WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2417

(By Mr. Speaker, Mr. Chamber Del. R. Burke)
[By Request of the Executive]

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Passed April 8, 1989

In Effect July 1, 1989 Passage
ENROLLED
COMMITEE SUBSTITUTE
FOR
H. B. 2417
(By MR. Speaker, MR. Chambers, and Delegate R. Burk)
[By Request of the Executive]

[Passed April 8, 1989; in effect July 1, 1989.]

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty of said chapter; to amend and reenact section six, article twenty-four of said chapter, to amend and reenact section eight, article twenty-five of said chapter; and to amend section eight, article twenty-five-a of said chapter, all relating to extending of the rate and form filings review period on all rate and form filings involving insurance to sixty days; and notice of rate increase requests.

Be it enacted by the Legislature of West Virginia:

That section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty of said chapter be amended and reenacted; that section six, article twenty-four of said chapter be amended and reenacted; that section eight, article twenty-five of said chapter be amended and reenacted; and that section eight, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:
ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Approval of forms.

(a) Except as provided in section eight, article seventeen of this chapter (fire and marine forms), no insurance policy form, no group certificate form, no insurance application form where written application is required and is to be made a part of the policy, and no rider, endorsement or other form to be attached to any policy, shall be delivered or issued for delivery in this state by an insurer unless it has been filed with and approved by the commissioner, except that as to group insurance policies delivered outside this state, only the group certificates to be delivered or issued for delivery in this state shall be filed with the commissioner upon his request. This section shall not apply to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or accident and sickness insurance policies, and are used at the request of the individual policyholder, contract holder or certificate holder, nor to the surety bond forms.

(b) Every such filing shall be made not less than sixty days in advance of any such delivery. At the expiration of such sixty days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(c) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor.

(d) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and
approval of which are, in his opinion, not desirable or
necessary for the protection of the public.

(e) Notwithstanding any other provisions of this
section, any mass marketed life and/or health insurance
policy offered to members of any association by an
association where the primary purpose of such associ-
atation is other than the sale of insurance to its members,
shall be exempt from the provision requiring prior
approval under this section.

(f) This section shall apply also to any form used by
domestic insurers for delivery in a jurisdiction outside
West Virginia, if the insurance supervisory official of
such jurisdiction informs the commissioner that such
form is not subject to approval or disapproval by such
official, and upon the commissioner’s order requiring
the form to be submitted to him for the purpose. The
applicable same standards shall apply to such forms as
apply to forms for domestic use.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4. Rate filings.

(a) (1) Every insurer shall file with the commissioner
every manual of classifications, territorial rate areas
established pursuant to subdivision (e) (2), section three
of this article, rules and rates, every rating plan and
every modification of any of the foregoing which it
proposes to use for casualty insurance to which this
article applies.

(2) Every insurer shall file with the commissioner,
except as to inland marine risks which by general
custom of the business are not written according to
manual rates or rating plans, every manual, minimum,
class rate, rating schedule or rating plan and every
other rating rule and every modification of any of the
foresaid which it proposes to use for fire and marine
insurance to which this article applies. Specific inland
marine rates on risks specially rated, made by a rating
organization, shall be filed with the commissioner.

(b) Every such filing shall state the proposed effective
date thereof and shall indicate the character and extent
of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this article, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (1) the experience or judgment of the insurer or rating organization making the filing, (2) the experience or judgment of the insurer or rating organization in the territorial rate areas established by subdivision (c) (2), section three of this article, (3) its interpretation of any statistical data it relies upon, (4) the experience of other insurers or rating organizations or (5) any other relevant factors. A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or its position concerning the filing. Upon receipt of such statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of such statement to the filer, which may file such reply as it may desire to make. This section shall not be applicable to any memorandum or statement of any kind by any employee of the commissioner.

(c) An insurer may satisfy its obligation to make such filing by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf: Provided, That nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(d) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this
(e) Subject to the exceptions specified in subsections (f) and (g) of this section, each filing shall be on file for a waiting period of sixty days before it becomes effective. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period.

(f) Any special filing with respect to a surety bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this article until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(g) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this article until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(h) Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in subdivision (b), section three of this article.

(i) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by
(j) No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this article or in accordance with subsection (h) or (i) of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

(k) In instances when an insurer files a request for an increase of automobile liability insurance rates in the amount of fifteen percent or more, the insurance commissioner shall provide notice of such increase with the office of the secretary of state to be filed in the state register and shall provide interested persons the opportunity to comment on such request up to the time the commissioner approves or disapproves such rate increase.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.

§33-24-6. Commissioner to enforce article; approval of contracts, forms, rates and fees.

(a) It shall be the duty of the commissioner to enforce the provisions of this article.

(b) No such corporation shall deliver or issue for delivery any subscriber's contract, changes in the terms of such contract, application, rider or endorsement, until a copy thereof and the rates pertaining thereto have been filed with and approved by the commissioner. All such forms filed with the commissioner shall be deemed approved after the expiration of sixty days from the date of such filing unless the commissioner shall have disapproved the same, stating his reasons for such disapproval in writing. Such forms may be used prior to the expiration of such periods if written approval thereof has been received from the commissioner.

(c) No rates to be charged subscribers shall be used or established by any such corporation unless and until the same have been filed with the commissioner and
approved by him. The procedure for such filing and
approval shall be the same as that prescribed in
paragraph (b) of this section for the approval of forms.
The commissioner shall approve all such rates which are
not excessive, inadequate or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial
soundness of the schedule of fees to be paid hospitals,
physicians, dentists and other health agencies.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8. Commissioner to enforce article; approval of
contracts, forms and rates; reserve fund;
membership fee.

(a) It shall be the duty of the commissioner to enforce
the provisions of this article.

(b) No such corporation shall deliver or issue for
delivery any subscriber's contract, changes in the terms
of such contract, application, rider or endorsement until
a copy thereof and the rates pertaining thereto have
been filed with and approved by the commissioner. All
such forms filed with the commissioner shall be deemed
approved after the expiration of sixty days from the date
of such filing unless the commissioner shall have
disapproved the same, stating his reasons for such
disapproval in writing. Such forms may be used prior
to the expiration of such periods if written approval
thereof has been received from the commissioner.

(c) No rates to be charged subscribers shall be used
or established by any such corporation unless and until
the same have been filed with the commissioner and
approved by him. The procedure for such filing and
approval shall be the same as that prescribed in
paragraph (b) of this section for the approval of forms.
The commissioner shall approve all such rates which are
not excessive, inadequate, or unfairly discriminatory.

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

(e) The corporation shall accumulate a fund to be
derived from a minimum of two percent of every
substitute's monthly premium which shall be known as a contingency and liability reserve fund except that the same shall not exceed an amount equal to three months' average obligation of said corporation, nor shall it fall below a minimum of one month's average obligation of said corporation. Said fund shall be expended by the corporation according to rules and regulations to be promulgated by the commissioner.

In addition to the above requirements, every subscriber shall pay into the corporation a membership fee equal to one monthly premium. The membership fee shall be collected in full by said corporation within ninety days of said subscriber's application for membership.

(f) Each such rate filing and each such form filing made with the commissioner pursuant to this section is subject to the filing fee of section thirty-four, article six of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.

(1) (a) Every enrollee is entitled to evidence of coverage in accordance with this section. The health maintenance organization or its designated representative shall issue the evidence of coverage.

(b) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(c) An evidence of coverage shall contain a clear, concise and complete statement of (i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled; (ii) any exclusions or limitations on the services, kind of services, benefits, or kind of benefits, to be provided, including any copayments; (iii) where and in what manner information is available as to how services, including emergency and
out-of-area services, may be obtained; (iv) the total
amount of payment and copayment, if any, for health
care services and the indemnity or service benefits, if
any, which the enrollee is obligated to pay with respect
to individual contracts, or an indication whether the
plan is contributory or noncontributory with respect to
group certificates; and (v) a description of the health
maintenance organization's method for resolving enrol-
lee complaints.

(d) Any subsequent approved change in an evidence
of coverage shall be issued to each enrollee.

(e) A copy of the form of the evidence of coverage to
be used in this state, and any amendment thereto, shall
be subject to the filing and approval requirements of
subdivision (b), subsection (1) of this section, unless the
commissioner promulgates a regulation dispensing with
this requirement or unless it is subject to the jurisdiction
of the commissioner under the laws governing health
insurance or, hospital or medical service corporations,
in which event the filing and approval provisions of such
laws shall apply. To the extent, however, that such
provisions do not apply the requirements in subdivision
(c), subsection (1) of this section, shall be applicable.

(2) Such charges may be established in accordance
with actuarial principles: Provided, That premiums
shall not be excessive, inadequate, or unfairly discrimi-
natory. A certification by a qualified actuary, to the
appropriateness of the charges based on reasonable
assumptions shall accompany the filing along with
adequate supporting information. In determining
whether such charges are reasonable, the commissioner
shall consider whether such health maintenance organ-
ization has (a) made a vigorous, good faith effort to
control rates paid to health care providers; (b) established a premium schedule, including copay-
ments, if any, which encourages enrollees to seek out
preventive health care services; and (c) has made a good
faith effort to secure arrangements whereby basic
services can be obtained by subscribers from all local
providers to the extent that such providers offer such
services.
(3) The commissioner shall within a reasonable period approve any form if the requirements of subsection (1) are met and any schedule of charges if the requirements of subsection (2) are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the commissioner disapproves of such filing, he shall notify the filer promptly. In the notice, the commissioner shall specify the reasons for his disapproval and the findings of fact and conclusions which support his reasons. A hearing will be granted by the commissioner within fifteen days after a request in writing, by the person filing, has been received by the commission. If the commissioner does not disapprove any form or schedule of charges within sixty days of the filing of such forms or charges, they shall be deemed approved.

(4) The commissioner may require the submission of whatever relevant information in addition to the schedule of charges which he deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(5) An enrollee shall be allowed to cancel a contract with a health maintenance organization at any time for any reason provided that a health maintenance organization may require that he or she give sixty days notice of disenrollment to such organization.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of , 1989.

Governor