

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964

## ENROLLED

HOUSE BILL No. 50

*Originating in the Committee  
on the Judiciary*  
(By Mr. \_\_\_\_\_)

PASSED February 5 1964

In Effect 90 days from Passage



FILED IN THE OFFICE OF  
JOE F. BURDETT  
SECRETARY OF STATE  
THIS DATE 2-10-64

# 50

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AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, relating to the organization and operation of voluntary, non-profit, consumer sponsored, direct service health care organizations, and to their licensing and regulation by the state.

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

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five, to read as follows:

**Article 25. Health Care Corporations.**

**Section 1. Declaration of Policy.**—In view of the desirability of making available to the people of this state various methods of procuring and financing increased hospital, medical, dental, other health services, or any one or more of them, the declared policy of the legislature in the enactment of this article is to encourage the organization, promotion, and expansion of health care corporations by exempting them from the payment of all taxes and from the operation of the general insurance laws of this state, but at the same time subjecting them to such regulation as may be necessary for the adequate protection of those members of the public who subscribe for the services offered by such corporations.

**Sec. 2. Definitions.**—For the purpose of this article, unless the context otherwise indicates:

(a) “Health care corporation or corporation” shall mean a corporation organized and licensed under the provisions of this article.

(b) Direct health care services shall, subject to the limitations contained in this article, include all such

8 services as are designed to preserve or restore a person's  
9 health.

10 (c) "Subscriber" shall mean a person (including, as  
11 the case may be, the members of his family) who sub-  
12 scribes to the direct health care plan of a corporation.

13 (d) "Commissioner" means the insurance commis-  
14 sioner of the state of West Virginia.

**Sec. 3. Incorporation; Purposes; Name; Limitations.—**

2 Any law to the contrary notwithstanding, non-profit,  
3 non-stock corporations may be organized in accordance  
4 with the provisions of article one, chapter thirty-one of  
5 the code of West Virginia, for the sole purpose of pro-  
6 viding any or all of the following direct health care  
7 services, at the expense of the corporation, to its mem-  
8 bers and subscribers through contracts with duly licensed  
9 physicians and surgeons, osteopathic physicians and  
10 surgeons, chiropractors, chiropodists, nurses, dentists,  
11 optometrists and pharmacists, and any others who are  
12 licensed to engage in the practice of the healing arts, as  
13 well as hospitals, clinics, convalescent centers, nursing  
14 homes, and any other persons, corporations, associations,

15 and institutions engaged in the business of providing  
16 facilities, appliances, supplies and services incidental to  
17 such health care.

18 No such corporation shall include in its name the words  
19 "insurance", "casualty", "surety", "health and accident",  
20 "accident and sickness", "mutual", or any other words,  
21 which in the opinion of the commissioner, are descriptive  
22 of the insurance, casualty or surety business, or decep-  
23 tively similar to the name or description of any insurance  
24 or surety corporation doing business in the state.

25 A corporation shall provide only direct health care  
26 services to the subscribers to its health care plan and  
27 shall not provide for the payment of any cash or cash  
28 indemnity to or on behalf of a subscriber: *Provided,*  
29 That a corporation may provide a cash reimbursement  
30 to a subscriber who employs or obtains in the event of  
31 an emergency the health care services of any person,  
32 corporation, association, or institution named or referred  
33 to in this section and located outside the territorial  
34 boundaries within which the corporation is licensed to  
35 operate.

**Sec. 4. Board of Directors.**—The board of directors of  
2 any corporation organized under this article shall con-  
3 sist of seven members, all of whom shall be residents  
4 of the State of West Virginia, four of whom shall be  
5 subscribers to its services, one of whom shall be a person  
6 licensed to practice medicine under the laws of the State  
7 of West Virginia, one of whom shall be a person con-  
8 nected with the healing arts, and one of whom shall be  
9 a member of the general public not connected with any  
10 contracting party. The members of the board shall serve  
11 without compensation but may be reimbursed for ex-  
12 penses incurred in carrying out their duties as members  
13 of the board.

**Sec. 5. Exemptions.**—Every such corporation is hereby  
2 declared to be a charitable, scientific, non-profit institu-  
3 tion and as such exempt from the payment of all prop-  
4 erty and other taxes.

**Sec. 6. Supervision and Regulation by Insurance Com-**  
2 **missioner.**—Corporations organized under this article  
3 shall be subject to supervision and regulation by the in-  
4 surance commissioner. Any provisions of this chapter or

5 of any other law to the contrary notwithstanding, such  
6 corporation shall not be subject to the insurance laws of  
7 this state now in force nor to any law hereafter enacted  
8 relating to insurance and corporations engaged in the  
9 business of insurance unless otherwise provided in this  
10 article or unless such other law specifically and in exact  
11 terms applies to such voluntary, non-profit health care  
12 corporations as are organized under this article.

**Sec. 7. Licenses.**—(a) Before it may issue any con-  
2 tract to a subscriber, a corporation desiring to establish,  
3 maintain, and operate a direct health care plan must  
4 first obtain from the commissioner a license as provided  
5 in this section.

6 (b) Applications for an original license shall be made  
7 on forms prescribed and furnished by the commissioner  
8 and shall be accompanied by the following documents  
9 and information: (1) certificate of incorporation; (2) by-  
10 laws; (3) list of names and residence addresses of all  
11 officers and board of directors of the corporation; (4) con-  
12 tracts between the corporation and persons, firms, corpo-  
13 rations or associations to render direct health care serv-

14 ices; (5) proposed contracts to be issued to subscribers  
15 setting forth in detail the direct health care services to  
16 which subscribers are entitled and the table of rates to  
17 be charged for such services; (6) financial statement  
18 showing the assets and liabilities of the corporation, the  
19 amount of contributions paid, or agreed to be paid, to  
20 the corporation for working capital, the names or name  
21 of each contributor and the terms of each contribution;  
22 and (7) such additional information as the commissioner  
23 may require.

24 (c) Within thirty days after receipt of an application,  
25 the commissioner shall, upon payment to him of a license  
26 fee of one hundred dollars, issue a license authorizing the  
27 corporation to transact business in this state in the area  
28 to be served by it, if he is satisfied (1) that the applicant  
29 is incorporated in this state under the provisions of article  
30 one, chapter thirty-one of the code of West Virginia as a  
31 bona fide, non-profit corporation, (2) that the health care  
32 plan which the corporation proposes to operate, as well  
33 as the forms of all contracts which it proposes to issue  
34 under such health care plan, are based upon sound busi-

35 ness principles and will be in every respect equitable,  
36 just and fair to the subscriber, (3) that the working capi-  
37 tal available to the corporation will be sufficient to pay all  
38 operating expenses during the subscription period, and  
39 (4) that the proposed plan will adequately serve the best  
40 interests of all the people of the area in which the corpo-  
41 ration intends to operate, regardless of their race, color  
42 or religion.

43 (d) The commissioner may refuse to license a corpo-  
44 ration when he determines that such corporation has not  
45 complied with the laws of this state, or that it is not in  
46 the best interest of the people of the state that such cor-  
47 poration be licensed, or that such corporation would trans-  
48 act business in this state in an improper, illegal, or unjust  
49 manner. In such event, the commissioner shall enter an  
50 order refusing such license and the applicant therefor  
51 may have a hearing and judicial review in accordance  
52 with the applicable provisions of article two of this chap-  
53 ter relating to hearings before and judicial review of  
54 orders entered by the commissioner.

55 (e) All licenses issued under the provisions of this

56 article shall expire at midnight on March thirty-first next  
57 following the date of issuance. The commissioner shall  
58 renew annually the license of all corporations which  
59 qualify and make application therefor upon a form pre-  
60 scribed by the commissioner upon payment to the com-  
61 missioner of a renewal fee of one hundred dollars.

62 (f) The commissioner shall, after notice and hearing,  
63 refuse to renew or shall revoke or suspend the license of  
64 a corporation, if the corporation: (1) violates any pro-  
65 vision of this article; (2) fails to comply with any lawful  
66 rule, regulation or order of the commissioner; (3) is trans-  
67 acting its business in an illegal, improper or unjust man-  
68 ner, or is operating in contravention of its articles of in-  
69 corporation or any amendments thereto, of its by-laws,  
70 or of its health care plan; (4) is found by the commis-  
71 sioner to be in an unsound condition or in such condition  
72 as to jeopardize its obligations to subscribers and those  
73 with whom it has contracted; (5) compels subscribers to  
74 its health care program to accept less than the obligation  
75 due them under their contracts or agreements with the  
76 corporation; (6) refuses to be examined or to produce its

77 accounts, records and files for examination by the com-  
78 missioner when required; (7) fails to pay any final judg-  
79 ment rendered against it in West Virginia within thirty  
80 days after the judgment became final or time for appeal  
81 expired, whichever is later; (8) fails to pay when due to  
82 the state of West Virginia any fees, charges, or penalties  
83 required by this chapter.

84 In those cases where the commissioner has the right  
85 to revoke, suspend or terminate the license or any renewal  
86 thereof of said corporation, the commissioner shall, by  
87 order, require the corporation to pay to the state of West  
88 Virginia a penalty in the sum not exceeding one thousand  
89 dollars, and on the failure of the corporation to pay such  
90 penalty within thirty days after notice thereof, the com-  
91 missioner shall revoke or suspend the license of such cor-  
92 poration.

93 When any license has been revoked, suspended or ter-  
94 minated, the commissioner may reinstate such license  
95 when he is satisfied that the conditions causing such revo-  
96 cation, suspension or termination have ceased to exist and  
97 are unlikely to recur.

98 In the event the commissioner revokes, suspends or  
99 terminates a license, the corporation may demand a hear-  
100 ing in the manner provided in article two of this chapter.

**Sec. 8. Supervision by Commissioner; Approval of**

2 **Contracts, Forms, Rates, and Fees.**—(a) It shall be the  
3 duty of the commissioner to enforce the provisions of  
4 this article.

5 (b) No such corporation shall deliver or issue for  
6 delivery any subscriber's contract, changes in the terms  
7 of such contract, application, rider or endorsement until  
8 a copy thereof and the rates pertaining thereto have  
9 been filed with and approved by the commissioner. All  
10 such forms filed with the commissioner shall be deemed  
11 approved after the expiration of thirty days from the  
12 date of such filing unless the commissioner shall have  
13 disapproved the same, stating his reasons for such dis-  
14 approval in writing, except that such period may be ex-  
15 tended for an additional period not to exceed fifteen days  
16 upon written notice thereof from the commissioner to  
17 the applicant. Such forms may be used prior to the ex-  
18 piration of such periods if written approval thereof has  
19 been received from the commissioner.

20 (c) No rates to be charged subscribers shall be used  
21 or established by any such corporation unless and until  
22 the same have been filed with the commissioner and ap-  
23 proved by him. The procedure for such filing and ap-  
24 proval shall be the same as that prescribed in paragraph  
25 (b) of this section for the approval of forms. The com-  
26 missioner shall approve all such rates which are not ex-  
27 cessive, inadequate, or unfairly discriminatory.

28 (d) The commissioner shall pass upon the actuarial  
29 soundness of all direct health care services plans.

30 (e) The corporation shall accumulate a fund to be  
31 derived from a minimum of two percentum of every sub-  
32 scriber's monthly premium which shall be known as a  
33 contingency and liability reserve fund except that the  
34 same shall not exceed an amount equal to three months'  
35 average obligation of said corporation, nor shall it fall  
36 below a minimum of one months' average obligation of  
37 said corporation. Said fund shall be expended by the  
38 corporation according to rules and regulations to be  
39 promulgated by the commissioner.

40 In addition to the above requirements, every sub-

41 scribe shall pay into the corporation a membership fee  
42 equal to one monthly premium. The membership fee  
43 shall be collected in full by said corporation within ninety  
44 days of said subscriber's application for membership.

**Sec. 9. Reports by Corporations to the Commissioner.—**

2 Every corporation shall annually on or before the first  
3 day of March, file, with its application for renewal license,  
4 a report, verified by an officer of the corporation, with  
5 the commissioner, showing its condition on the last day  
6 of the preceding calendar year, on forms prescribed by  
7 the commissioner, which report shall include:

8 (a) A financial statement of such corporation, in-  
9 cluding its balance sheet and its receipts and disburse-  
10 ments for the preceding calendar year;

11 (b) A list of the names and residence addresses of all  
12 its officers and directors, and the total amount of expense  
13 reimbursement to all officers and directors during the  
14 preceding calendar year;

15 (c) The number of subscribers' contracts issued by  
16 such corporation and outstanding;

17 (d) The names of those persons (other than sub-

18 scribes), corporations, associations, and institutions with  
19 which such corporation has agreements;

20 (e) Number and type of services currently covered  
21 under the health care plan of the corporation.

**Sec. 10. Examination of Corporation; Access to Books;**

2 **Records, etc.**—The commissioner or his accredited ex-  
3 aminers may at any reasonable time and shall, at least  
4 once each year, visit each health care corporation and  
5 thoroughly examine its financial condition and methods of  
6 doing business and ascertain whether it has complied  
7 with all of the laws and regulations of this state. All ex-  
8 penses of each such examination conducted shall be borne  
9 by such corporation. The commissioner shall make a full  
10 written report of each such examination of the corpo-  
11 ration, certified to by the commissioner or the examiner  
12 in charge of such examinations. The commissioner shall  
13 furnish a copy of the report to the corporation examined  
14 not less than ten days prior to filing the same in his  
15 office. If such corporation so requests in writing, within  
16 such ten-day period, the commissioner shall consider the  
17 objections of such corporation to the report as proposed,

18 and shall not so file the report until after such modifi-  
19 cations, if any, have been made therein as the commis-  
20 sioner deems proper. The report, when filed, shall be  
21 admissible in evidence in any action or proceeding  
22 brought by the commissioner against the corporation ex-  
23 amined, or its officers or agents, and shall be prima facie  
24 evidence of the facts stated therein. The commissioner  
25 or his examiners may at any time testify and offer other  
26 proper evidence as to information secured during the  
27 course of an examination, whether or not a written re-  
28 port of the examination has at that time been either  
29 made, served, or filed in the commissioner's office.

30 (b) For such purposes the commissioner, his deputies  
31 and employees shall have free access to all books, rec-  
32 ords, papers, documents and correspondence of any such  
33 corporation and such books, records, papers, documents  
34 and records shall be and remain in the state of West Vir-  
35 ginia. The licenses of said corporation shall be auto-  
36 matically revoked if such books, records, papers, docu-  
37 ments and records are taken outside the state of West  
38 Virginia without the prior written approval of the com-  
39 missioner.

40 (c) The commissioner shall revoke the license of any  
41 such corporation which refuses to submit to such ex-  
42 amination.

**Sec. 11. Rules and Regulations.**—The commissioner is  
2 authorized to promulgate and adopt such rules and regu-  
3 lations relating to health care corporations as are neces-  
4 sary to discharge his duties and exercise his powers and  
5 to effectuate the provisions of this article and to protect  
6 and safeguard the interests of subscribers and the public  
7 of this state.

**Sec. 12. Required Provisions in Contracts Made by the**  
2 **Corporation with Physicians, Dentists, etc., Hospitals and**  
3 **Other Health Agencies.**—Each contract made by the cor-  
4 poration with any person (other than subscribers), cor-  
5 poration, association, and institution, named or referred  
6 to in section three of this article shall contain the follow-  
7 ing provisions:

8 (a) That the person, corporation, association, or in-  
9 stitution will render to any subscriber such service as he  
10 may be entitled to under the terms and conditions of the  
11 contract issued to the subscriber by the corporation;

12 (b) That the person, corporation, association, or in-  
13 stitution will accept as full payment for services con-  
14 tracted for subscribers such compensation as is set forth  
15 in the contract between such persons, corporation, as-  
16 sociation, or institution and the corporation;

17 (c) That in the event a surplus remains after an an-  
18 nual accounting of the financial condition of the corpo-  
19 ration, such surplus may be used by the Corporation,  
20 upon an affirmative vote of a majority of its board of  
21 directors for the following purposes, in the order of pri-  
22 ority stated below:

23 (1) To liquidate on a pro rata basis any obligation  
24 due any such person, corporation, association, or institu-  
25 tion in previous years;

26 (2) To return the original contributions for working  
27 capital, or any part thereof, on a pro rata basis;

28 (3) To reduce rates charged subscribers, or to ex-  
29 pand the services rendered them.

**Sec. 13. Contracts to be Furnished to Subscribers;**

2 **Contracts with Needy Persons.**—(a) Every such corpo-  
3 ration shall deliver to each subscriber to its health care

4 plan a copy of the contract.

5 (b) A corporation may not accept from private agencies,  
6 corporations, associations, groups or individuals, payment  
7 for or on behalf of any subscriber of all or any part  
8 of the cost of subscriptions for direct health care services  
9 to be rendered: *Provided, however,* That no employer or  
10 sponsor may deduct the proportionate share of such pay-  
11 ment attributable to any employee or subscriber from that  
12 employee's or subscriber's wages or salary, without the  
13 prior written consent of the employee or subscriber. It  
14 shall be unlawful for any governmental agency to pay  
15 subscriptions for or on behalf of any subscriber.

**Sec. 14. Advancement of Sums of Money to a Corpo-**  
2 **ration.**—Any person may advance to such corporation  
3 any sums of money necessary for its business or to enable  
4 it to comply with any requirements of law. Such ad-  
5 vances and such interest thereon not exceeding six per  
6 cent per annum, as may be agreed upon, shall not be a  
7 liability or a claim against the corporation or any of its  
8 assets, except as provided in this section and shall be  
9 reimbursed only out of the surplus earnings of such cor-

10 poration. This section does not affect the power to borrow  
11 money which any such corporation possesses under other  
12 laws. No commissions or promotion expenses shall be  
13 paid by the corporation in connection with the advance  
14 of any such money to the corporation. The amount of any  
15 such advance that has not been repaid shall be reported  
16 in each annual statement of the corporation.

**Sec. 15. Investments.**—The funds of any such corpo-  
2 ration shall be invested only in the following: Corporate  
3 obligations of West Virginia corporations, building and  
4 savings and loan shares of West Virginia corporations  
5 and state or national bank shares, deposits or certificates  
6 of banks located in West Virginia, preferred or guaran-  
7 teed stock of any West Virginia corporation, real property  
8 located in West Virginia, and revenue bonds and govern-  
9 ment securities of any state or the United States.

**Sec. 16. Disposition of Fees and Charges.**—All licenses  
2 or renewal fees, all auditing charges and any other in-  
3 come derived from this act shall be deposited with the  
4 treasurer of the state of West Virginia to the credit of  
5 the insurance commissioner to be used only for the cost

6 of operation of the insurance commissioner's office.

**Sec. 17. Bonds of Corporation Officers and Em-**  
2 **ployees.**—Every officer or employee of any such corpo-  
3 ration, who is entrusted with the handling of its funds,  
4 shall furnish, in such amount as may with the approval  
5 of the commissioner be fixed by the board of directors of  
6 the corporation, a bond with corporate surety, conditioned  
7 upon faithful performance of all his duties.

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

*B. Roy Parker*  
Chairman Senate Committee

*Ethel L. Caudall*  
Chairman House Committee

Originated in the House.

Takes effect 90 days from passage.

*Howard Myers*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*Howard W. Carson*  
President of the Senate

*Julius W. Singleton Jr.*  
Speaker House of Delegates

The within approved this the 9th  
day of February, 1964.

*W. M. Barron*  
Governor