WEST VIRGINIA CODE CHAPTER 33 ARTICLE 16F

WV Legislature

§33-16F-1. Legislative intent.

The Legislature finds that the inability of a significant number of state residents to obtain affordable health insurance coverage adversely affects everyone in our state. Therefore, it is the intent of the Legislature to expand the availability of health care options for uninsured residents by developing affordable health care products that emphasize coverage for basic and preventive health care services, provide inpatient hospital and emergency care services and offer optional catastrophic coverage.

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§33-16F-2. Definitions.

As used in this article:

"West Virginia affordable health care plan" means a health insurance plan approved under this article.

"West Virginia affordable health care plan entity" or "plan entity" means an entity licensed under this chapter that develops and proposes a West Virginia affordable health care plan and, if the plan is approved, is responsible for administering the plan and paying claims of plan enrollees.

"Enrollee" means an individual who has been determined to be eligible for and is receiving health insurance coverage under a West Virginia affordable health care plan.

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§33-16F-3. Plan proposals; approval of plans.

(a) The commissioner shall announce, no later than July 1, 2009, an invitation to prospective West Virginia affordable health care plan entities to submit West Virginia affordable health care plan proposals. The invitation shall include guidelines for the review of West Virginia affordable health care plan applications, policies and associated rates.

(b) In reviewing proposals under this article, the commissioner shall consider the proposed plans' effectiveness in improving the health status of individuals, their impact on maintaining and improving health and their potential to reduce the unnecessary consumption of health care services.

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§33-16F-4. Required plan provisions; grounds for disapproval; alternative plans.

(a) To be approved, plan entities must assure that each proposed plan will provide cost containment through the use of plan design features such as limits on the number of services, caps on benefit payments or copayments for services.

(b) To provide consumer choice, plan entities must develop and submit two alternative benefit option plans having different cost and benefit levels, including at least one plan that provides catastrophic coverage. Plans providing catastrophic coverage must, at a minimum, provide coverage for preventive health services and inpatient hospital stays and may also include coverage of one or more of the following: Hospital emergency care services and outpatient facility services; outpatient surgery; or outpatient diagnostic services.

(c) All plans must offer prescription drug benefit coverage.

(d) Plan enrollment materials must provide information in plain language on policy benefit coverage, benefit limits, cost-sharing requirements, exclusions and a clear representation of what is not covered in the plan. The enrollment materials must include a standard disclosure form developed by the commissioner that must be reviewed and executed by all consumers purchasing West Virginia affordable health care plan coverage.

(e) The commissioner shall disapprove any plan that:

(1) Contains any ambiguous, inconsistent or misleading provisions or any exceptions or conditions that deceptively affect or limit the benefits purported to be assumed in the general coverage provided by the plan;

(2) Provides benefits that are unreasonable in relation to the premium charged; or

(3) Contains provisions that are unfair or inequitable, contrary to the public policy of this state, encourage misrepresentation or result in unfair discrimination in sales practices.

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§33-16F-5. Eligibility of individuals and groups.

(a) Individuals. –- Eligibility to enroll in an individual West Virginia affordable health care plan is limited to any resident of this state who:

(1) Is not covered by a private insurance policy and is not eligible for coverage under an employer-sponsored group plan or through a public health insurance program, such as Medicare, Medicaid or the state Children's Health Insurance Program; and

(2) Has not been covered by any health insurance program at any time during the past six months, unless coverage under a health insurance program was terminated within the previous six months due to loss of a job that provided an employer-sponsored health benefit plan or death of, or divorce from, a spouse who was provided an employer-sponsored health benefit plan or, with respect to a public health insurance program, eligibility for such program was lost due to an inability to meet income or categorical requirements: Provided, That an individual may not be excluded from enrollment in a West Virginia affordable health care plan on the ground that he or she is eligible for or is enrolled in a COBRA plan.

(b) Group. -– An otherwise eligible group may not obtain coverage under a West Virginia affordable health care plan unless the group has not had coverage under any health insurance plan at any time during the previous six months.

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§33-16F-6. Regulation and marketing of plans.

(a) The commissioner shall issue guidelines to ensure that West Virginia affordable health care plans meet minimum standards for quality of and access to care.

(b) Initial filings and changes in West Virginia affordable health care plan benefits, premiums and policy forms are subject to regulatory oversight by the commissioner.

(c) The commissioner shall develop a public awareness program to be implemented throughout the state for the promotion of the plans approved under this article, which may include assistance from state health insurance benefits advisors.

(d) Each West Virginia affordable health care plan must maintain enrollment data and provide network data and reasonable records to enable the commissioner to assess the plans.

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§33-16F-7. Applicability of certain provisions; commissioner's authority to forbear from applying certain provisions.

(a) Individual plans. -- Only the following provisions of article fifteen of this chapter apply to West Virginia entities offering individual plans pursuant to this article: Sections two-a, two-d, two-e, three, four, four-c, four-e, four-f, four-g, five, six, seven, eight, nine, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty. Notwithstanding any other provision of this code, the provisions of article twenty-eight of this chapter and legislative rules regulating individual accident and sickness policies, including the rule contained in series 12, title 114 of the West Virginia Code of State Rules, do not apply to individual plans issued pursuant to this article unless and to the extent specifically incorporated in rules promulgated pursuant to the authority conferred by section eleven of this article.

(b) Group plans. -- Only the following provisions of article sixteen of this chapter apply to insurers offering group plans pursuant to this article: Sections one-a, three, three-g, three-j, three-k, three-l, three-m, three-n, three-o, three-p, four, five, six, seven, nine, ten, eleven, twelve, thirteen, fourteen and fifteen; all other provisions of article sixteen do not apply to group plans approved pursuant to this article unless and to the extent the provisions are specifically incorporated in rules promulgated by the commissioner. Notwithstanding any other provision of this code or of the code of state rules, the provisions of article sixteen-e of this chapter and of legislative rules regulating group accident and sickness policies, including the rule set forth in series 39, title 114 of the West Virginia Code of State Rules, do not apply to group plans approved pursuant to this article unless and to the extent specifically incorporated in rules promulgated by the commissioner pursuant to the authority conferred by section eleven of this article.

(c) Small group plans. -- With respect to any group plan approved under this article and offered to any "small employer", as that term is defined in section two, article sixteen-d of this chapter, the following provisions of article sixteen-d apply: Sections two, four, seven, eight, twelve, thirteen and fourteen: Provided, That only the sentence preceding the proviso in section thirteen, article sixteen-d of this chapter applies to small employer plans approved pursuant to this article. Notwithstanding any other provision of this code, all other provisions of article sixteen-d of this chapter do not apply to small employer plans approved pursuant to this article unless and to the extent such provisions are specifically incorporated in rules promulgated by the commissioner.

(d) Forbearance by the commissioner. -- The commissioner may forbear from applying any other statutory or regulatory requirements to an insurer offering an individual or group plan approved pursuant to this article, including any requirements in articles twenty-four and twenty-five-a of this chapter, if he or she determines that such forbearance serves the principles set forth in section one of this article.

(e) Existing limited benefit plans. -- Plans approved pursuant to the provisions of article fifteen-d of this chapter, as that article existed prior to its repeal during the 2009 regular legislative session, and this article, as that it existed prior to its amendment and

reenactment during the 2009 regular legislative session, remain in effect and are subject to those provisions.

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§33-16F-8. Assessment of the West Virginia program.

The commissioner shall:

(1) Provide an assessment of the West Virginia affordable health care plans and their potential applicability in other settings;

(2) Use West Virginia affordable health care plans to gather more information to evaluate low-income, consumer-driven benefit packages; and

(3) Submit by March 1, 2011, and annually thereafter, a report to the Governor, the President of the Senate and the Speaker of the House of Delegates that provides the information specified in this section and recommendations relating to the successful implementation and administration of the program.

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§33-16F-9. Nonentitlement.

Coverage under a West Virginia affordable health care plan is not an entitlement and a cause of action does not arise against the state, a local government entity, any other political subdivision of the state or any agency for failure to make coverage available to eligible persons under this article.

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§33-16F-10. Emergency and legislative rules authorized.

The commissioner may promulgate emergency and legislative rules under the provisions of article three, chapter twenty-nine-a of this code, to prescribe requirements regarding rate making, which may include rules establishing loss ratio standards for the plans; to place limitations on eligibility for coverage under the approved plans; to establish standards to determine whether a plan qualifies as creditable coverage; to determine what medical treatments, procedures and related health services benefits must be included in the plans; and to provide for any other matters deemed necessary to further the intent of this article.

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