WEST VIRGINIA CODE CHAPTER 33 ARTICLE 25B

WV Legislature

§33-25B-1. Definitions.

The following words, as used in this article, have the meanings set forth below, unless the context clearly requires otherwise:

(a) "Applicant aide" means an individual licensed by the state to care for the physical or emotional needs of children or an employee authorized by his employer where the employer is an institution licensed by the state to care for the physical or emotional needs of children and who has received an applicant aide certificate. Individuals include, but are not limited to, licensed teachers, child care workers, social workers, guidance counselors, psychologists, nurses and physicians. Licensed institutions include, but are not limited to, hospitals, schools, local human services offices, child care centers and medical clinics;

(b) "Approved providers" means any accident and health insurer licensed by the state or any health services organization licensed by the state or any other entity approved by the Insurance Commissioner for provision of health care coverage for children;

(c) "Corporation" means a nonprofit corporation organized under the laws of West Virginia which has undertaken to implement a federal insurance subsidy for children's health insurance created by this article; and

(d) "Insurance subsidy fund" or "fund" means a fund or account established by the corporation for the deposit of moneys to implement the insurance subsidy program.

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§33-25B-2. Purpose.

The purpose of this article is to:

(a) Assist, promote, encourage, develop and advance the knowledge of lower to moderate income families with dependent children of the earned income credit available for money spent on health insurance;

(b) Cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and education of lower to moderate income families with dependent children of the earned income credit available for money spent on health insurance;

(c) Establish a system of qualified applicant aides who shall be trained by the department of health and human services and, who, for a modest dollar incentive, will on a volunteer basis make knowledge of this program available to the targeted families; and

(d) Establish a mechanism by which to provide counseling and assistance to families and aid them in filing for the insurance voucher, selecting an appropriate health insurance policy and completing the required federal income tax return.

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§33-25B-3. General powers.

In order for a nonprofit corporation to participate in the program provided pursuant to this article, the nonprofit corporation must be organized and incorporated as a nonprofit corporation pursuant to the provisions of article one, section thirty-one of this code. The nonprofit corporation, in addition to all other lawful powers, shall have the power to provide counseling services to West Virginia families on the purchase of federally subsidized health insurance and to accept gifts, grants, or loans from and enter into contracts or other transactions with any federal or state agency, any municipality, any private organization or any other source as may be authorized by law.

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§33-25B-4. Voucher applications; contents.

A guardian or applicant aide may file with a nonprofit corporation, organized for the purposes of this article, a sworn voucher application signed by the guardian asserting:

(a) That the guardian meets the requirements for the federal earned income credit for child health insurance for the current or next calendar year;

(b) The good-faith estimate value of the health insurance earned income credit for the year in question;

(c) That the guardian will use the voucher to purchase health insurance covering dependent children;

(d) That the guardian will prepare a federal tax return for the year in question; and

(e) That the guardian agrees to assign the value of any federal tax refund, in the amount of the voucher issued by the corporation to the corporation when filing the guardian's federal tax return.

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§33-25B-5. Duties and responsibilities of corporation.

Upon presentation of a valid voucher application, the corporation shall issue from its insurance subsidy fund a voucher to the guardian or applicant aide, made out in behalf of the guardian and redeemable for the face amount by any approved provider. The corporation shall retain in the fund all moneys received from refundable tax credits of guardians. These moneys shall be used to extend additional vouchers. The corporation may solicit and receive donations of moneys for the fund. No corporation may require that vouchers be presented to a specific approved provider in order to be eligible to participate in the program.

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§33-25B-6. Duties and responsibilities of Department of Human Services to provide training and other services.

(a) The Department of Human Services shall design and provide the vouchers to any corporation wishing to participate in the program at a cost not to exceed the actual cost of the voucher.

(b) No later than ninety days after a request is made by a corporation wishing to participate in the insurance subsidy program, the Department of Human Services in cooperation with the corporations participating in the program, shall begin to conduct regional training and information sessions in all regions of the state. The purpose of these sessions is to train guardians and potential applicant aides in the necessary rules to qualify under the federal guidelines for earned income credits and the requirements of this section. These sessions shall be open to the public and potential applicant aides, at a charge not to exceed $10 which shall be used solely to defray the costs of conducting the training sessions. Sessions shall be available in at least the first and fourth quarter of the calendar year in all regions of the state after a request has been made by a corporation to commence such training sessions. The Department of Human Services may waive the fee for guardians.

(c) Potential applicant aides shall be tested by the Department of Human Services. Potential applicant aides who successfully complete the test shall be awarded a certificate entitling them to work as an applicant aide. The Department of Human Services shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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§33-25B-7. Allowable commission for applicant aides; prohibited practices.

(a) Applicant aides may receive a commission not to exceed five percent of the voucher, from an approved provider. No commission may be paid until the fund is fully reimbursed for the voucher. Applicant aides may not solicit or accept any compensation from guardians or potential guardians.

(b) An applicant aide shall be prohibited from entering into any agreement with an approved provider, whether such agreement is for profit or not for profit, to recommend a specific approved provider, to the exclusion of all other approved providers, in the course of counseling guardians or applicants.

(c) Applicant aides who engage in deceptive practices or who aid or encourage deception or fraud may, upon hearing by the corporation, have their certificate as an applicant aide revoked for a period of not less than five years. This action shall be in addition to any other penalties available at law.

(d) The corporation may pursue triple damages in civil court for any losses to the fund attributable to actions or the conduct of applicant aides or guardians.

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§33-25B-8. Activities not deemed the sale of insurance; exemptions from benefits and taxation.

(a) Assisting individuals in the preparation of applications to the fund and selection of the providers does not constitute the sale of insurance and shall not be subject to regulation by the Insurance Commissioner.

(b) Insurance coverage bought by the guardian through the use of a voucher provided pursuant to the provisions of this article will be exempt from state law and regulations requiring certain mandatory state insurance coverages or benefits.

(c) Insurance coverage bought by guardians through the use of a voucher provided pursuant to the provisions of this article shall not be subject to state premium taxes.

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§33-25B-9. Annual report and audits.

On January 1, of each year the corporation shall report on its operations for the preceding fiscal year to the Governor and the State Legislature. The report shall include a summary of the activities of the corporation and a complete operating and financial statement. A corporation shall cause an annual audit to be made by a resident certified public accountant or a registered public accountant of its books, accounts and records, with respect to its receipts, disbursements and all other matters related to the operation of the insurance subsidy program. The person performing such audit shall also furnish copies of the audit report to the Joint Committee on Government and Finance and the Legislative Auditor.

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§33-25B-10. Tax exemption.

Any corporation organized for the purposes of this article is exempt from all franchise, corporate, business and taxes of every nature levied by the state.

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§33-25B-11. Personal liability of members or persons acting on behalf of the corporation.

No person acting on behalf of the corporation executing any contracts, commitments or agreements issued pursuant to this article may be liable personally upon the contracts, commitments or agreements or be subject to any personal liability or accountability by reason thereof.

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