
WEST VIRGINIA CODE CHAPTER 9
ARTICLE 4D

WV Legislature

§9-4D-1. Legislative findings.

(a) The Legislature finds that there are many individuals in this state who have disabilities that qualify them for state or federal assistance and who are nonetheless willing and able to enter the workforce, but do not do so out of fear of losing essential medical care. As a result, the state realizes increased costs in fully supporting these disabled individuals who, in turn, suffer under an additional disability of being deprived of the additional income, dignity and self-sufficiency derived by being engaged in competitive employment.

(b) The Legislature finds that establishing a Medicaid buy-in program for certain individuals with disabilities will assist them in becoming independent of public assistance by enabling them to enter the workforce without fear of losing essential medical care.

§9-4D-2. Definitions.

As used in this article:

(1) "Approved accounts" means any retirement account that the secretary has determined is not to be included as an asset in determining the eligibility of an individual for participation in the buy-in program. Approved accounts may include, but not be limited to, private retirement accounts such as individual retirement accounts; other individual accounts; and employer-sponsored retirement plans such as 401(k) plans, Keogh plans and employer pension plans.

(2) "Basic coverage group" means an optional coverage group as defined by the Ticket to Work and Work Incentives Improvement Act of 1999.

(3) "Copayment" is a fixed fee to be paid by the patient at the time of each office visit, outpatient service or filling of prescriptions.

(4) "Cost-sharing" means the eligible participant will participate in the cost of the program by paying the enrollment fee, monthly premiums and copayments if established by the department.

(5) "Countable income" means income that does not exceed two hundred fifty percent of the federal poverty level: *Provided*, That for purposes of this article, countable income does not include:

(A) The income of the individual's spouse, parent or guardian with whom he or she resides; and

(B) Income disregarded under the state Medicaid plan's financial methodology, including income disregarded under the federal supplemental security income program (42 U.S.C. §1382) as impairment-related work expenses.

(6) "Countable resources" includes earned and unearned income: *Provided*, That countable resources do not include:

(A) Liquid assets of up to \$5,000 for an individual;

(B) Liquid assets of up to \$10,000 for a family;

(C) Retirement accounts; and

(D) Independence accounts.

(7) "Department" means the Department of Human Services.

(8) "Disability" means a medically determinable physical or mental condition that:

- (A) Can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than twelve months; and
- (B) Renders a person unable to engage in substantial gainful activity; and
- (C) Is a disability defined by social security administration criteria and has been determined by either the social security administration or the department.
- (9) "Eligible buy-in participant" means an individual who:
- (A) Is a resident of the State of West Virginia;
- (B) Has a disability as defined herein;
- (C) Is at least sixteen years of age and less than sixty-five years of age;
- (D) Is engaged in competitive employment, including self-employment or nontraditional work that results in remuneration at or above minimum wage in an integrated setting;
- (E) Has countable resources that do not exceed the resource limits as defined in this article; and
- (F) Has countable income that does not exceed the income limits as defined in this article.
- (10) "Enrollment fee" means a one-time fee to participate in the Medicaid buy-in program.
- (11) "Federal benefit rate" is the amount of monthly federal or state benefits paid to persons with limited income and resources who are age sixty-five or older, blind or disabled.
- (12) "Federal poverty level" means the level of personal or family income below which one is classified as poor according to federal governmental standards, commonly referred to as the federal poverty guidelines which are issued and printed each year in the federal register.
- (13) "Income" means money earned from employment wages or self-employment earnings and unearned money received from any other source.
- (14) "Independence accounts" are department-approved accounts established with the department solely by funds paid from the earned income of an eligible buy-in participant to cover expenses necessary to enhance or maintain his or her independence or increase employment opportunities. Approved expenditures from the funds may include: Educational expenses; work-related expenses; home purchase or modification; transportation; medical expenses; assistive technology and related services; or for short-term living expenses in times of qualified emergencies as determined by the department.
- (15) "Liquid assets" are cash or assets payable in cash on demand, including financial instruments that can be converted to cash within twenty working days. For purposes of this

article, national, state and local holidays are not working days.

(16) "Premium" is a monthly fee paid by an eligible buy-in participant to continue participation in the program.

(17) "Resources" are possessions that the eligible buy-in participant owns that could be changed to cash and used for food, clothing or shelter and that qualify as resources under the applicable social security administration guidelines.

(18) "Retirement accounts" are moneys invested in approved retirement funds and accounts that are disregarded as an asset by the department in determining the eligibility of an individual for participation in the buy-in program.

§9-4D-3. Medicaid buy-in program; funding.

(a) The Medicaid buy-in program for working individuals with disabilities is hereby established to provide Medicaid benefits to individuals who are disabled and employed, as authorized under Section 201 of the federal Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170, 42 U.S.C. 1396, et seq.). The Medicaid buy-in program shall become effective as of July 1, 2003.

(b) Funding for the buy-in program shall be from funds appropriated by the Legislature, premiums paid, enrollment fees and any federal matching funding available to the program.

§9-4D-4. Eligibility guidelines.

(a) To be eligible to participate in the buy-in program beginning July 1, 2003, an individual shall:

- (1) Be a resident of the State of West Virginia;
- (2) Have a disability that is defined and determined by the social security administration or the department;
- (3) Be at least sixteen years of age but not more than sixty-four years of age;
- (4) Be engaged in competitive employment, including self-employment or nontraditional work that results in remuneration at or above minimum wage in an integrated setting;
- (5) Have countable resources that do not exceed the resource limit for the supplemental security income program;
- (6) Have countable income that does not exceed two hundred fifty percent of the federal poverty level;
- (7) Have total countable unearned income, using the social security income program methodology, that does not exceed the federal benefit rate plus the general income exclusion; and
- (8) Except as provided in section five of this article, not have countable resources that exceed the resource limits for the federal supplemental security income program.

(b) The secretary shall establish a method of providing notice of the availability of participation in the Medicaid buy-in program. The secretary shall develop all forms and notices necessary to implement the provisions of this article, including forms for application to the program, determination of eligibility and continued participation and notices that advise all eligible buy-in participants of the rights, benefits, obligations and participation requirements of the program, including, but not limited to, notice of fees, premiums, premium adjustments, periodic review, length of time for which benefits may be paid and disqualifying factors.

§9-4D-5. Exceptions to qualifying factors.

(a) An individual who is enrolled in the buy-in program and who no longer meets the eligibility requirements of the basic coverage group due to an improvement in the individual's medical condition may continue to be eligible for Medicaid coverage under the buy-in program if the individual meets the following requirements:

- (1) The individual continues to have a severe medically determinable impairment as determined by the department and as defined and recognized by federal law;
- (2) The individual is employed and earning a monthly wage that is not less than the federal minimum hourly wage times forty;
- (3) The individual does not have income or countable resources in excess of the limits established for the basic coverage group;
- (4) The individual is at least sixteen years of age and less than sixty-five years of age;
- (5) The individual pays any premiums or other cost sharing required under this chapter; and
- (6) The individual meets all other eligibility requirements under this section.

(b) An individual who is enrolled in the buy-in program and who is unable to maintain employment for involuntary reasons, including temporary leave due to a health problem or involuntary termination, may continue to be eligible for Medicaid coverage under the buy-in program if the individual meets the following requirements:

- (1) Within thirty days after the date on which the individual becomes unemployed, the individual, or an authorized representative of the individual, submits a written request to the office that the individual's Medicaid coverage be continued;
- (2) The individual maintains a connection to the workforce during the individual's continued eligibility period by participating in at least one of the following activities:
 - (A) Enrollment in a state or federal vocational rehabilitation program;
 - (B) Enrollment or registration with the office of workforce development;
 - (C) Participation in a transition from school-to-work program;
 - (D) Participation with an approved provider of employment services;
 - (E) Provision of documentation from the individual's employer that the individual is on temporary involuntary leave;
 - (F) The individual does not have income or countable resources in excess of the limits established under this section;

(G) The individual is at least sixteen years of age and less than sixty-five years of age;

(H) The individual pays any premiums or other cost sharing required under this section; and

(I) The individual meets all other eligibility requirements under this section.

(c) The department shall continue Medicaid coverage under the buy-in program for an individual described in subsection (b) of this section for up to six months from the date of the individual's involuntary loss of employment.

(d) If an individual is ineligible for continued coverage under the buy-in program because he or she fails to meet the requirements of subsection (b) of this section or has already fulfilled twelve months of continuing eligibility, the individual shall be required to meet the eligibility requirements of another available Medicaid program in order to continue to be eligible for Medicaid benefits.

§9-4D-6. Fees, premiums and periodic reviews.

(a) The department shall charge a \$50 enrollment fee to all participants in the Medicaid buy-in program. Upon payment of the enrollment fee, the first month's premium payment is waived. Medicaid coverage begins on the first day of the month following payment of the enrollment fee.

(b) The department shall develop a sliding scale of premiums for individuals participating in the buy-in program. The sliding scale shall:

(1) Be based on the annual gross income of the individual; and

(2) Provide for a minimum premium of \$15 and a maximum monthly premium not to exceed three and one-half percent of the individual's gross monthly income.

(c) Subject to the minimum and maximum amounts described in this section, the department may annually adjust the scale of premiums charged for participation in the Medicaid buy-in program.

(d) The department shall biannually review the amount of the premium that an individual is required to pay under this section.

(e) The department may increase the premium required only after conducting a review.

(f) The department shall decrease the premium that an eligible buy-in participant is required to pay if:

(1) The individual notifies the office of a change in income or family size; and

(2) The sliding scale adopted by the department applied to the individual's changed circumstances prescribes a premium for the individual that is lower than the premium the individual is paying.

(g) The department shall establish administrative procedures regarding premiums for the buy-in program, including:

(1) The effect of nonpayment of a premium; and

(2) The collection of premiums.

(h) The department shall establish criteria to base the biannual redetermination of disability required for an individual participating in the buy-in program on the individual's medical evidence, including evidence of physical or mental impairment.

(i) In conducting the biannual redetermination described in this section, the department may not determine that an individual participating in the buy-in program is no longer disabled

solely on the individual's:

- (1) Participation in employment;
- (2) Earned income; or
- (3) Income from self-employment.

WV Legislature

§9-4D-7. Benefits of the Medicaid buy-in program.

(a) Except as otherwise provided in this article, an eligible buy-in participant shall receive the same benefits that he or she would otherwise receive as a recipient of Medicaid benefits, including home health care services.

(b) Except as otherwise provided in this article, an eligible buy-in participant is subject to the same obligations and requirements, including cost sharing, that he or she would otherwise be subject to as recipient of Medicaid benefits.

§9-4D-8. Analytical criteria and reporting requirements.

(a) The secretary shall establish criteria to determine the effectiveness of the Medicaid buy-in program and continued Medicaid coverage through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h). The criteria shall include an analysis of the following:

(1) The number of individuals with disabilities who are:

(A) Enrolled in the buy-in program; or

(B) Receiving Medicaid through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h);

(2) The amount of state revenues resulting from premiums paid by participants in the buy-in program; and

(3) The amount of state costs incurred as a result of implementing the buy-in program, including administrative costs and costs of providing services.

(b) In addition to the criteria required under subsection (a) of this section, the secretary may establish criteria to determine the following:

(1) Comparative costs of Medicaid funded services for participants in the buy-in program and work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h) before and after employment;

(2) The number of supplemental security income and social security disability insurance recipients in West Virginia who are no longer dependent on, or who have reduced dependence on, public assistance or health care entitlement services, other than Medicaid or the Children's Health Insurance Program, due to participation in the buy-in program or work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h);

(3) The number of individuals with severe disabilities who are no longer dependent on, or who have reduced dependence on, public benefits or services, other than Medicaid or the Children's Health Insurance Program, due to income or support services received through participation in the buy-in program or work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h); and

(4) The change in the number of buy-in program participants or participants in work incentives created through Section 1619 of the federal Social Security Act (42 U.S.C. §1382h) who have health care needs and related services covered through employer based benefit programs.

(c) In evaluating the effectiveness of the state's work incentives initiatives for individuals with disabilities, the secretary:

- (1) Shall collaborate with other state agencies on data collection; and
- (2) May consult with an independent contractor to collect data on the criteria required by this section.
- (d) The department secretary shall provide an annual report of its evaluation of the Medicaid buy-in program performed pursuant to the requirements of this section to the Legislature no later than the last day of December of each year, beginning in two thousand four.

§9-4D-9. Advisory council; rules.

(a) The secretary of the department shall establish a Medicaid buy-in program advisory council, consisting of representatives from the state Medicaid agency, the state rehabilitation agency, the state office of family support, the West Virginia statewide independent living council, the West Virginia state rehabilitation council, the West Virginia developmental disabilities council, the West Virginia mental health planning council and the center for excellence in disabilities at West Virginia University.

(b) The secretary shall submit proposed rules for review and input to the advisory council prior to release for public comment and shall consider any recommendations of the advisory council before adopting final rules.

(c) The secretary shall propose emergency rules in accordance with the provisions of 29A-3-15 of this code to implement the provisions of this article. Thereafter, the secretary shall propose additional rules for legislative approval in accordance with the provisions of said article three, chapter twenty-nine-a of this code as may be needed to administer and maintain the Medicaid buy-in program.