed access to all records of any foster family
5 home, state agency, child-placing agency, or residential care facility that is reasonably necessary
6 for the investigation of a complaint, including, but not limited to, incident reports; dietary records;
7 policies and procedures that a foster family home, a state agency, a child-placing agency, or a
8 residential care facility are required to maintain under federal or state law; admission agreements;
9 staffing schedules; or any document depicting the actual staffing pattern.

§16B-16-5. Subpoena powers.

1 (a) The Foster Care Ombudsman may, in the course of any investigation:

2 (1) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha
3 County for the issuance of a subpoena to compel at a specific time and place, by subpoena, the
4 appearance, before a person authorized to administer oaths, the sworn testimony of any person
5 whom the Foster Care Ombudsman reasonably believes may be able to give information relating
6 to a matter under investigation; or

7 (2) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha
8 County for the issuance of a subpoena duces tecum to compel any person to produce at a specific
9 time and place, before a person authorized to administer oaths, any documents, books, records,

10 papers, objects, or other evidence which the Foster Care Ombudsman reasonably believes may
11 relate to a matter under investigation.

12 (b) A subpoena or subpoena duces tecum applied for by the Foster Care Ombudsman
13 may not be issued until a circuit court judge in term or vacation thereof has personally reviewed
14 the application and accompanying affidavits and approved, by a signed order entered by the
15 judge, the issuance of the subpoena or subpoena duces tecum. Subpoenas or subpoenas duces
16 tecum applied for pursuant to this section may be issued on an ex parte basis following review
17 and approval of the application by the judge in term or vacation thereof.

18 (c) The Attorney General shall, upon request, provide legal counsel and services to the
19 Foster Care Ombudsman in all administrative proceedings and in all proceedings in any circuit
20 court and the West Virginia Supreme Court of Appeals.

§16B-16-6. Cooperation among government departments or agencies.

1 (a) The Foster Care Ombudsman shall have access to the records of any state
2 government agency reasonably necessary to any investigation. The Foster Care Ombudsman
3 shall be notified of and be allowed to observe any survey conducted by a government agency
4 affecting the health, safety, welfare, or rights of the foster child, the foster parents, or the kinship
5 parents.

6 (b) The Foster Care Ombudsman shall develop procedures to refer any complaint to any
7 appropriate state government department, agency, or office.

8 (c) When abuse, neglect, or exploitation of a foster child is suspected, the Foster Care
9 Ombudsman shall make a referral to the Bureau for Children and Families, Office of Health Facility
10 Licensure and Certification, or both.

11 (d) Any state government department, agency, or office that responds to a complaint
12 referred to it by the Foster Care Ombudsman Program shall make available to the Foster Care
13 Ombudsman copies of inspection reports and plans of correction, and notices of any citations and

14 sanctions levied against the foster family home, the child-placing agency, or the residential care
15 facility identified in the complaint.

§16B-16-7. Confidentiality of investigations.

1 (a) Information relating to any investigation of a complaint that contains the identity of the
2 complainant, a child who is subject to a reported allegation of abuse and neglect, a child who has
3 died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster
4 parent, or kinship parent shall remain confidential except:

5 (1) Where imminent risk of serious harm is communicated directly to the Foster Care
6 Ombudsman or his or her staff;

7 (2) Where disclosure is necessary to the bureau in order for such office to determine the
8 appropriateness of initiating an investigation regarding potential abuse, neglect, or emergency
9 circumstances; or

10 (3) Where disclosure is necessary to the Office of Health Facility Licensure and
11 Certification in order for such office to determine the appropriateness of initiating an investigation
12 to determine facility compliance with applicable rules of licensure, certification, or both.

13 (b) The Foster Care Ombudsman shall maintain confidentiality with respect to all matters
14 including the identities of complainants, witnesses, or others from whom information is acquired,
15 except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry
16 out duties of the office or to support recommendations.

17 (c) Notwithstanding any other section within this article, all information, records, and
18 reports received by or developed by the Foster Care Ombudsman Program which relate to a
19 foster child, foster parent, or kinship parent, including written material identifying a foster child,
20 foster parent, or a child who is subject to a reported allegation of abuse and neglect, a child who
21 has died or sustained a critical incident, a child in the juvenile justice system, or kinship parent,
22 are confidential pursuant to §49-5-101 *et seq.* of this code and are not subject to the provisions

23 of §29B-1-1 *et seq.* of this code, and may not be disclosed or released by the Foster Care
24 Ombudsman Program, except under the circumstances enumerated in this section.

25 (d) Nothing in this section prohibits the preparation and submission by the Foster Care
26 Ombudsman of statistical data and reports, as required to implement the provisions of this article
27 or any applicable federal law, exclusive of any material that identifies any foster child, foster
28 parent, kinship parent, or complainant.

29 (e) The Inspector General shall have access to the records and files of the Foster Care
30 Ombudsman Program to verify its effectiveness and quality where the identity of any complainant,
31 a child who is subject to a reported allegation of abuse and neglect, a child who has died or
32 sustained a critical incident, a child in the juvenile justice system, or foster child, foster parent, or
33 kinship parent is not disclosed.

§16B-16-8. Limitations on liability.

1 (a) The Foster Care Ombudsman participating in an investigation carried out pursuant to
2 this article who is performing his or her duties is immune from civil liability that otherwise might
3 result by reason of his or her participation in the investigation, as long as such participation is not
4 violative of any applicable law, rule, or regulation, and done within the scope of his or her
5 employment and in good faith.

6 (b) If an act or omission by the Foster Care Ombudsman or an act in good faith pursuant
7 to a specific foster child, foster parent, or kinship parent complaint causes a foster child's, foster
8 parents', or kinship parents' rights to be violated, no foster family home, state agency, child-
9 placing agency, or residential care facility, its owners, administrators, officers, director, agents,
10 consultants, employees, or any member of management may be held civilly liable as a result of
11 the act or omission.

§16B-16-9. Willful interference; retaliation; penalties.

1 (a) An individual who willfully interferes with or impedes the Foster Care Ombudsman in
2 the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction
3 thereof, shall be fined not more than \$100.

4 (b) An individual who institutes or commits a discriminatory, disciplinary, retaliatory, or
5 reprisal action against a foster child, foster parent, or kinship parent for having filed a complaint
6 with or provided information in good faith to the Foster Care Ombudsman in carrying out the duties
7 pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not
8 more than \$100.

9 (c) An individual violating the provisions of subsection (a) or (b) of this section is, for the
10 second or any subsequent offense under either of these subsections, guilty of a misdemeanor
11 and, upon conviction thereof, shall be fined not more than \$250. Each day of a continuing violation
12 after conviction shall be considered a separate offense.

13 (d) Nothing in this section infringes upon the rights of an employer to supervise, discipline,
14 or terminate an employee for other reasons.

§16B-16-10. Funding for Foster Care Ombudsman Program.

1 The Foster Care Ombudsman Program shall receive such funds appropriated by the
2 Legislature for the operation of the program.

ARTICLE 17. HUMAN RIGHTS COMMISSION.

§16B-17-1. Short title.

1 This article shall be known and may be cited and referred to as "The West Virginia Human
2 Rights Act."

§16B-17-2. Declaration of policy.

1 It is the public policy of the State of West Virginia to provide all of its citizens equal
2 opportunity for employment, equal access to places of public accommodations, and equal
3 opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real

4 property. Equal opportunity in the areas of employment and public accommodations is hereby
5 declared to be a human right or civil right of all persons without regard to race, religion, color,
6 national origin, ancestry, sex, age, blindness, or disability. Equal opportunity in housing
7 accommodations or real property is hereby declared to be a human right or civil right of all persons
8 without regard to race, religion, color, national origin, ancestry, sex, blindness, disability, or familial
9 status.

10 The denial of these rights to properly qualified persons by reason of race, religion, color,
11 national origin, ancestry, sex, age, blindness, disability, or familial status is contrary to the
12 principles of freedom and equality of opportunity and is destructive to a free and democratic
13 society.

§16B-17-3. Definitions.

1 When used in this article:

2 (a) The term "person" means one or more individuals, partnerships, associations,
3 organizations, corporations, labor organizations, cooperatives, legal representatives, trustees,
4 trustees in bankruptcy, receivers, and other organized groups of persons;

5 (b) The term "commission" means the West Virginia Human Rights Commission;

6 (c) The term "director" means the executive director of the commission who reports to the
7 Inspector General;

8 (d) The term "employer" means the state, or any political subdivision thereof, and any
9 person employing 12 or more persons within the state for 20 or more calendar weeks in the
10 calendar year in which the act of discrimination allegedly took place or the preceding calendar
11 year: *Provided*, That such terms shall not be taken, understood or construed to include a private
12 club;

13 (e) The term "employee" shall not include any individual employed by his or her parents,
14 spouse or child;

15 (f) The term "labor organization" includes any organization which exists for the purpose,
16 in whole or in part, of collective bargaining or of dealing with employers concerning grievances,
17 terms or conditions of employment or for other mutual aid or protection in relation to employment;

18 (g) The term "employment agency" includes any person undertaking, with or without
19 compensation, to procure, recruit, refer or place employees. A newspaper engaged in the activity
20 of advertising in the normal course of its business shall not be deemed to be an employment
21 agency;

22 (h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to
23 extend to, a person equal opportunities because of race, religion, color, national origin, ancestry,
24 sex, age, blindness, disability or familial status and includes to separate or segregate;

25 (i) The term "unlawful discriminatory practices" includes only those practices specified in
26 §16B-17-9 of this code;

27 (j) The term "place of public accommodations" means any establishment or person, as
28 defined herein, including the state, or any political or civil subdivision thereof, which offers its
29 services, goods, facilities, or accommodations to the general public, but shall not include any
30 accommodations which are in their nature private. To the extent that any penitentiary, correctional
31 facility, detention center, regional jail or county jail is a place of public accommodation, the rights,
32 remedies and requirements provided by this article for any violation of subdivision (6), §16B-17-
33 9 of this code shall not apply to any person other than: (1) Any person employed at a penitentiary,
34 correctional facility, detention center, regional jail or county jail; (2) any person employed by a
35 law-enforcement agency; or (3) any person visiting any such employee or visiting any person
36 detained in custody at such facility;

37 (k) The term "age" means the age of 40 or above;

38 (l) For the purpose of this article, a person shall be considered to be blind only if his central
39 visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity

40 is greater than 20/200 but is occasioned by a limitation in the fields of vision such that the widest
41 diameter of the visual field subtends an angle no greater than twenty degrees; and

42 (m) The term "disability" means:

43 (1) A mental or physical impairment which substantially limits one or more of such person's
44 major life activities. The term "major life activities" includes functions such as caring for one's self,
45 performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

46 (2) A record of such impairment; or

47 (3) Being regarded as having such an impairment.

48 For the purposes of this article, this term does not include persons whose current use of
49 or addiction to alcohol or drugs prevents such persons from performing the duties of the job in
50 question or whose employment, by reason of such current alcohol or drug abuse, would constitute
51 a direct threat to property or the safety of others.

§16B-17-4. Powers and objectives.

1 The commission shall have the power and authority and shall perform the functions and
2 services as in this article prescribed and as otherwise provided by law. The commission shall
3 encourage and endeavor to bring about mutual understanding and respect among all racial,
4 religious and ethnic groups within the state and shall strive to eliminate all discrimination in
5 employment and places of public accommodations by virtue of race, religion, color, national origin,
6 ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the
7 sale, purchase, lease, rental or financing of housing and other real property by virtue of race,
8 religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

§16B-17-5. Composition; appointment, terms, and oath of members; compensation and expenses.

1 The commission shall be composed of nine members, all residents, and citizens of the
2 State of West Virginia and broadly representative of the several racial, religious, and ethnic groups
3 residing within the state, to be appointed by the Governor, by and with the advice and consent of

4 the Senate. Not more than five members of the commission shall be members of the same political
5 party and not more than five members shall be appointed from any one congressional district.

6 Members of the commission shall be appointed for terms of three years commencing on
7 July 1 of the year of their appointments, except that the nine members first appointed hereunder
8 shall be appointed for terms of from one to three years, respectively, so that the terms of three
9 members of the commission will expire on June 30 of each succeeding year thereafter. Upon the
10 expiration of the initial terms, all subsequent appointments shall be for terms of three years each,
11 except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall
12 be eligible for reappointment. Before assuming and performing any duties as a member of the
13 commission, each commission member shall take and subscribe to the official oath prescribed by
14 section 5, article IV of the Constitution of West Virginia, which executed oath shall be filed in the
15 office of the Secretary of State.

16 The members of the commission shall not receive a salary, but each appointed member
17 shall be paid \$50 per diem for actual time spent in the performance of duties under this article
18 and shall be reimbursed for actual and necessary expenses incident to the performance of their
19 duties, upon presentation of an itemized and sworn statement thereof. The foregoing per diem
20 and reimbursement for actual and necessary expenses shall be paid from appropriations made
21 by the Legislature to the commission.

**§16B-17-6. Commission organization and personnel; executive director; offices; meetings;
quorum; expenses of personnel.**

1 As soon as practical after July 1, of each year, the Governor shall call a meeting of the
2 commission to be convened at the State Capitol. The commission shall at such meeting organize
3 by electing one of its members as chairperson of the commission and one as vice chairperson
4 thereof for a term of one year or until their successors are elected and qualified. At such meeting
5 the commission shall also elect from its membership such other officers as may be found
6 necessary and proper for its effective organization.

7 The Governor shall, by and with the advice and consent of the Senate, appoint an
8 executive director to serve at his or her will and pleasure. The executive director shall serve as
9 secretary of the commission. The executive director shall have a college degree. He or she shall
10 be selected with particular reference to his or her training, experience and qualifications for the
11 position and shall be paid an annual salary, payable in monthly installments, from any
12 appropriations made therefor. The commission, upon recommendation of the executive director
13 and in accordance with the requirements of the civil service law, may employ such personnel as
14 may be necessary for the effective and orderly performance of the functions and services of the
15 commission. The commission shall employ an administrative law judge who shall be an attorney,
16 duly licensed to practice law in the State of West Virginia, for the conduct of the public hearings
17 authorized in §16B-17-8(d)(3) of this code.

18 The commission shall equip and maintain its offices at the State Capitol and shall hold its
19 annual organizational meeting there. The commission may hold other meetings during the year
20 at such times and places within the state as may be found necessary and may maintain one
21 branch office within the state as determined by the commission to be necessary for the effective
22 and orderly performance of the functions and services of the commission. Any five members of
23 the commission shall constitute a quorum for the transaction of business. Minutes of its meetings
24 shall be kept by its secretary.

25 The executive director and other commission personnel shall be reimbursed for necessary
26 and reasonable travel and subsistence expenses actually incurred in the performance of
27 commission services upon presentation of properly verified expense accounts as prescribed by
28 law.

§16B-17-7. Assistance to commission; legal services.

1 The commission may call upon other officers, departments, and agencies of the state
2 government to assist in its hearings, programs, and projects. The Attorney General of the state

3 shall render legal services to the commission upon request made by the commission or by the
4 chairman or the executive director thereof.

§16B-17-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and local government officers, units,
3 activities and agencies in the promotion and attainment of more harmonious understanding and
4 greater equality of rights between and among all racial, religious and ethnic groups in this state;

5 (b) To enlist the cooperation of racial, religious and ethnic units, community and civic
6 organizations, industrial and labor organizations and other identifiable groups of the state in
7 programs and campaigns devoted to the advancement of tolerance, understanding and the equal
8 protection of the laws of all groups and peoples;

9 (c) To receive, investigate and pass upon complaints alleging discrimination in
10 employment or places of public accommodations, because of race, religion, color, national origin,
11 ancestry, sex, age, blindness or disability, and complaints alleging discrimination in the sale,
12 purchase, lease, rental and financing of housing accommodations or real property because of
13 race, religion, color, national origin, ancestry, sex, blindness, disability or familial status, and to
14 initiate its own consideration of any situations, circumstances or problems, including therein any
15 racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing
16 within the state relating to employment, places of public accommodations, housing
17 accommodations and real property;

18 (d) To hold and conduct public and private hearings, in the county where the respondent
19 resides or transacts business or where agreed to by the parties or where the acts complained of
20 occurred, on complaints, matters and questions before the commission and, in connection
21 therewith, relating to discrimination in employment or places of public accommodations, housing
22 accommodations or real property and during the investigation of any formal complaint before the

23 commission relating to employment, places of public accommodations, housing accommodations
24 or real property to:

25 (1) Issue subpoenas and subpoenas duces tecum upon the approval of the executive
26 director or the chairperson of the commission; administer oaths; take the testimony of any person
27 under oath; and make reimbursement for travel and other reasonable and necessary expenses
28 in connection with such attendance;

29 (2) Furnish copies of public hearing records to parties involved therein upon their payment
30 of the reasonable costs thereof to the commission;

31 (3) Delegate to an administrative law judge who shall be an attorney, duly licensed to
32 practice law in West Virginia, the power and authority to hold and conduct hearings, as herein
33 provided, to determine all questions of fact and law presented during the hearing and to render a
34 final decision on the merits of the complaint, subject to the review of the commission as hereinafter
35 set forth.

36 Any respondent or complainant who shall feel aggrieved at any final action of an
37 administrative law judge shall file a written notice of appeal with the commission by serving such
38 notice on the executive director and upon all other parties within 30 days after receipt of the
39 administrative law judge's decision. The commission shall limit its review upon such appeals to
40 whether the administrative law judge's decision is:

41 (A) In conformity with the Constitution and the laws of the state and the United States;

42 (B) Within the commission's statutory jurisdiction or authority;

43 (C) Made in accordance with procedures required by law or established by appropriate
44 rules of the commission;

45 (D) Supported by substantial evidence on the whole record; or

46 (E) Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted
47 exercise of discretion.

48 (4) To enter into conciliation agreements and consent orders.

49 Each conciliation agreement shall include provisions requiring the respondent to refrain
50 from the commission of unlawful discriminatory practices in the future and shall contain such
51 further provisions as may be agreed upon by the commission and the respondent.

52 If the respondent and the commission agree upon conciliation terms, the commission shall
53 serve upon the complainant a copy of the proposed conciliation agreement. If the complainant
54 agrees to the terms of the agreement or fails to object to such terms within 15 days after its service
55 upon him or her, the commission shall issue an order embodying such conciliation agreement. If
56 the complainant objects to the agreement, he or she shall serve a specification of his or her
57 objections upon the commission within such period. Unless such objections are met or withdrawn
58 within 10 days after service thereof, the commission shall notice the complaint for hearing.

59 Notwithstanding any other provisions of this section, the commission may, where it finds
60 the terms of the conciliation agreement to be in the public interest, execute such agreement, and
61 limit the hearing to the objections of the complainant.

62 If a conciliation agreement is entered into, the commission shall serve a copy of the order
63 embodying such agreement upon all parties to the proceeding.

64 Not later than one year from the date of a conciliation agreement, the commission shall
65 investigate whether the respondent is complying with the terms of such agreement. Upon a finding
66 of noncompliance, the commission shall take appropriate action to assure compliance;

67 (5) To apply to the circuit court of the county where the respondent resides or transacts
68 business for enforcement of any conciliation agreement or consent order by seeking specific
69 performance of such agreement or consent order;

70 (6) To issue cease and desist orders against any person found, after a public hearing, to
71 have violated the provisions of this article or the rules of the commission;

72 (7) To apply to the circuit court of the county where the respondent resides or transacts
73 business for an order enforcing any lawful cease and desist order issued by the commission;

74 (e) To recommend to the Governor and Legislature policies, procedures, practices and
75 legislation in matters and questions affecting human rights;

76 (f) To delegate to its executive director such powers, duties and functions as may be
77 necessary and expedient in carrying out the objectives and purposes of this article who shall
78 report to the Inspector General;

79 (g) To prepare a written report on its work, functions and services for each year ending on
80 June 30 and to deliver copies thereof to the Governor on or before December 1, next thereafter;

81 (h) To do all other acts and deeds necessary and proper to carry out and accomplish
82 effectively the objects, functions and services contemplated by the provisions of this article,
83 including the promulgation of legislative rules in accordance with the provisions of §29A-3-1 *et*
84 *seq.* of this code, implementing the powers and authority hereby vested in the commission;

85 (i) To create such advisory agencies and conciliation councils, local, regional or statewide,
86 as in its judgment will aid in effectuating the purposes of this article, to study the problems of
87 discrimination in all or specific fields or instances of discrimination because of race, religion, color,
88 national origin, ancestry, sex, age, blindness, disability or familial status; to foster, through
89 community effort or otherwise, goodwill, cooperation and conciliation among the groups and
90 elements of the population of this state, and to make recommendations to the commission for the
91 development of policies and procedures, and for programs of formal and informal education,
92 which the commission may recommend to the appropriate state agency. Such advisory agencies
93 and conciliation councils shall be composed of representative citizens serving without pay. The
94 commission may itself make the studies and perform the acts authorized by this subdivision. It
95 may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion
96 to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all
97 elements of the population of the state;

98 (j) To accept contributions from any person to assist in the effectuation of the purposes of
99 this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and
100 benevolent organizations for the purposes of this section;

101 (k) To issue such publications and such results of investigation and research as in its
102 judgment will tend to promote goodwill and minimize or eliminate discrimination: *Provided, That*
103 the identity of the parties involved shall not be disclosed.

§16B-17-9. Unlawful discriminatory practices.

1 It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational
2 qualification, or except where based upon applicable security regulations established by the
3 United States or the State of West Virginia or its agencies or political subdivisions:

4 (1) For any employer to discriminate against an individual with respect to compensation,
5 hire, tenure, terms, conditions or privileges of employment if the individual is able and competent
6 to perform the services required even if such individual is blind or disabled: *Provided, That* it shall
7 not be an unlawful discriminatory practice for an employer to observe the provisions of any bona
8 fide pension, retirement, group or employee insurance or welfare benefit plan or system not
9 adopted as a subterfuge to evade the provisions of this subdivision: *Provided, however, That* an
10 employer may grant preference in hiring to a veteran or a disabled veteran in accordance with the
11 provisions of §16B-17-9a of this code without violating the provisions of this article.

12 (2) For any employer, employment agency or labor organization, prior to the employment
13 or admission to membership, to: (A) Elicit any information or make or keep a record of or use any
14 form of application or application blank containing questions or entries concerning the race,
15 religion, color, national origin, ancestry, sex or age of any applicant for employment or
16 membership; (B) print or publish or cause to be printed or published any notice or advertisement
17 relating to employment or membership indicating any preference, limitation, specifications or
18 discrimination based upon race, religion, color, national origin, ancestry, sex, disability or age; or

19 (C) deny or limit, through a quota system, employment or membership because of race, religion,
20 color, national origin, ancestry, sex, age, blindness or disability;

21 (3) For any labor organization because of race, religion, color, national origin, ancestry,
22 sex, age, blindness or disability of any individual to deny full and equal membership rights to any
23 individual or otherwise to discriminate against such individual with respect to hire, tenure, terms,
24 conditions or privileges of employment or any other matter, directly or indirectly, related to
25 employment;

26 (4) For an employer, labor organization, employment agency or any joint labor-
27 management committee controlling apprentice training programs to:

28 (A) Select individuals for an apprentice training program registered with the State of West
29 Virginia on any basis other than their qualifications as determined by objective criteria which
30 permit review;

31 (B) Discriminate against any individual with respect to his or her right to be admitted to or
32 participate in a guidance program, an apprenticeship training program, on-the-job training
33 program or other occupational training or retraining program;

34 (C) Discriminate against any individual in his or her pursuit of such programs or to
35 discriminate against such a person in the terms, conditions or privileges of such programs;

36 (D) Print or circulate or cause to be printed or circulated any statement, advertisement or
37 publication, or to use any form of application for these programs or to make any inquiry in
38 connection with a program which expresses, directly or indirectly, discrimination or any intent to
39 discriminate unless based upon a bona fide occupational qualification;

40 (5) For any employment agency to fail or refuse to classify properly, refer for employment
41 or otherwise to discriminate against any individual because of his or her race, religion, color,
42 national origin, ancestry, sex, age, blindness or disability;

43 (6) For any person being the owner, lessee, proprietor, manager, superintendent, agent
44 or employee of any place of public accommodations to:

45 (A) Refuse, withhold from or deny to any individual because of his or her race, religion,
46 color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of
47 the accommodations, advantages, facilities, privileges or services of the place of public
48 accommodations;

49 (B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written
50 or printed communication, notice or advertisement to the effect that any of the accommodations,
51 advantages, facilities, privileges or services of any such place shall be refused, withheld from or
52 denied to any individual on account of race, religion, color, national origin, ancestry, sex, age,
53 blindness or disability, or that the patronage or custom thereof of any individual, belonging to or
54 purporting to be of any particular race, religion, color, national origin, ancestry, sex or age, or who
55 is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited; or

56 (7) For any person, employer, employment agency, labor organization, owner, real estate
57 broker, real estate salesman or financial institution to:

58 (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with
59 others to commit acts or activities of any nature, the purpose of which is to harass, degrade,
60 embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any
61 person to engage in any of the unlawful discriminatory practices defined in this section;

62 (B) Willfully obstruct or prevent any person from complying with the provisions of this
63 article, or to resist, prevent, impede or interfere with the commission or any of its members or
64 representatives in the performance of a duty under this article; or

65 (C) Engage in any form of reprisal or otherwise discriminate against any person because
66 he or she has opposed any practices or acts forbidden under this article or because he or she
67 has filed a complaint, testified, or assisted in any proceeding under this article.

§16B-17-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

1 An employer may grant preference in hiring to a veteran or disabled veteran who has been
2 honorably discharged from the United States Armed Services: *Provided*, That the veteran or
3 disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job, and
4 provided further that, granting the preference does not violate any state equal employment
5 opportunity law. For purposes of this section, the term "veteran" means any person who has
6 received an honorable discharge and: (a) Has provided more than one hundred eighty
7 consecutive days of full-time, active-duty service in the United States Armed Services or Reserve
8 components thereof, including the National Guard; or (b) has a service-connected disability rating
9 fixed by the United States Department of Veterans Affairs.

§16B-17-10. Discriminatory practices; investigations, hearings, procedures and orders.

1 Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall
2 make, sign and file with the commission a verified complaint, which shall state the name and
3 address of the person, employer, labor organization, employment agency, owner, real estate
4 broker, real estate salesman or financial institution alleged to have committed the unlawful
5 discriminatory practice complained of, and which shall set forth the particulars thereof and contain
6 such other information as may be required by the commission's rules and regulations. The
7 commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign and
8 file such complaint. Any employer, whose employees, or some of them, hinder or threaten to
9 hinder compliance with the provisions of this article, shall file with the commission a verified
10 complaint, asking for assistance by conciliation or other remedial action and, during such period
11 of conciliation or other remedial action, no hearings, orders or other actions shall be held, made
12 or taken by the commission against such employer. Any complaint filed pursuant to this article
13 must be filed within 365 days after the alleged act of discrimination.

14 After the filing of any complaint, or whenever there is reason to believe that an unlawful
15 discriminatory practice has been committed, the commission shall make a prompt investigation in
16 connection therewith.

17 If it shall be determined after such investigation that no probable cause exists for
18 substantiating the allegations of the complaint, the commission shall, within 10 days from such
19 determination, cause to be issued and served upon the complainant written notice of such
20 determination, and the said complainant or his or her attorney may, within 10 days after such
21 service, file with the commission a written request for a meeting with the commission to show
22 probable cause for substantiating the allegations of the complaint. If it shall be determined after
23 such investigation or meeting that probable cause exists for substantiating the allegations of the
24 complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory
25 practices complained of by conference, conciliation and persuasion. The members of the
26 commission and its staff shall not disclose what has transpired in the course of such endeavors:
27 *Provided*, That the commission may publish the facts in the case of any complaint which has been
28 dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing
29 the identity of the parties involved.

30 In case of failure so to eliminate such practice or in advance thereof, if in the judgment of
31 the commission circumstances so warrant, the commission shall cause to be issued and served
32 a written notice, together with a copy of such complaint as the same may have been amended,
33 in the manner provided by law for the service of summons in civil actions, requiring the person,
34 employer, labor organization, employment agency, owner, real estate broker, real estate
35 salesman or financial institution named in such complaint, hereinafter referred to as respondent,
36 to answer the charges of such complaint at a hearing before the commission in the county where
37 the respondent resides or transacts business at a time and place to be specified in such notice:
38 *Provided*, That said written notice be served at least 30 days prior to the time set for the hearing.

39 The case in support of the complaint shall be presented before the commission by one of
40 its attorneys or agents. The respondent may file a written, verified answer to the complaint and
41 appear at such hearing in person or otherwise, with or without counsel, and submit testimony and
42 evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et seq.* of

43 this code shall apply to and govern the hearing and the administrative procedures in connection
44 with and following such hearing, with like effect as if the provisions of said article five were set
45 forth in extensor in this section.

46 If, after such hearing and consideration of all of the testimony, evidence and record in the
47 case, the commission shall find that a respondent has engaged in or is engaging in any unlawful
48 discriminatory practice as defined in this article, the commission shall issue and cause to be
49 served on such respondent an order to cease and desist from such unlawful discriminatory
50 practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or
51 upgrading of employees, with or without back pay, admission or restoration to membership in any
52 respondent labor organization, or the admission to full and equal enjoyment of the services,
53 goods, facilities, or accommodations offered by any respondent place of public accommodation,
54 and the sale, purchase, lease, rental or financial assistance to any complainant otherwise
55 qualified for the housing accommodation or real property, denied in violation of this article, as in
56 the judgment of the commission, will effectuate the purposes of this article, and including a
57 requirement for report of the manner of compliance. Such order shall be accompanied by findings
58 of fact and conclusions of law as specified in §29A-5-3 of this code.

59 If, after such hearing and consideration of all of the testimony, evidence and record in the
60 case, the commission shall find that a respondent has not engaged in such unlawful discriminatory
61 practice, the commission shall state its findings of fact and conclusions of law as aforesaid and
62 shall issue and cause to be served on the complainant an order dismissing the said complaint as
63 to such respondent.

64 A copy of its order shall be delivered in all cases by the commission to the complainant,
65 the respondent, the Attorney General and to such other public officers as the commission may
66 deem proper. Any such order shall not be enforceable except as provided in §16B-17-11 of this
67 code.

§16B-17-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an application for review may be prosecuted
2 by either party to the Supreme Court of Appeals within thirty days from the receipt thereof by the
3 filing of a petition therefor to such court against the commission and the adverse party as
4 respondents, and the clerk of such court shall notify each of the respondents and the commission
5 of the filing of such petition. The commission shall, within ten days after receipt of such notice, file
6 with the clerk of the court the record of the proceedings had before it, including all the evidence.
7 The court or any judge thereof in vacation may thereupon determine whether or not a review shall
8 be granted. And if granted to a nonresident of this state, he or she shall be required to execute
9 and file with the clerk before such order or review shall become effective, a bond, with security to
10 be approved by the clerk, conditioned to perform any judgment which may be awarded against
11 him or her thereon. The commission may certify to the court and request its decision of any
12 question of law arising upon the record, and withhold its further proceeding in the case, pending
13 the decision of court on the certified question, or until notice that the court has declined to docket
14 the same. If a review be granted or the certified question be docketed for hearing, the clerk shall
15 notify the board and the parties litigant or their attorneys and the commission of the fact by mail.
16 If a review be granted or the certified question docketed, the case shall be heard by the court in
17 the manner provided for other cases: *Provided*, That in the following cases the appellant may
18 prosecute the appeal in the circuit court of Kanawha County pursuant to section four, §29A-5-1
19 *et seq.* of this code: (1) Cases in which the commission awards damages other than back pay
20 exceeding \$5,000; (2) cases in which the commission awards back pay exceeding \$30,000; and
21 (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. In such
22 cases the appellee shall respond within thirty days of filing and the court shall make a
23 determination within the following 30 days: *Provided, however*, That appeals filed erroneously in
24 the circuit court after April 1, 1987, and prior to July 1, 1989, may be prosecuted in the Supreme
25 Court of Appeals without regard to the time limits specified herein: *Provided further*, That any
26 party adversely affected by the final judgment of the circuit court of Kanawha County may seek

27 review thereof by appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code filed
28 within 30 days of entry of the final order of the circuit court.

29 The appeal procedure contained in this subsection shall be the exclusive means of review,
30 notwithstanding the provisions of chapter twenty-nine-a of this code: *Provided*, That such
31 exclusive means of review shall not apply to any case wherein an appeal or a petition for
32 enforcement of a cease and desist order has been filed with a circuit court of this state prior to
33 April 1, 1987.

34 (b) In the event that any person shall fail to obey a final order of the commission within
35 thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the
36 circuit court or the Supreme Court of Appeals, a party or the commission may seek an order from
37 the circuit court for its enforcement. Such proceedings shall be initiated by filing of a petition in
38 said court, and served upon the respondent in the manner provided by law for the service of
39 summons in civil actions; a hearing shall be held on such petition within 60 days of the date of
40 service. The court may grant appropriate temporary relief, and shall make and enter upon the
41 pleadings, testimony, and proceedings such order as is necessary to enforce the order of the
42 commission or Supreme Court of Appeals.

§16B-17-12. Local human relations commissions.

43 (a) The legislative body of a political subdivision may, by ordinance or resolution, authorize
44 the establishment or membership in and support of a local human relations commission. The
45 number and qualifications of the members of any local commission and their terms and method
46 of appointment or removal shall be such as may be determined and agreed upon by the legislative
47 body, except that no such member shall hold office in any political party.

48 (b) The legislative body of any political subdivision shall have the authority to appropriate
49 funds, in such amounts as may be deemed necessary, for the purpose of contributing to the
50 operation of a local commission.

51 (c) The local commission shall have the power to appoint such employees and staff, as it
52 may deem necessary, to fulfill its purpose.

§16B-17-13. Exclusiveness of remedy; exceptions.

1 (a) Except as provided in subsection (b), nothing contained in this article shall be deemed
2 to repeal or supersede any of the provisions of any existing or hereafter adopted municipal
3 ordinance, municipal charter or of any law of this state relating to discrimination because of race,
4 religion, color, national origin, ancestry, sex, age, blindness or disability, but as to acts declared
5 unlawful by §16B-17-9 of this article the procedure herein provided shall, when invoked, be
6 exclusive and the final determination therein shall exclude any other action, civil or criminal, based
7 on the same grievance of the complainant concerned. If such complainant institutes any action
8 based on such grievance without resorting to the procedure provided in this article, he or she may
9 not subsequently resort to the procedure herein. In the event of a conflict between the
10 interpretation of a provision of this article and the interpretation of a similar provision contained in
11 any municipal ordinance authorized by charter, the interpretation of the provision in this article
12 shall apply to such municipal ordinance.

13 (b) Notwithstanding the provisions of subsection (a) of this section, a complainant may
14 institute an action against a respondent in the county wherein the respondent resides or transacts
15 business at any time within 90 days after the complainant is given notice of a right to sue pursuant
16 to this subsection or, if the statute of limitations on the claim has not expired at the end of such
17 90-day period, then at any time during which such statute of limitations has not expired. If a suit
18 is filed under this section, the proceedings pending before the commission shall be deemed
19 concluded.

20 The commission shall give a complainant who has filed a complaint a notice of a right to
21 sue upon: (1) The dismissal of the complaint for any reason other than an adjudication of the
22 merits of the case; or (2) the request of a complainant at any time after the timely filing of the
23 complaint in any case which has not been determined on its merits or has not resulted in a

24 conciliation agreement to which the complainant is a party. Upon the issuance of a right to sue
25 letter pursuant to subdivision (1) or (2), the commission may dismiss the complaint.

26 Notice of right to sue shall be given immediately upon complainant being entitled thereto,
27 by personal service or certified mail, return receipt requested, which notice shall inform the
28 complainant in plain terms of his or her right to institute a civil action as provided in this section
29 within ninety days of the giving of such notice. Service of the notice shall be complete upon
30 mailing.

31 (c) In any action filed under this section, if the court finds that the respondent has engaged
32 in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall
33 enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative
34 action which may include, but is not limited to, reinstatement or hiring of employees, granting of
35 back pay or any other legal or equitable relief as the court deems appropriate. In actions brought
36 under this section, the court in its discretion may award all or a portion of the costs of litigation,
37 including reasonable attorney fees and witness fees, to the complainant.

38 (d) The provisions of this section shall be available to all complainants whose active cases
39 are pending before the Human Rights Commission as well as those complainants who file after
40 the effective date of this section.

§16B-17-14. Penalty.

1 Any person who shall willfully resist, prevent, impede or interfere with the commission, its
2 members, agents or agencies in the performance of duties pursuant to this article, or shall willfully
3 violate a final order of the commission, shall be guilty of a misdemeanor, and, upon conviction
4 thereof, shall be punished by a fine of not less than \$100 nor more than \$500, or by imprisonment
5 not exceeding 30 days, or by both such fine and imprisonment, in the discretion of the court, but
6 seeking judicial review of an order shall not be deemed to be such willful conduct.

§16B-17-15. Construction; severability.

1 The provisions of this article shall be liberally construed to accomplish its objectives and
2 purposes. If any provision of this article be held invalid or unconstitutional by any court of
3 competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other
4 provisions hereof, all of which are declared and shall be construed to be separate and severable.

§16B-17-16. Certain records exempt.

1 Notwithstanding any other provisions of this article, it shall not be an unlawful
2 discriminatory practice for the Bureau of Employment Programs to ascertain and record the age,
3 sex, race, religion, color, national origin, ancestry, blindness or disability of any individual for the
4 purpose of making such reports as may from time to time be required by agencies of the federal
5 government or be necessary to show compliance with any rule or regulation issued by any such
6 agency. Said records may be made and kept in the manner required by the federal government:
7 *Provided*, That such recording of the age, sex, race, religion, color, national origin, ancestry,
8 blindness or disability of any individual shall not be used to discriminate, within the meaning of
9 this article, directly or indirectly, against any such individual as prohibited by all other sections of
10 this article.

§16B-17-17. Posting of law and information.

1 Every employer, labor organization, employment agency and person operating a place of
2 public accommodations, as defined herein, subject to this article, shall keep posted in a
3 conspicuous place or places on his or her premises a notice or notices to be prepared or approved
4 by the commission, which shall set forth excerpts of this article and such other relevant information
5 which the commission shall deem necessary.

§16B-17-18. Injunctions in certain housing complaints.

1 When it appears that a housing unit or units described in a complaint may be sold, rented
2 or otherwise disposed of before a determination of the complaint or case has been made by the
3 commission or during judicial review of any final order of the commission, the circuit court of the
4 county in which such housing unit or units are located may, upon the joint petition of the

5 commission and the complainant, or if there be more than one complainant, all such
6 complainants, issue a prohibitive injunction restraining the sale, rental or other disposition of such
7 housing unit or units except in compliance with the order of the court. No such injunction shall be
8 issued by the court until the complainant or complainants shall have posted bond, with good
9 security therefor, in such penalty as the court or judge awarding it may direct. The court may
10 include in any such injunction granted such other conditions as it deems proper and just. Such
11 injunction, if granted, shall be of no more than 30 days duration. If at the end of such 30-day
12 period the commission notifies the court that additional time is needed for the disposal or
13 determination of the complaint or case or the conclusion of such judicial review, the court, for
14 good cause shown, may extend the period of the injunction for such additional time as the court
15 deems proper. No such extension shall be granted except upon the continuation or reposting of
16 the bond required for the original injunction and any such extension of the injunction may be
17 granted upon such additional terms and conditions as to the court seem proper and just.

§16B-17-19. Private club exemption.

1 Nothing in this article shall prohibit a private club not in fact open to the public, which as
2 an incident to its primary purpose or purposes provides lodgings which it owns or operates for
3 other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its
4 members or guests of members or from giving preference to its members or guests of members:
5 *Provided*, That this exemption shall not apply to any private club not in fact open to the public
6 which owns or operates residential subdivisions providing lodgings for rental, occupancy or sale,
7 or which provides real estate for sale for the construction of single or multiunit dwellings.

§16B-17-20. Violations of human rights; civil action by attorney general.

1 (a) A person has the right to engage in lawful activities without being subject to actual or
2 threatened:

- 3 (1) Physical force or violence against him or her or any other person, or
4 (2) Damage to, destruction of or trespass on property,

5 any of which is motivated by race, color, religion, sex, ancestry, national origin, political
6 affiliation or disability.

7 (b) Whenever any person, whether or not acting under the color of law, intentionally
8 interferes or attempts to interfere with another person's exercise or enjoyment of rights secured
9 by this article or §16B-18-1 *et seq.* of this code, by actual or threatened physical force or violence
10 against that person or any other person, or by actual or threatened damage to, destruction of or
11 trespass on property, the Attorney General may bring a civil action:

12 (1) For injunctive or other appropriate equitable relief in order to protect the peaceable
13 exercise or enjoyment of the rights secured, or

14 (2) For civil penalties as specified in subsection (c) of this section, or

15 (3) For both equitable relief and civil penalties.

16 This action must be brought in the name of the state and instituted in the circuit court for
17 the county where the alleged violator resides or has a principal place of business or where the
18 alleged violation occurred.

19 (c) A civil penalty of not more than \$5,000 per violation may be assessed against any
20 person violating this section.

21 (d) Each preliminary, temporary, or permanent injunction issued under this section must
22 include a statement describing the penalties to be imposed for a knowing violation of the order or
23 injunction as provided in subsection (e) of this section. The clerk of the circuit court shall transmit
24 one certified copy of each order or injunction issued under this section to the appropriate law-
25 enforcement agency or agencies having authority over locations where the defendant was alleged
26 to have committed the act giving rise to the action, and service of the order or injunction must be
27 accomplished pursuant to the West Virginia rules of civil procedure.

28 (e) A person who knowingly violates a preliminary, temporary or permanent injunction
29 issued under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined

30 not more than \$5,000, or imprisoned in the county or regional jail not more than one year, or both
31 fined and imprisoned.

ARTICLE 18. WEST VIRGINIA FAIR HOUSING ACT.

§16B-18-1. Short title.

1 This article may be cited as the "West Virginia Fair Housing Act."

§16B-18-2. Declaration of policy.

1 It is the policy of the State of West Virginia to provide, within Constitutional limitations, for
2 fair housing throughout the state.

§16B-18-3. Definitions.

1 As used in this article:

2 (a) "Commission" means the West Virginia Human Rights Commission;

3 (b) "Dwelling" means any building, structure or portion thereof which is occupied as, or
4 designed or intended for occupancy as, a residence or sleeping place by one or more persons or
5 families and any vacant land which is offered for sale or lease for the construction or location
6 thereon of any such building, structure or portion thereof;

7 (c) "Family" includes a single individual;

8 (d) "Person" includes one or more individuals, corporations, partnerships, associations,
9 labor organizations, legal representatives, mutual companies, joint-stock companies, trusts,
10 unincorporated organizations, trustees, trustees in cases under Title 11 of the United States
11 Code, receivers and fiduciaries;

12 (e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration
13 the right to occupy premises not owned by the occupant;

14 (f) "Discriminatory housing practice" means an act that is unlawful under §16B-18-5, §16B-
15 18-6, §16B-18-7, or §16B-18-19 of this article;

16 (g) "Disability" means, with respect to a person:

17 (1) A physical or mental impairment which substantially limits one or more of the person's
18 major life activities;

19 (2) A record of having such an impairment; or

20 (3) Being regarded as having such an impairment, but the term does not include current,
21 illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled
22 Substances Act, Title 21, United States Code, Section 802;

23 (h) "Aggrieved person" includes any person who:

24 (1) Claims to have been injured by a discriminatory housing practice; or

25 (2) Believes that the person will be injured by a discriminatory housing practice that is
26 about to occur;

27 (i) "Complainant" means the person, including the commission, who files a complaint
28 under §16B-18-11;

29 (j) "Familial status" means:

30 (1) One or more individuals who have not attained the age of 18 years being domiciled
31 with:

32 (A) A parent or another person having legal custody of the individual or individuals; or

33 (B) The designee of the parent or other person having custody of the individual with the
34 written permission of the parent or other person; or

35 (2) Any person who is pregnant or is in the process of securing legal custody of any
36 individual who has not attained the age of 18 years;

37 (k) "Conciliation" means the attempted resolution of issues raised by a complaint or by the
38 investigation of the complaint through informal negotiations involving the aggrieved person, the
39 respondent and the commission;

40 (l) "Conciliation agreement" means a written agreement setting forth the resolution of the
41 issues in conciliation;

42 (m) "Respondent" means:

43 (1) The person or other entity accused in a complaint of an unfair housing practice; and

44 (2) Any other person or entity identified in the course of investigation and notified as
45 required with respect to respondents identified under §16B-18-11(a);

46 (n) The term "rooming house" means a house or building where there are one or more
47 bedrooms which the proprietor can spare for the purpose of giving lodgings to persons he or she
48 chooses to receive; and

49 (o) The term "basic universal design" means the design of products and environments to
50 be useable by all people, to the greatest extent possible, without the need for adaptation or
51 specialization.

52 (p) "Assistance animal" means any service, therapy or support animal, weighing less than
53 150 pounds, with or without specific training or certification, that works, provides assistance, or
54 performs tasks for the benefit of a person with a disability, or provides emotional support that
55 alleviate one or more identified symptoms or effects of a person's disability.

§16B-18-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

1 Any person, including a worker, contractor, engineer or architect, who in good faith
2 provides services or materials, without remuneration, to build or install basic universal design
3 features as set forth in §30-42-10 of this code may not be liable for any civil damages as the result
4 of any act or omission in providing such services or materials: *Provided*, That the basic universal
5 design feature or features shall be built or constructed in accordance with applicable state and
6 federal laws and applicable building codes.

§16B-18-4. Application of article.

1 (a) The prohibitions against discrimination in the sale or rental of housing set forth in §16B-
2 18-5 of this code shall apply to all dwellings except as hereinafter exempted. Nothing in section
3 five of this article, other than subsection (b) of this section, shall apply to the rental of a room or

4 rooms in a rooming house occupied by the owner as a place of residence and containing no more
5 than four rented rooms or rooms to be rented. Solely for the purposes of familial status, nothing
6 in section five shall apply to:

7 (1) Any single-family house sold or rented by an owner: *Provided*, That such private
8 individual owner does not own more than three such single-family houses at any one time:
9 *Provided, however*, That in the case of the sale of any such single-family house by a private
10 individual owner not residing in such house at the time of such sale or who was not the most
11 recent resident of such house prior to such sale, the exemption granted by this subsection shall
12 apply only with respect to one such sale within any 24 month period: *Provided further*, That such
13 bona fide private individual owner does not own any interest in, nor is there owned or reserved
14 on his or her behalf under any express or voluntary agreement, title to or any right to all or a
15 portion of the proceeds from the sale or rental of more than three such single-family houses at
16 any one time: *And provided further*, That the sale or rental of any such single-family house shall
17 be excepted from the application of this article only if such house is sold or rented:

18 (A) Without the use in any manner of the sales or rental facilities or the sales or rental
19 services of any real estate broker, agent or salesman, or of such facilities or services of any
20 person in the business of selling or renting dwellings, or of any employee or agent of any such
21 broker, agent, salesman or person; and

22 (B) Without the publication, posting or mailing, after notice, of any advertisement or written
23 notice in violation of subsection (c), §16B-18-5 of this code; but nothing in this proviso shall
24 prohibit the use of attorneys, escrow agents, abstractors, title companies and other such
25 professional assistance as necessary to perfect or transfer the title; or

26 (2) Rooms or units in dwellings containing living quarters occupied or intended to be
27 occupied by no more than four families living independently of each other, if the owner actually
28 maintains and occupies one of such living quarters as his residence.

29 (b) For the purposes of subsection (a) of this section, a person shall be deemed to be in
30 the business of selling or renting dwellings if:

31 (1) The person has within the preceding 12 months participated as principal in three or
32 more transactions involving the sale or rental of any dwelling or any interest therein;

33 (2) The person has within the preceding 12 months participated as agent, other than in
34 the sale of his or her own personal residence, in providing sales or rental facilities or sales or
35 rental services in two or more transactions involving the sale or rental of any dwelling or any
36 interest therein; or

37 (3) The person is the owner of any dwelling designed or intended for occupancy by or
38 occupied by five or more families.

§16B-18-5. Discrimination in sale or rental of housing and other prohibited practices.

1 As made applicable by section four of this article and except as exempted by §16B-18-4
2 and §16B-18-8 of this code, it is unlawful:

3 (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate
4 for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because
5 of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

6 (b) To discriminate against any person in the terms, conditions or privileges of sale or
7 rental of a dwelling, or in the provision of services or facilities in connection therewith, because of
8 race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

9 (c) To make, print or publish, or cause to be made, printed or published any notice,
10 statement or advertisement, with respect to the sale or rental of a dwelling that indicates any
11 preference, limitation or discrimination based on race, color, religion, sex, blindness, disability,
12 familial status, ancestry or national origin, or an intention to make any such preference, limitation
13 or discrimination;

14 (d) To represent to any person because of race, color, religion, sex, blindness, disability,
15 familial status, ancestry or national origin that any dwelling is not available for inspection, sale or
16 rental when the dwelling is in fact available;

17 (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by
18 representations regarding the entry or prospective entry into the neighborhood of a person or
19 persons of a particular race, color, religion, sex, blindness, disability, familial status, ancestry or
20 national origin; or

21 (f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a
22 dwelling to any buyer or renter because of a disability of: (A) That buyer or renter; (B) a person
23 residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
24 (C) any person associated with that buyer or renter.

25 (2) To discriminate against any person in the terms, conditions or privileges of sale or
26 rental of a dwelling, or in the provision of services or facilities in connection with the dwelling,
27 because of a disability of: (A) That person; (B) a person residing in or intending to reside in that
28 dwelling after it is so sold, rented or made available; or (C) any person associated with that person.

29 (3) For purposes of this subdivision, discrimination includes:

30 (A) A refusal to permit, at the expense of the disabled person, reasonable modifications
31 of existing premises occupied or to be occupied by the person if the modifications may be
32 necessary to afford the person full enjoyment of the premises, except that, in the case of a rental,
33 the landlord may where it is reasonable to do so condition permission for a modification on the
34 renter agreeing to restore the interior of the premises to the condition that existed before the
35 modification, reasonable wear and tear excepted;

36 (B) A refusal to make reasonable accommodations in rules, policies, practices or services
37 when the accommodations may be necessary to afford the person equal opportunity to use and
38 enjoy a dwelling; or

39 (C) In connection with the design and construction of covered multifamily dwellings for first
40 occupancy after the date that is thirty months after the date of enactment of the West Virginia Fair
41 Housing Act, a failure to design and construct those dwellings in a manner that:

42 (i) The public use and common use portions of the dwellings are readily accessible to and
43 usable by disabled persons;

44 (ii) All the doors designed to allow passage into and within all premises within the dwellings
45 are sufficiently wide to allow passage by disabled persons in wheelchairs; and

46 (iii) All premises within the dwellings contain the following features of adaptive design: (I)
47 An accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats
48 and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to
49 allow later installation of grab bars; and (IV) usable kitchens and bathrooms that an individual in
50 a wheelchair can maneuver about the space.

51 (4) Compliance with the appropriate requirements of the *American National Standard for*
52 *Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People*,
53 commonly cited as ANSI A117.1, suffices to satisfy the requirements of subparagraph (3)(C)(iii)
54 of this subdivision.

55 (5) (A) If a unit of general local government has incorporated into its laws the requirements
56 set forth in subparagraph (3)(C) of this subdivision, compliance with those laws satisfy the
57 requirements of that subparagraph.

58 (B) The commission or unit of general local government may review and approve newly
59 constructed covered multifamily dwellings for the purpose of making determinations as to whether
60 the design and construction requirements of subparagraph (3)(C) of this subdivision are met.

61 (C) The commission shall encourage, but may not require, units of local government to
62 include in their existing procedures for the review and approval of newly constructed covered
63 multifamily dwellings, determinations as to whether the design and construction of such dwellings
64 are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance

65 to units of local government and other persons to implement the requirements of that
66 subparagraph.

67 (D) Nothing in this article requires the commission to review or approve the plans, designs
68 or construction of all covered multifamily dwellings to determine whether the design and
69 construction of the dwellings are consistent with the requirements of subparagraph (3)(C) of this
70 subdivision.

71 (6) (A) Nothing in paragraph (5) of this subdivision affects the authority and responsibility
72 of the commission or a local public agency to receive and process complaints or otherwise engage
73 in enforcement activities under this article.

74 (B) Determinations by a unit of general local government under subparagraphs (5)(A) and
75 (B) of this subdivision are not conclusive in enforcement proceedings under this article.

76 (7) As used in this section, the term "covered multifamily dwellings" means: (A) Buildings
77 consisting of four or more units if the buildings have one or more elevators; and (B) ground floor
78 units in other buildings consisting of four or more units.

79 (8) Nothing in this article invalidates or limits any law of this state or any political
80 subdivision of this state that requires dwellings to be designed and constructed in a manner that
81 affords disabled persons greater access than is required by this article.

82 (9) This section does not require that a dwelling be made available to an individual whose
83 tenancy would constitute a direct threat to the health or safety of other individuals or whose
84 tenancy would result in substantial physical damage to the property of others. The burden of
85 proving such threat to health or safety or the likelihood of such damage is upon the respondent.

86 (10) For the purposes of this subdivision, rules, policies, practices, or services regarding
87 animals are subject to the reasonable accommodation requirements of subparagraph (B),
88 paragraph (3) of this subdivision and the following provisions:

89 (A) In connection with a request for reasonable accommodation to the rules, policies or
90 services, a person with a disability may be required to submit documentation, from a professional
91 treatment provider, of the disability related need for the assistance animal.

92 (i) Such documentation is sufficient if it establishes that the assistance animal will provide
93 some type of disability-related assistance or emotional support.

94 (ii) A person with a disability may not be required to submit or provide access to medical
95 records or medical providers, or to provide detailed or extensive information or documentation of
96 a person's physical or mental impairments.

97 (B) A person with a disability may be denied the accommodation of an assistance animal
98 if there is credible evidence that:

99 (i) The assistance animal poses a direct threat to the health or safety of others that cannot
100 be eliminated by another reasonable accommodation; or

101 (ii) The assistance animal would cause substantial physical damage to the property of
102 other that cannot be reduced or eliminated by another reasonable accommodation.

103 (C) A determination that an assistance animal poses a direct threat of harm to others or
104 would cause substantial physical damage to the property of others must be based on an
105 individualized assessment that relies on objective evidence about the specific animal's actual
106 conduct.

107 (D) A request for a reasonable accommodation may not be unreasonably denied,
108 conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or
109 residents with pets, and a response may not be unreasonably delayed.

§16B-18-6. Discrimination in residential real estate-related transactions.

1 (a) It is unlawful for any person or other entity whose business includes engaging in
2 residential real estate-related transactions to discriminate against any person in making available
3 such a transaction or in the terms or conditions of such a transaction because of race, color,
4 religion, sex, blindness, disability, familial status, ancestry or national origin.

5 (b) As used in this section, the term "residential real estate-related transaction" means any
6 of the following:

7 (1) The making or purchasing of loans or providing other financial assistance: (A) For
8 purchasing, constructing, improving, repairing or maintaining a dwelling; or (B) secured by
9 residential real estate; or

10 (2) The selling, brokering or appraising of residential real property.

11 (c) Nothing in this article prohibits a person engaged in the business of furnishing
12 appraisals of real property to take into consideration factors other than race, color, religion,
13 national origin, ancestry, sex, blindness, disability, or familial status.

§16B-18-7. Discrimination in provision of brokerage services.

1 It is unlawful to deny any person access to or membership or participation in any multiple
2 listing service, real estate broker's organization or other service, organization or facility relating to
3 the business of selling or renting dwellings, or to discriminate against him or her in the terms or
4 conditions of such access, membership, or participation on account of race, color, religion, sex,
5 blindness, disability, familial status, ancestry or national origin.

§16B-18-8. Religious organization or private club exemption.

1 (a) Nothing in this article shall prohibit a religious organization, association or society, or
2 any nonprofit institution or organization operated, supervised or controlled by or in conjunction
3 with a religious organization, association or society, from limiting the sale, rental or occupancy of
4 dwellings which it owns or operates for other than a commercial purpose to persons of the same
5 religion, or from giving preference to such persons, unless membership in such religion is
6 restricted on account of race, color or national origin. Nor shall anything in this article prohibit a
7 private club not in fact open to the public, which as an incident to its primary purpose or purposes
8 provides lodgings which it owns or operates for other than a commercial purpose, from limiting
9 the rental or occupancy of such lodgings to its members or from giving preference to its members.

10 (b) (1) Nothing in this article limits the applicability of any reasonable local, state or federal
11 restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor
12 does any provision in this article regarding familial status apply with respect to housing for older
13 persons.

14 (2) As used in this section, "housing for older persons" means housing:

15 (A) Provided under any state or federal program that the secretary of the United States
16 Department of Housing and Urban Development determines is specifically designed and operated
17 to assist elderly persons, as defined in the state or federal program; or

18 (B) Intended for, and solely occupied by, persons 62 years of age or older; or

19 (C) Intended and operated for occupancy by at least one person 55 years of age or older
20 per unit. In determining whether housing qualifies as housing for older persons under this
21 subsection, the commission shall develop regulations which require at least the following factors:

22 (i) The existence of significant facilities and services specifically designed to meet the physical or
23 social needs of older persons, or if the provision of such facilities and services is not practicable,
24 that such housing is necessary to provide important housing opportunities for older persons; (ii)
25 that at least 80 percent of the units are occupied by at least one person 55 years of age or older
26 per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate
27 an intent by the owner or manager to provide housing for persons 55 years of age or older.

28 (3) Housing shall not fail to meet the requirements for housing for older persons by reason
29 of: (A) Persons residing in such housing as of the date of enactment of this article who do not
30 meet the age requirements of subdivision (2)(B) or (C) of this subsection: *Provided*, That new
31 occupants of such housing meet the age requirements of such subdivisions; or (B) unoccupied
32 units: *Provided, however*, That such units are reserved for occupancy by persons who meet the
33 age requirements of subdivision (2)(B) or (C) of this subsection.

34 (4) Nothing in this article prohibits conduct against a person because such person has
35 been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of

36 a controlled substance as defined in Section 102 of the Controlled Substances Act, Title 21,
37 United States Code, Section 802.

**§16B-18-9. Administration; authority and responsibility; delegation of authority;
appointment of administrative law judges; location of conciliation meetings;
administrative review; cooperation of the commission and executive departments
and agencies to further fair housing purposes; functions of the commission.**

1 The authority and responsibility for administering this article shall be in the West Virginia
2 Human Rights Commission.

3 The commission may delegate any of its functions, duties and powers to employees of the
4 Human Rights Commission, including functions, duties and powers with respect to investigating,
5 conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any
6 work, business or matter under this article. The person to whom such delegations are made with
7 respect to hearing functions, duties and powers shall be a licensed attorney. Insofar as possible,
8 conciliation meetings shall be held in the county where the discriminatory housing practices
9 allegedly occurred. The commission shall by rule prescribe such rights of appeal from the
10 decisions of its administrative law judges to other administrative law judges or to other officers in
11 the commission, to boards of officers or to itself, as shall be appropriate and in accordance with
12 law.

13 All executive departments and agencies shall administer their programs and activities
14 relating to housing, including any agency having regulatory or supervisory authority over financial
15 institutions, in a manner affirmatively to further the purposes of this article and shall cooperate
16 with the commission to further such purposes.

17 The commission may:

18 (1) Make studies with respect to the nature and extent of discriminatory housing practices
19 in representative communities, urban, suburban and rural, throughout the state;

20 (2) Publish and disseminate reports, recommendations and information derived from such
21 studies, including reports to the Legislature specifying the nature and extent of progress made
22 statewide in eliminating discriminatory housing practices and furthering the purposes of this
23 article, obstacles remaining to achieving equal housing opportunity and recommendations for
24 further legislative or executive action;

25 (3) Cooperate with and execute such cooperative agreements with federal agencies as
26 are necessary to carry out the provisions of this article; and

27 (4) Administer the programs and activities relating to fair housing in a manner affirmatively
28 to further the policies of this article.

§16B-18-10. Education and conciliation; conferences and consultations; reports.

1 Immediately upon the effective date of this article, the commission shall commence such
2 educational and conciliatory activities as in its judgment will further the purposes of this article. It
3 may call conferences of persons in the housing industry and other interested parties to acquaint
4 them with the provisions of this article and its suggested means of implementing it, and may
5 endeavor with their advice to work out programs of voluntary compliance and of enforcement. It
6 may pay per diem, travel and transportation expenses for persons attending such conferences as
7 permitted by law. It may consult with local officials and other interested parties to learn the extent,
8 if any, to which housing discrimination exists in their locality, and whether and how local
9 enforcement programs might be utilized to combat such discrimination in connection with the
10 commission's enforcement of this article. The commission shall issue reports on such conferences
11 and consultations as it deems appropriate.

**§16B-18-11. Administrative enforcement; preliminary matters; complaints and answers;
service; conciliation; injunctions; reasonable cause determinations; issuance of
charge.**

1 (a) (1) (A) An aggrieved person may, not later than one year after an alleged discriminatory
2 housing practice has occurred or terminated, file a complaint with the commission alleging a

3 discriminatory housing practice. The commission, on the commission's own initiative, may also
4 file such a complaint. Such complaint shall be in writing and shall contain such information and
5 be in such form as the commission requires. The commission may also investigate housing
6 practices to determine whether a complaint should be brought under this section.

7 (B) Upon the filing of such complaint: (i) The commission shall serve notice upon the
8 aggrieved person acknowledging such filing and advising the aggrieved person of the time limits
9 and choice of forums provided under this article; (ii) the commission shall, not later than 10 days
10 after such filing or the identification of an additional respondent under paragraph (2) of this
11 subsection, serve on the respondent a notice identifying the alleged discriminatory housing
12 practice and advising such respondent of the procedural rights and obligations of respondents
13 under this article, together with a copy of the original complaint; (iii) each respondent may file, not
14 later than ten days after receipt of notice from the commission, an answer to such complaint; and
15 (iv) unless it is impracticable to do so, the commission shall make an investigation of the alleged
16 discriminatory housing practice and complete such investigation within 100 days after the filing of
17 the complaint.

18 (C) If the commission is unable to complete the investigation within 100 days after the
19 filing of the complaint, the commission shall notify the complainant and respondent in writing of
20 the reasons for not doing so.

21 (D) Complaints and answers shall be under oath or affirmation and may be reasonably
22 and fairly amended at any time.

23 (2) (A) A person who is not named as a respondent in a complaint, but who is identified
24 as a respondent in the course of investigation, may be joined as an additional or substitute
25 respondent upon written notice, under paragraph (1) of this subsection, to such person, from the
26 commission.

27 (B) Such notice, in addition to meeting the requirements of paragraph (1) of this
28 subsection, shall explain the basis for the commission's belief that the person to whom the notice
29 is addressed is properly joined as a respondent.

30 (b) (1) During the period beginning with the filing of such complaint and ending with the
31 filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible,
32 engage in conciliation with respect to such complaint.

33 (2) A conciliation agreement arising out of such conciliation shall be an agreement
34 between the respondent and the complainant and shall be subject to approval by the commission.

35 (3) A conciliation agreement may provide for binding arbitration of the dispute arising from
36 the complaint. Any such arbitration that results from a conciliation agreement may award
37 appropriate relief, including monetary relief.

38 (4) Each conciliation agreement shall be made public unless the complainant and
39 respondent otherwise agree and the commission determines that disclosure is not required to
40 further the purposes of this article.

41 (5) (A) At the end of each investigation under this section, the commission shall prepare
42 a final investigative report containing: (i) The names and dates of contacts with witnesses; (ii) a
43 summary and the dates of correspondence and other contacts with the aggrieved person and the
44 respondent; (iii) a summary description of other pertinent records; (iv) a summary of witness
45 statements; and (v) answers to interrogatories.

46 (B) A final report under this paragraph may be amended if additional evidence is later
47 discovered.

48 (c) Whenever the commission has reasonable cause to believe that a respondent has
49 breached a conciliation agreement, the commission shall refer the matter to the Attorney General
50 with a recommendation that a civil action be filed under §16B-18-15 of this code for the
51 enforcement of such agreement.

52 (d) Nothing said or done in the course of conciliation under this article may be made public
53 or used as evidence in a subsequent proceeding under this article without the written consent of
54 the persons concerned, except the commission shall make available to the aggrieved person and
55 the respondent, at any time, upon request following completion of the commission's investigation,
56 information derived from an investigation and any final investigative report relating to that
57 investigation.

58 (e) (1) If the commission concludes at any time following the filing of a complaint that
59 prompt judicial action is necessary to carry out the purposes of this article, the commission may
60 authorize a civil action for appropriate temporary or preliminary relief pending final disposition of
61 the complaint under this section. Upon receipt of such authorization, the Attorney General shall
62 promptly commence and maintain such an action. Any temporary injunction or other order
63 granting preliminary or temporary relief shall be issued in accordance with the West Virginia rules
64 of civil procedure. The commencement of a civil action under this subsection does not affect the
65 initiation or continuation of administrative proceedings under this section and §16B-18-13 of this
66 code.

67 (2) Whenever the commission has reason to believe that a basis may exist for the
68 commencement of proceedings against any respondent under subsections (a) and (b), §16B-18-
69 15 of this code or for proceedings by any governmental licensing or supervisory authorities, the
70 commission shall transmit the information upon which such belief is based to the Attorney
71 General, or to such authorities, as the case may be.

72 (f) (1) The commission shall within 100 days after the filing of the complaint determine,
73 based on the facts, whether reasonable cause exists to believe that a discriminatory housing
74 practice has occurred or is about to occur, unless it is impracticable to do so, or unless the
75 commission has approved a conciliation agreement with respect to the complaint. If the
76 commission is unable to make the determination within 100 days after the filing of the complaint,

77 the commission shall notify the complainant and respondent in writing of the reasons for not doing
78 so.

79 (2) (A) If the commission determines that reasonable cause exists to believe that a
80 discriminatory housing practice has occurred or is about to occur, the commission shall, except
81 as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person,
82 for further proceedings under section thirteen of this article.

83 (B) Such charge: (i) Shall consist of a short and plain statement of the facts upon which
84 the commission has found reasonable cause to believe that a discriminatory housing practice has
85 occurred or is about to occur; (ii) shall be based on the final investigative report; and (iii) need not
86 be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

87 (C) If the commission determines that the matter involves the legality of any state or local
88 zoning or other land use law or ordinance, the commission shall immediately refer the matter to
89 the Attorney General for appropriate action under section fifteen of this article, instead of issuing
90 such charge.

91 (3) If the commission determines that no reasonable cause exists to believe that a
92 discriminatory housing practice has occurred or is about to occur, the commission shall promptly
93 dismiss the complaint. The commission shall make public disclosure of each such dismissal.

94 (4) The commission may not issue a charge under this section regarding an alleged
95 discriminatory housing practice after the beginning of the trial of a civil action commenced by the
96 aggrieved party under an act of Congress or a state law seeking relief with respect to that
97 discriminatory housing practice.

98 (g) After the commission issues a charge under this section, the commission shall cause
99 a copy thereof, together with information as to how to make an election under subsection (a),
100 §16B-18-13 of this code and the effect of such an election, to be served: (1) On each respondent
101 named in such charge, together with a notice of opportunity for a hearing at a time and place

102 specified in the notice, unless that election is made; and (2) on each aggrieved person on whose
103 behalf the complaint was filed.

§16B-18-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

1 The commission may, in accordance with this subsection, issue subpoenas and order
2 discovery in aid of investigations and hearings under this article. Such subpoenas and discovery
3 may be ordered to the same extent and subject to the same limitations as would apply if the
4 subpoenas or discovery were ordered or served in aid of a civil action in the circuit courts of this
5 state.

6 Witnesses summoned by a subpoena under this article shall be entitled to the same
7 witness and mileage fees as witnesses in proceedings in the circuit courts of this state. Fees
8 payable to a witness summoned by a subpoena shall be paid by the commission, the complainant
9 or the respondent in accordance with §29A-5-1 *et seq.* of this code.

10 Enforcement of subpoenas may be had in the circuit courts of this state as set out in §29A-
11 5-1 *et seq.* of this code.

**§16B-18-13. Election of remedies; administrative hearings and discovery; exclusivity of
remedies; final orders; review by commission; judicial review; remedies; attorney
fees.**

1 (a) When a charge is filed under §16B-18-11 of this code a complainant, a respondent or
2 an aggrieved person on whose behalf the complaint was filed, may elect to have the claims
3 asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a
4 hearing under subsection (b) of this section. The election must be made not later than 20 days
5 after the receipt by the electing person of service under section eleven of this article or, in the
6 case of the commission, not later than 20 days after such service. The person making such
7 election shall give notice of doing so to the commission and to all other complainants and
8 respondents to whom the charge relates.

9 (b) If an election is not made under subsection (a) of this section with respect to a charge
10 filed under section eleven of this article, the commission shall provide an opportunity for a hearing
11 on the record with respect to a charge issued under said section. The commission shall delegate
12 the conduct of a hearing under this section to an administrative law judge who shall be a licensed
13 attorney. The administrative law judge shall conduct the hearing at a place in the county in which
14 the discriminatory housing practice is alleged to have occurred or is about to occur.

15 (c) At a hearing under this section, each party may appear in person, be represented by
16 counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under
17 §16B-18-12 of this code. Any aggrieved person may intervene as a party in the proceeding. The
18 rules of evidence apply to the presentation of evidence in such hearing as they would in a civil
19 action in the circuit courts of this state. The case in support of the complaint shall be presented
20 before the administrative law judge by the Attorney General.

21 (d) (1) Discovery in administrative proceedings under this section shall be conducted as
22 expeditiously and inexpensively as possible, consistent with the need of all parties to obtain
23 relevant evidence.

24 (2) A hearing under this section shall be conducted as expeditiously and inexpensively as
25 possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete
26 record.

27 (3) The commission shall, not later than 180 days after the date of enactment of this
28 subsection, issue rules to implement this subsection.

29 (e) Any resolution of a charge before a final order under this section shall require the
30 consent of the aggrieved person on whose behalf the charge is issued.

31 (f) An administrative law judge may not continue administrative proceedings under this
32 section regarding any alleged discriminatory housing practice after the beginning of the trial of a
33 civil action commenced by the aggrieved party under an act of Congress or a state law seeking
34 relief with respect to that discriminatory housing practice.

35 (g) (1) The administrative law judge shall commence the hearing under this section no
36 later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the
37 administrative law judge is unable to commence the hearing within 120 days after the issuance
38 of the charge, the administrative law judge shall notify the commission, the aggrieved person on
39 whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

40 (2) The administrative law judge shall make findings of fact and conclusions of law within
41 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the
42 administrative law judge is unable to make findings of fact and conclusions of law within such
43 period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the
44 commission, the aggrieved person on whose behalf the charge was filed and the respondent in
45 writing of the reasons for not doing so.

46 (3) If the administrative law judge finds that a respondent has engaged or is about to
47 engage in a discriminatory housing practice, such administrative law judge shall promptly issue
48 an order for such relief as may be appropriate, which may include actual damages suffered by
49 the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the
50 public interest, assess a civil penalty against the respondent: (A) In an amount not exceeding
51 \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory
52 housing practice; (B) in an amount not exceeding \$25,000 if the respondent has been adjudged
53 to have committed one other discriminatory housing practice during the five-year period ending
54 on the date of the filing of this charge; and (C) in an amount not exceeding \$50,000 if the
55 respondent has been adjudged to have committed two or more discriminatory housing practices
56 during the seven-year period ending on the date of the filing of this charge; except that if the acts
57 constituting the discriminatory housing practice that are the object of the charge are committed
58 by the same natural person who has been previously adjudged to have committed acts
59 constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs

60 (B) and (C) may be imposed without regard to the period of time within which any subsequent
61 discriminatory housing practice occurred.

62 (4) No such order shall affect any contract, sale, encumbrance or lease consummated
63 before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant
64 without actual notice of the charge filed under this article.

65 (5) In the case of an order with respect to a discriminatory housing practice that occurred
66 in the course of a business subject to licensing or regulation by a governmental agency, the
67 commission shall, not later than thirty days after the date of the issuance of such order or, if such
68 order is judicially reviewed, 30 days after such order is in substance affirmed upon such review:

69 (A) Send copies of the findings of fact, conclusions of law and the order to that governmental
70 agency; and (B) recommend to that governmental agency appropriate disciplinary action,
71 including, where appropriate, the suspension or revocation of the license of the respondent.

72 (6) In the case of an order against a respondent against whom another order was issued
73 within the preceding five years under this section, the commission shall send a copy of each such
74 order to the Attorney General.

75 (7) If the administrative law judge finds that the respondent has not engaged or is not
76 about to engage in a discriminatory housing practice, as the case may be, such administrative
77 law judge shall enter an order dismissing the charge. The commission shall make public
78 disclosure of each such dismissal.

79 (h) (1) The commission may review any finding, conclusion or order issued under
80 subsection (g) of this section. Such review shall be completed not later than 30 days after the
81 finding, conclusion or order is so issued; otherwise the finding, conclusion or order becomes final.

82 (2) The commission shall cause the findings of fact and conclusions of law made with
83 respect to any final order for relief under this section, together with a copy of such order, to be
84 served on each aggrieved person and each respondent in the proceeding.

85 (i) (1) Any party aggrieved by a final order for relief under this section granting or denying,
86 in whole or in part, the relief sought may obtain a review of such order under §29A-5-4 of this
87 code.

88 (2) Notwithstanding §29A-1-1 *et seq.* of this code, venue of the proceeding shall be in the
89 judicial circuit in which the discriminatory housing practice is alleged to have occurred and filing
90 of the petition for review shall be not later than 30 days after the order is entered.

91 (j) (1) The commission may petition the circuit court in the circuit in which the discriminatory
92 housing practice is alleged to have occurred or in which any respondent resides or transacts
93 business for the enforcement of the order of the administrative law judge and for appropriate
94 temporary relief or injunctive relief by filing in such court a written petition praying that such order
95 be enforced and for appropriate temporary relief or injunctive relief.

96 (2) The commission shall file in court with the petition the record in the proceeding. A copy
97 of such petition shall be forthwith transmitted by the clerk of the court to the parties to the
98 proceeding before the administrative law judge.

99 (k) (1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:

100 (A) Grant to the petitioner, or any other party, such temporary relief, injunction or other
101 order as the court deems just and proper;

102 (B) Affirm the order or decision of the administrative law judge or remand the case for
103 further proceedings. It shall reverse, vacate or modify the order or decision of the administrative
104 law judge if the substantial rights of the parties have been prejudiced because the administrative
105 findings, inferences, conclusions, decision or order are: (i) In violation of Constitutional or statutory
106 provisions; or (ii) in excess of the statutory authority or jurisdiction of the commission; or (iii) made
107 upon unlawful procedures; or (iv) affected by other error of law; or (v) clearly wrong in view of the
108 reliable, probative and substantial evidence on the whole record; or (vi) arbitrary or capricious or
109 characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

110 (C) Enforce such order to the extent that such order is affirmed or modified.

111 (2) Any party to the proceeding before the administrative law judge may intervene in the
112 circuit court.

113 (3) No objection not made before the administrative law judge shall be considered by the
114 court, unless the failure or neglect to urge such objection is excused because of extraordinary
115 circumstances.

116 (4) The judgment of the circuit court shall be final unless reversed, vacated, or modified
117 on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of
118 §29A-6-1 of this code.

119 (l) If no petition for review is filed under subsection (i) of this section before the expiration
120 of 45 days after the date the administrative law judge's order is entered, the administrative law
121 judge's findings of fact and order shall be conclusive in connection with any petition for
122 enforcement: (1) Which is filed by the commission under subsection (j) of this section after the
123 end of such day; or (2) under subsection (m) of this section.

124 (m) If before the expiration of 60 days after the date the administrative law judge's order
125 is entered, no petition for review has been filed under subsection (i) of this section, and the
126 commission has not sought enforcement of the order under subsection (j) of this section, any
127 person entitled to relief under the order may petition for a decree enforcing the order in the circuit
128 court for the circuit in which the discriminatory housing practice is alleged to have occurred.

129 (n) The judge of the circuit court in which a petition for enforcement is filed under
130 subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall
131 transmit a copy of such decree to the commission, the respondent named in the petition and to
132 any other parties to the proceeding before the administrative law judge. The judgment of the circuit
133 court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of
134 Appeals pursuant to §29A-6-1 of this code.

135 (o) (1) If an election is made under subsection (a) of this section, the commission shall
136 authorize, and not later than 30 days after the election is made the Attorney General shall

137 commence and maintain, a civil action on behalf of the aggrieved person in the appropriate circuit
138 court seeking relief under this subsection. Venue for such civil action shall be in the circuit court
139 in the county in which the alleged discriminatory housing practice occurred.

140 (2) Any aggrieved person with respect to the issues to be determined in a civil action under
141 this subsection may intervene as of right in that civil action.

142 (3) In a civil action under this subsection, if the court finds that a discriminatory housing
143 practice has occurred or is about to occur, the court may grant as relief any relief which a court
144 could grant with respect to such discriminatory housing practice in a civil action under §16B-18-
145 12 of this code. Any relief so granted that would accrue to an aggrieved person in a civil action
146 commenced by that aggrieved person under said section shall also accrue to that aggrieved
147 person in a civil action under this subsection. If monetary relief is sought for the benefit of an
148 aggrieved person who does not intervene in the civil action, the court shall not award such relief
149 if that aggrieved person has not complied with discovery orders entered by the court.

150 (p) In any administrative proceeding brought under this section, or any court proceeding
151 arising therefrom, or any civil action under section fourteen of this article, the administrative law
152 judge or the court, as the case may be, in its discretion, may allow a prevailing complainant a
153 reasonable attorney's fee and costs.

**§16B-18-14. Enforcement by private persons; civil actions; appointed attorneys; remedies;
bona fide purchasers; intervention by Attorney General.**

1 (a) (1) (A) An aggrieved person may commence a civil action in an appropriate circuit court
2 not later than two years after the occurrence or the termination of an alleged discriminatory
3 housing practice, or the breach of a conciliation agreement entered into under this article,
4 whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing
5 practice or breach.

6 (B) The computation of such two-year period shall not include any time during which an
7 administrative proceeding under this article was pending with respect to a complaint or charge

8 under this article based upon such discriminatory housing practice. This subparagraph does not
9 apply to actions arising from a breach of a conciliation agreement.

10 (2) An aggrieved person may commence a civil action under this subsection whether or
11 not a complaint has been filed under subsection (a), §16B-18-11 of this code and without regard
12 to the status of any such complaint, but if the commission has obtained a conciliation agreement
13 with the consent of an aggrieved person, no action may be filed under this subsection by such
14 aggrieved person with respect to the alleged discriminatory housing practice which forms the
15 basis for such complaint except for the purpose of enforcing the terms of such an agreement.

16 (3) An aggrieved person may not commence a civil action under this subsection with
17 respect to an alleged discriminatory housing practice which forms the basis of a charge issued by
18 the commission if an administrative law judge has commenced a hearing on the record under this
19 article with respect to such charge.

20 (b) Upon application by a person alleging a discriminatory housing practice, the court may:

21 (1) Appoint an attorney for such person; or (2) authorize the commencement or continuation of a
22 civil action under subsection (a) of this section without the payment of fees, costs or security, if in
23 the opinion of the court such person is financially unable to bear the costs of such action.

24 (c) (1) In a civil action under subsection (a) of this section, if the court finds that a
25 discriminatory housing practice has occurred or is about to occur, the court may award to the
26 complainant actual and punitive damages, and subject to subsection (d) of this section, may grant
27 as relief, as the court deems appropriate, any permanent or temporary injunction or other order,
28 including an order enjoining the respondent from engaging in such practice or ordering such
29 affirmative action as may be appropriate.

30 (2) In a civil action under subsection (a) of this section, the court, in its discretion, may
31 allow a prevailing complainant a reasonable attorney's fee and costs.

32 (d) Relief granted under this section shall not affect any contract, sale, encumbrance or
33 lease consummated before the granting of such relief and involving a bona fide purchaser,

34 encumbrancer or tenant without actual notice of the filing of a complaint with the commission or
35 civil action under this section.

36 (e) Upon timely application, the Attorney General may intervene in such civil action, if the
37 Attorney General certifies that the case is of general public importance. Upon such intervention
38 the Attorney General may obtain such relief as would be available to the Attorney General under
39 subsection (d), §16B-18-15 of this code in a civil action to which such section applies.

16B-18-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

1 (a) Whenever the Attorney General has reasonable cause to believe that any person or
2 group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of
3 the rights granted by this article, or that any group of persons has been denied any of the rights
4 granted by this article and such denial raises an issue of general public importance, the Attorney
5 General may commence a civil action in any appropriate circuit court.

6 (b) (1) The Attorney General may commence a civil action in any appropriate circuit court
7 for appropriate relief with respect to a discriminatory housing practice referred to the Attorney
8 General by the commission under subsection (f), §16B-18-11 of this code. A civil action under
9 this paragraph may be commenced not later than the expiration of 18 months after the date of the
10 occurrence or the termination of the alleged discriminatory housing practice.

11 (2) The Attorney General may commence a civil action in any appropriate circuit court for
12 appropriate relief with respect to breach of a conciliation agreement referred to the Attorney
13 General by the commission under subsection (c), §16B-18-12 of this code. A civil action may be
14 commenced under this paragraph not later than the expiration of 90 days after the referral of the
15 alleged breach under subsection (c), section eleven of this article.

16 (c) The Attorney General, on behalf of the commission or other party at whose request a
17 subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in

18 the circuit court for the circuit in which the person to whom the subpoena was addressed resides,
19 was served or transacts business.

20 (d) (1) In a civil action under subsection (a) or (b) of this section, the court:

21 (A) May award such preventive relief, including a permanent or temporary injunction or
22 other order against the person responsible for a violation of this article as is necessary to assure
23 the full enjoyment of the rights granted by this article;

24 (B) May award such other relief as the court deems appropriate, including monetary
25 damages to persons aggrieved; and

26 (C) May, to vindicate the public interest, assess a civil penalty against the respondent: (i)
27 In an amount not exceeding \$50,000 for a first violation; and (ii) in an amount not exceeding
28 \$100,000 for any subsequent violation.

29 (2) In a civil action under this section, the court, in its discretion, may allow a prevailing
30 complainant a reasonable attorney's fee and costs.

31 (e) Upon timely application, any person may intervene in a civil action commenced by the
32 Attorney General under subsection (a) or (b) of this section which involves an alleged
33 discriminatory housing practice with respect to which such person is an aggrieved person or a
34 conciliation agreement to which such person is a party. The court may grant such appropriate
35 relief to any such intervening party as is authorized to be granted to a complainant in a civil action
36 under section fourteen of this article.

§16B-18-16. Interference, coercion, or intimidation; enforcement by civil action.

1 It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the
2 exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account
3 of his or her having aided or encouraged any other person in the exercise or enjoyment of, any
4 right granted or protected by section §16B-18-4 of this code, §16B-18-5 of this code, §16B-18-6,
5 of this code or §16B-18-7 of this code of this article.

§16B-18-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication in state register.

1 The commission may cooperate with local agencies charged with the administration of
2 local fair housing laws and, with the consent of such agencies, utilize the services of such
3 agencies and their employees and, to the extent permitted by law, may reimburse such agencies
4 and their employees for services rendered to assist it in carrying out this article. In furtherance of
5 such cooperative efforts, the commission may enter into written agreements with such local
6 agencies. All agreements and terminations thereof shall be published in the state register.

§16B-18-18. Effect on other laws.

1 Nothing in this article shall be construed to invalidate or limit any law of this state or of any
2 political subdivision of this state, that grants, guarantees or protects the same rights as are
3 granted by this article; but any law of this state or any political subdivision hereof that purports to
4 require or permit any action that would be a discriminatory housing practice under this article shall
5 to that extent be invalid.

§16B-18-19. Severability of provisions.

1 If any provision of this article or the application thereof to any person or circumstances is
2 held invalid, the remainder of the article and the application of the provision to other persons not
3 similarly situated or to other circumstances shall not be affected thereby.

§16B-18-20. Rules to implement article.

1 In consultation with other appropriate agencies, the commission shall, not later than the
2 one hundred eightieth day after the date of the enactment of this article, issue rules to implement
3 it. Such rules may include provision for the collection, maintenance, and analysis of appropriate
4 data to carry out this article. The commission shall comply with §29A-3-1 *et seq.* of this code when
5 promulgating rules.

ARTICLE 19. PREGNANCY WORKERS' FAIRNESS ACT.

§16B-19-1. Short title.

1 This article may be cited as the Pregnant Workers' Fairness Act.

§16B-19-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

1 It shall be an unlawful employment practice for a covered entity to:

2 (1) Not make reasonable accommodations to the known limitations related to the
3 pregnancy, childbirth, or related medical conditions of a job applicant or employee, following
4 delivery by the applicant or employee of written documentation from the applicant's or employee's
5 health care provider that specifies the applicant's or employee's limitations and suggesting what
6 accommodations would address those limitations, unless such covered entity can demonstrate
7 that the accommodation would impose an undue hardship on the operation of the business of
8 such covered entity;

9 (2) Deny employment opportunities to a job applicant or employee, if such denial is based
10 on the refusal of the covered entity to make reasonable accommodations to the known limitations
11 related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;

12 (3) Require a job applicant or employee affected by pregnancy, childbirth, or related
13 medical conditions to accept an accommodation that such applicant or employee chooses not to
14 accept; or

15 (4) Require an employee to take leave under any leave law or policy of the covered entity
16 if another reasonable accommodation can be provided to the known limitations related to the
17 pregnancy, childbirth, or related medical conditions of an employee.

§16B-19-3. Remedies and enforcement.

1 (a) The powers, procedures, and remedies provided in §16B-19-11 of this code to the
2 Commission, the Attorney General, or any person, alleging a violation of the West Virginia Human
3 Rights Act shall be the powers, procedures, and remedies this article provides to the Commission,

4 the Attorney General, or any person, respectively, alleging an unlawful employment practice in
5 violation of this article against an employee or job applicant.

6 (b) No person shall discriminate against any individual because such individual has
7 opposed any act or practice made unlawful by this article or because such individual made a
8 charge, testified, assisted, or participated in any manner in an investigation, proceeding, or
9 hearing under this article. The remedies and procedures otherwise provided for under this section
10 shall be available to aggrieved individuals with respect to violations of this subsection.

§16B-19-4. Rule-making.

1 Not later than two years after the date of enactment of this article, the Commission shall
2 propose legislative rules in accordance with §29A-3-1 of this code, to carry out this article. Such
3 rules shall identify some reasonable accommodations addressing known limitations related to
4 pregnancy, childbirth, or related medical conditions that shall be provided to a job applicant or
5 employee affected by such known limitations unless the covered entity can demonstrate that
6 doing so would impose an undue hardship.

§16B-19-5. Definitions.

1 As used in this article:

2 (1) "Attorney General" means the West Virginia Attorney General;

3 (2) "Commission" means the West Virginia Human Rights Commission;

4 (3) "Covered entity" has the meaning given the word employer in §16B-17-3 of this code;

5 (4) "Person" has the meaning given the word in section three, article eleven of this chapter;

6 and

7 (5) "Reasonable accommodation" and "undue hardship" have the meanings given those
8 terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall
9 be construed as such terms have been construed under such Act and as set forth in the rules
10 required by this article.

§16B-19-6. Reports.

1 The Commission shall on October 1 of each year report to the Joint Committee on
2 Government and Finance on the number of complaints filed under this article during the previous
3 year and their resolution. The report shall be transmitted to the members of the committee
4 electronically. Further, the report shall be provided to the legislative librarian to be posted to the
5 legislative website. No hard copy of the report shall be issued; however, a member shall be
6 provided a hard copy upon request.

§16B-19-7. Relationship to other laws.

1 Nothing in this article shall be construed to invalidate or limit the remedies, rights, and
2 procedures that provides greater or equal protection for workers affected by pregnancy, childbirth,
3 or related medical conditions.

ARTICLE 20. BIRTHING CENTERS.

§16B-20-1. Definitions.

1 For the purpose of this article:

2 "Birthing center" means a type of facility which is a building, house or the equivalent
3 organized to provide facilities and staff to support a birthing service for pregnant clients.

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

6 "Inspector General" means the Inspector General of the Office of the Inspector General
7 as described in §16B-2-1 of this code, or his or her designee.

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

§16B-20-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

1 The Inspector General designates the director of the Office of Health Facilities Licensure
2 and Certification to enforce the provisions of this article, except as otherwise stated.

3 No person, partnership, association, or corporation, or any local governmental unit or any
4 division, department, board or agency thereof may operate a birthing center unless such operation

5 shall have been approved and licensed by the director in accordance with the provisions of this
6 article and the rules and regulations lawfully promulgated hereunder provided that all birthing
7 centers which are in operation or which have received a certificate of need valid as of the date of
8 passage of this act shall be deemed to have been so approved and shall be issued a license
9 within 30 days of passage of this act.

10 Any person, partnership, association or corporation, or any local governmental unit or any
11 division, department, board, or agency thereof desiring a license hereunder shall file with the
12 director an application in such form as the director shall prescribe and furnish accompanied by a
13 fee of \$10. Information received by the director under the provisions of this section shall be
14 confidential. The director is authorized to issue licenses for the operation of birthing centers which
15 are found to comply with the provisions of this article and with all rules and regulations
16 promulgated by the Inspector General. The license issued shall not be transferred or assignable.
17 The director, in consultation with the Inspector General, is authorized to suspend or revoke a
18 license issued hereunder if the provisions of this article or of the rules and regulations are violated.

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

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

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

34 The West Virginia Intermediate Court of Appeals shall have the power to affirm, modify or
35 reverse the decision of the Board of Review and either the applicant or licensee or the Office of
36 Inspector General may appeal from the court's decision to the Supreme Court of Appeals.
37 Pending the final disposition of the matter the status quo of the applicant or licensee shall be
38 preserved.

39 Any applicant or licensee who is dissatisfied with the decision of the Board of Review as
40 a result of the hearing provided in this section may, within 30 days after receiving notice of the
41 decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the
42 decision.

**§16B-20-3. Inspector General to establish rules and regulations; legislative findings;
emergency filing.**

1 The Inspector General shall promulgate rules and regulations not in conflict with any
2 provision of this article, as he or she finds necessary in order to ensure adequate care and
3 accommodations for consumers of birthing centers. In promulgating such regulations the
4 Inspector General shall be limited to simple, necessary provisions which shall not have the effect
5 of hampering the development and licensure of birthing centers. Such regulations shall not
6 address acceptable site characteristics such as the number of minutes of travel time between a
7 birthing center and a hospital, or physical environment, such as acceptable levels of temperature
8 of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind
9 of clocks which a birthing center must have on the premises. Such regulations shall require that
10 all birthing centers submit satisfactory evidence that the center has implemented the paternity
11 program created pursuant to §16B-3-13 of this code along with any application for licensure.

12 The Legislature hereby finds and declares that it is in the public interest to encourage the
13 development of birthing centers for the purpose of providing an alternative method of birth and
14 therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm
15 to the public interest because of preexisting delay, within 60 days of passage of this article, the
16 Inspector General shall proceed to promulgate such rules and regulations under the provisions of
17 §29A-3-15 of this code.

§16B-20-4. Insurance.

1 Not later than July 1, 1983, every policy or contract of individual accident and sickness
2 insurance covered under the provision of §33-15-1 *et seq.* of this code, or policy or contract of
3 group accident and sickness insurance covered under the provisions of §33-16-1 *et seq.* of this
4 code, including, but not limited to, any subscriber contract issued by a corporation organized
5 pursuant to §33-24-1 *et seq.* of this code , shall include benefits to all subscribers and members
6 for birthing center service charges, and for care rendered therein by a licensed nurse midwife or
7 midwife as this occupation is defined in §30-15-1 *et seq.* of this code, and which care is within the
8 scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of §30-
9 15-7 of this code.

§16B-20-5. Violations; penalties; injunction.

1 Any person, partnership, association or corporation, and any local governmental unit or
2 any division, department, board, or agency thereof establishing, conducting, managing or
3 operating a birthing center without first obtaining a license therefor as herein provided, or violating
4 any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be
5 guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a
6 fine of not more than \$100, or by imprisonment in the county jail for a period of not more than 90
7 days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent
8 offense the fine may be increased to not more than \$500, with imprisonment in the county jail for

9 a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the
10 court. Each day of a continuing violation after conviction shall be considered a separate offense.

11 Notwithstanding the existence or pursuit of any other remedy, the Inspector General may,
12 in the manner provided by law, maintain an action in the name of the state for an injunction against
13 any person, partnership, association, corporation, or any local governmental unit, or any division,
14 department, board or agency thereof, to restrain or prevent the establishment, conduct,
15 management or operation of any birthing center without first obtaining a license therefor in the
16 manner hereinbefore provided.

ARTICLE 21. NEONATAL ABSTINENCE SYNDROME CENTER.

§16B-21-1. Neonatal Abstinence Centers authorized; licensure required.

1 Neonatal abstinence centers are a distinct type of medical facility, providing unique
2 medical services in the state. Neonatal abstinence centers may provide treatment for infants
3 under one year of age suffering from Neonatal Abstinence Syndrome, including, but not limited
4 to, the following services:

- 5 (1) Administration of medications;
- 6 (2) Pain management;
- 7 (3) Scoring, analysis and monitoring of symptoms;
- 8 (4) Nursing care;
- 9 (5) Plan of care;
- 10 (6) Therapeutic handling;
- 11 (7) Nutrition management;
- 12 (8) Doctor visits; and
- 13 (9) Parental training.

§16B-21-2. Rules; minimum standards for neonatal abstinence centers.

1 (a) The Inspector General shall promulgate emergency rules pursuant to the provisions of
2 section §29A-3-15 of this code to carry out the purpose of this article. These rules shall include at
3 a minimum:

4 (1) Licensing procedures for neonatal abstinence centers. These procedures shall be in
5 place by July 1, 2015;

6 (2) The minimum standards of operation for neonatal abstinence facilities including the
7 following:

8 (A) Minimum numbers of administrators, medical directors, nurses, aides and other
9 personnel according to the occupancy of the facility;

10 (B) Qualifications of facility's administrators, medical directors, nurses, aides and other
11 personnel;

12 (C) Safety requirements;

13 (D) Sanitation requirements;

14 (E) Therapeutic services to be provided;

15 (F) Medical records;

16 (G) Pharmacy services;

17 (H) Nursing services;

18 (I) Medical services;

19 (J) Physical facility;

20 (K) Visitation privileges; and

21 (L) Admission, transfer and discharge policies.

22 (b) The provisions of the rules promulgated pursuant to this section shall apply only to
23 those facilities regulated pursuant to §16-2D-1 *et seq.* of this code and shall not apply to a
24 hospital-based acute care unit.

§16B-21-3. Certificate of need; exemption from moratorium.

1 Notwithstanding any other provision of this code, the Health Care Authority shall consider
2 neonatal abstinence services provided in neonatal abstinence care centers as a unique and
3 distinct medical service in conducting a certificate of need review.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1B. WEST VIRGINIA CORRECTIONAL CENTER NURSERY ACT.

§25-1B-7. Voluntary regulation.

1 Notwithstanding any other provision of this code to the contrary, neither the Correctional
2 Center Nursery Program nor the division, with respect to the program, is subject to any regulation,
3 licensing or oversight by the Office of Health Facility Licensure and Certification unless the
4 division and the Office of Health Facility Licensure and Certification agree to voluntary regulation,
5 licensing or oversight.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-9. Mental health facility.

1 "Mental health facility" means any inpatient, residential or outpatient facility for the care
2 and treatment of the mentally ill, intellectually disabled or addicted which is operated, or licensed
3 to operate, by the Office of Health Facility Licensure and Certification and includes state hospitals
4 as defined in §27-1-6 of this code. The term also includes veterans administration hospitals, but
5 does not include any regional jail, juvenile or adult correctional facility, or juvenile detention facility.

ARTICLE 1A. DEPARTMENT OF HEALTH.

§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.

1 There is a Division of Professional Services established in the Department of Health
2 Facilities. The supervisor of this division shall assist the director in the operation of the programs
3 or services of the department and shall be a qualified psychiatrist.

4 The supervisor of this division has the following powers and duties:

5 (1) To develop professional standards, provide supervision of state hospitals, analyze
6 hospital programs and inspect individual hospitals.

7 (2) To assist in recruiting professional staff.

8 (3) To take primary responsibility for the education and training of professional and
9 subprofessional personnel.

10 (4) To carry on or stimulate research activities related to medical and psychiatric facilities
11 of the department, and render specialized assistance to hospital superintendents.

12 (5) To establish liaison with appropriate state agencies and with private groups interested
13 in mental health, including the state Bureau for Public Health, Division of Corrections, the
14 Department of Education, the Board of Governors of West Virginia University, and the West
15 Virginia Association for Mental Health, Incorporated.

16 (6) To license, supervise and inspect any hospital, center or institution, or part of any
17 hospital, center or institution, maintained and operated by any political subdivision or by any
18 person, persons, association or corporation to provide inpatient care and treatment for the
19 mentally ill, or individuals with an intellectual disability, or both.

20 To perform any other duties assigned to the division by the Secretary of the Department
21 of Health Facilities.

§27-1A-7. Division of community services; powers and duties of supervisor.

1 There shall be a division of community services in the Department of Human Services.
2 This division shall administer all funds made available to the State of West Virginia and any
3 political subdivision thereof under the National Mental Health Act, and all other funds made
4 available for use by this division. The director shall establish standards and criteria for reimbursing
5 sponsoring groups for a portion of the cost of local mental health services which they may provide.

6 The supervisor of this division shall also have the following powers and duties:

7 (1) To establish standards for and supervise the operation of community mental health
8 clinics for adults and children and to develop new community facilities and community service
9 programs for the overall improvement of the regional mental health facilities.

10 (2) To develop a comprehensive and practical program of mental health education of the
11 public, especially at the local level.

12 (3) To work with county mental hygiene commissions and circuit courts.

13 (4) To determine and approve schedules of reasonable cost for reimbursement by the
14 patient or responsible relative for mental health services rendered.

15 (5) To perform any other duties assigned to the division by the director of the department.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License; regulations.

1 No behavioral health center shall provide behavioral health services unless a license is
2 first obtained from the Secretary of the Office of Health Facility Licensure and Certification. The
3 director of the Office of Health Facility Licensure and Certification shall propose rules for
4 legislative approval in accordance with the provisions of §29A-3-1 *et seq.*, in regard to the
5 operation of behavioral health centers. The director, or any person authorized by the director, has
6 authority to investigate and inspect any licensed behavioral health center. The director may
7 impose a civil money penalty, suspend, or revoke the license of any center for good cause after
8 reasonable notice, including due process rights as provided in legislative rule.

§27-9-2. Forensic group homes.

1 The Inspector General shall propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the
3 provisions of §29A-3-15 of this code to amend the Behavioral Health Centers Licensure Rule,
4 W.Va. C.S.R. §64-11-1 *et seq.* (hereinafter the "rule"), to implement the requirements of this
5 section after consultation with appropriate stakeholders.

6 (1) The Inspector General shall amend the rule to include that the forensic group home
7 shall not be located within one mile of a residential area, a public or private licensed day care
8 center, or a public or private k-12 school learning pods and micro-schools.

9 (2) The Inspector General may grant a variance to an existing forensic group home
10 referenced in subdivision (1) of this section only if the facility demonstrates that it has adequate
11 patient population controls and that it otherwise meets the requirements set forth in the amended
12 rule.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

1 (a) "Developmental disability" means a chronic disability of a person which: (1) Is
2 attributable to a mental or physical impairment or combination of mental and physical
3 impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in
4 self-direction, capacity for independent living or economic self-sufficiency; and (4) reflects the
5 person's need for a combination and sequence of special, interdisciplinary or generic care,
6 treatment or other services which are of lifelong or extended duration and are individually planned
7 and coordinated.

8 (b) "Behavioral disability" means a disability of a person which: (1) Is attributable to severe
9 or persistent mental illness, emotional disorder or chemical dependency; and (2) results in
10 substantial functional limitations in self-direction, capacity for independent living or economic self-
11 sufficiency.

12 (c) "Group residential facility" means a facility which is owned, leased or operated by a
13 behavioral health service provider and which: (1) Provides residential services and supervision
14 for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a
15 residence by not more than eight individuals who are developmentally disabled and not more than
16 three supervisors or is occupied as a residence by not more than 12 individuals who are
17 behaviorally disabled and not more than three supervisors; (3) is licensed by the Office of Health

18 Facility Licensure and Certification; and (4) complies with the state Fire Commission for residential
19 facilities.

20 (d) "Group residential home" means a building owned or leased by developmentally
21 disabled or behaviorally disabled persons for purposes of establishing a personal residence. A
22 behavioral health service provider may not lease a building to such persons if the provider is
23 providing services to the persons without a license as provided for in this article.

**§27-17-3. License from Office of Health Facility Licensure and Certification; regulations;
and penalties.**

1 (a) No group residential facility shall be established or operated unless a license is
2 obtained from the Office of Health Facility Licensure and Certification. The Inspector General shall
3 propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.*,
4 including the operation of the group residential facility; a statement of the rights of patients in
5 group residential facilities to ensure the adequate care and supervision of patients; and shall have
6 the authority to investigate and inspect a facility, and may impose a civil money penalty, suspend
7 or revoke the license for good cause after notice, hearing, and other due process rights as
8 provided by legislative rule.

9 (b) A group residential home is not required to obtain a license from the Inspector General.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-203. Definitions related, but not limited to, licensing and approval of programs.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, licensing and approval of programs, except in those
3 instances where a different meaning is provided or the context in which the word used clearly
4 indicates that a different meaning is intended.

5 "Approval" means a finding by the Secretary of the Department of Human Services that a
6 facility operated by the state has met the requirements of legislative rules promulgated for
7 operation of that facility and that a certificate of approval or a certificate of operation has been
8 issued.

9 "Certification of approval" or "certificate of operation" means a statement issued by the
10 Secretary of the Department of Human Services that a facility meets all of the necessary
11 requirements for operation.

12 "Certificate of license" means a statement issued by the Secretary of the Department of
13 Human Services authorizing an individual, corporation, partnership, voluntary association,
14 municipality, or county, or any agency thereof, to provide specified services for a limited period of
15 time in accordance with the terms of the certificate.

16 "Certificate of registration" means a statement issued by the Secretary of the Department
17 of Human Services to a family child care home, informal family child care home, or relative family
18 child care home to provide specified services for a limited period in accordance with the terms of
19 the certificate.

20 "License" means the grant of official permission to a facility to engage in an activity which
21 would otherwise be prohibited.

22 "Registration" means the grant of official permission to a family child care home, informal
23 family child care home, or a relative family child care home determined to be in compliance with
24 the legislative rules promulgated pursuant to this chapter.

25 "Rule" means legislative rules promulgated by the Secretary of the Department of Human
26 Services or a statement issued by the Secretary of the Department of Human Services of the
27 standards to be applied in the various areas of child care.

28 "Variance" means a declaration that a rule may be accomplished in a manner different
29 from the manner set forth in the rule.

30 "Waiver" means a declaration that a certain legislative rule is inapplicable in a particular
31 circumstance.

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

1 [Repealed.]

§49-9-102. Investigation of complaints.

1 [Repealed.]

§49-9-103. Access to foster care children.

1 [Repealed.]

§49-9-104. Access to records.

1 [Repealed.]

§49-9-105. Subpoena powers.

1 [Repealed.]

§49-9-106. Cooperation among government departments or agencies.

1 [Repealed.]

§49-9-107. Confidentiality of investigations.

1 [Repealed.]

§49-9-108. Limitations on liability.

1 [Repealed.]

§49-9-109. Willful interference; retaliation; penalties.

1 [Repealed.]

§49-9-110. Funding for Foster Care Ombudsman Program.

1 [Repealed.]

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

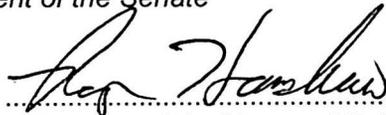

Clerk of the Senate


Clerk of the House of Delegates

Originated in the Senate.

In effect from passage.


President of the Senate


Speaker of the House of Delegates

OFFICE OF THE SECRETARY OF STATE
SECRETARY OF STATE

2024 FEB 19 P 4: 34

FILED

The within is approved this the 19th
Day of February 2024.


Governor

FEB 13 2024

Time 10:01 am