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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2636

(By Mr. Speaker, M. Chambers & Del. White)

— ● —

Passed April 6, 1989

In Effect Ninety Days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2636

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE WHITE)

[Passed April 6, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section ten, all relating to creating the West Virginia health care insurance plan; legislative findings; purpose; planning; development and implementation; West Virginia health care insurance fund; administrative support; rules and regulations; contents; legislative report; availability of data of department of employment security; termination of health care insurance plan; exemption from state antitrust laws and insurance laws; misrepresentation by employee or provider; and penalty.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section ten, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE ACT.

§5-16A-1. Short title.

1 This article may be cited as "The West Virginia
2 Health Care Insurance Plan Act."

§5-16A-2. Legislative findings.

1 The Legislature hereby finds and declares as follows:

2 (a) That in excess of three hundred thousand, or
3 nearly sixteen percent, of West Virginians are without
4 health insurance and are not covered by federal or state
5 health care assistance and eighty percent of these
6 persons have incomes below two hundred percent of the
7 federal poverty level and are thus medically indigent;

8 (b) That this problem is exacerbating as the number
9 of persons so uninsured has increased by thirty thou-
10 sand, or eleven percent, since the year one thousand nine
11 hundred eighty;

12 (c) Approximately seventy-six thousand of these
13 uninsured are employed by small businesses. Taking
14 into account dependents, this group accounts for
15 approximately one half of West Virginia's uninsured
16 population;

17 (d) No relief appears available for the uninsured
18 working citizens of this state in the form of adequate
19 health insurance or access to funds to pay therefor and
20 the health and welfare of these uninsured working
21 citizens and their dependents is increasingly threatened;

22 (e) Studies show that the numbers of such uninsured
23 persons are rising as a result of changing patterns of
24 employment in which jobs are available in ever enlarg-
25 ing numbers in industries involving service and trade
26 and that these are among the least likely industries to
27 provide health insurance for employees;

28 (f) The system of cost shifting by providers of
29 uncompensated health care to paying health care
30 consumers creates increasing numbers of persons
31 unable to afford health insurance and has resulted in a
32 climate where the financial stability of health care
33 providers is increasingly threatened; West Virginia
34 taxpayers and private insurance companies provided
35 one hundred thirty million dollars of uncompensated
36 health care in the year one thousand nine hundred
37 eighty-seven, which represents eight and three tenths
38 percent of gross patient revenue, a rate that is twenty-
39 five percent greater than the national average;

40 (g) Thousands of uninsured working citizens are
41 employed in small businesses many of which do not have
42 available to them affordable group health insurance
43 plans for their employees;

44 (h) Many small businesses, with only one employee
45 who is considered to be a high risk for medical reasons,
46 are unable to obtain group health insurance for any of
47 their employees;

48 (i) That the Family Support Act of 1988 provides the
49 state of West Virginia with an opportunity to provide
50 basic health care coverage to families earning below one
51 hundred and eighty-five percent of the federal poverty
52 level; thereby taking full advantage of available federal
53 funds;

54 (j) That families and individuals without health
55 insurance delay seeking health care which often results
56 in more expensive intensive care at a later date;

57 (k) That the state of West Virginia presently does not
58 have a "high risk pool" which would provide health
59 insurance to persons not able to purchase health
60 insurance due to medical reasons;

61 (l) The severity of these problems demands a solution,
62 and projects have been developed in other states which
63 do provide affordable, necessary health insurance
64 coverage through the combining of small employee
65 groups into a larger insurance pool;

66 (m) To address these problems, the public employees

67 insurance agency created by article sixteen of this
68 chapter is the appropriate logical entity to implement
69 a health care insurance plan to target West Virginians
70 and their dependents without health insurance, and to
71 assist those unable to purchase health insurance with
72 the cooperation and assistance of the legislative task
73 force on uncompensated health care and medicaid
74 expenditures created by article twenty-nine-c, chapter
75 sixteen of this code.

**§5-16A-3. Insurance plan; purpose; planning; develop-
ment and implementation.**

1 On the first day of July, one thousand nine hundred
2 eighty-nine, a health care insurance plan in the state
3 shall be commenced and administered by the public
4 employees insurance agency and the resources available
5 to it solely through the West Virginia health care
6 insurance fund, with the advice and assistance of the
7 legislative task force on uncompensated health care and
8 medicaid expenditures. The purpose of the plan shall be
9 to make available affordable health insurance by
10 pooling in a group for health insurance purposes groups
11 of small businesses to provide for acute and primary
12 health care services to working citizens of the state and
13 their dependents who are without health insurance
14 benefits offered in connection with their employment as
15 well as to any citizen who is unable to obtain health
16 insurance coverage. The public employees insurance
17 agency shall be responsible for the development and
18 implementation of the plan. In so doing, the agency may
19 seek the advice and assistance of the legislative task
20 force on uncompensated health care and medicaid
21 expenditures.

**§5-16A-4. West Virginia health care insurance fund;
administrative support.**

1 (a) There is hereby created in the state treasury the
2 West Virginia health care insurance fund. The fund
3 shall operate as a revolving fund whereby all appropri-
4 ations, other payments and interest earned thereon shall
5 be applied and reapplied for the purposes of this article.
6 Any premiums, grants, gifts, legislative appropriations

7 or other income from any source shall be deposited into
8 this fund.

9 (b) The fund shall be used to provide the subsidization
10 provided in subsections (e) and (g), section five of this
11 article as well as to pay the administrative costs and all
12 other proper costs incurred in implementing the
13 provisions of this article.

14 (c) The public employees insurance agency is autho-
15 rized to utilize its administrative staff and resources in
16 administering this article. In no event, however, may
17 any benefit or program entitlement offered to those
18 eligible under the provisions of article sixteen be
19 affected by the plan established in this article.

§5-16A-5. Rules; contents.

1 (a) The public employees insurance agency shall
2 develop and implement the plan through rules promul-
3 gated in accordance with the provisions of chapter
4 twenty-nine-a of this code. The legislative task force on
5 uncompensated health care and medicaid expenditures
6 shall share with the public employees insurance agency
7 any and all pertinent data, studies, reports, analyses,
8 research, summaries, information collected, filed or
9 developed now or in the future in order to effect the
10 development and implementation of the plan contem-
11 plated herein. Upon request, in the planning, develop-
12 ment and implementation of the plan the insurance
13 commissioner and the commissioner of human services
14 shall cooperate with advice and assistance.

15 (b) The rules shall provide for the establishment of an
16 insurance pool for the provision of basic acute and
17 primary health care insurance coverage with measur-
18 able cost containment provisions to employers and
19 employees of small businesses and individuals in this
20 state and their respective dependents; shall develop a
21 definition for "small business" which definition shall
22 include nonprofit organizations and nonprofit corpora-
23 tions having nineteen or fewer employees; shall permit
24 bids from qualified and licensed insurance companies or
25 carriers, who may wish to offer plans or reinsurance for
26 the insurance coverage desired; shall address incentives

27 for small business participation in the plan, and a
28 variety of effective cost controls; shall provide for an
29 appropriate application form for participation and
30 procedures for application; shall ensure accurate and
31 appropriate marketing of the health insurance coverage
32 to small businesses throughout the state; and shall
33 establish criteria for monitoring the effectiveness of the
34 insurance pool.

35 (c) The rules shall provide that the plan will be
36 available to small business employers with nineteen
37 employees or less and to individuals who can demon-
38 strate that they have been without health insurance
39 coverage for a period of at least six months prior to
40 enrollment, except that persons who are not eligible for
41 the COBRA provisions for the unemployed and who can
42 demonstrate that their lack of health insurance is due
43 to a reduction in workforce will be eligible. Beginning
44 on the first day of April, one thousand nine hundred
45 ninety, families that no longer qualify for AFDC but do
46 qualify for Medicaid under the Family Support Act of
47 1988 will be eligible to participate in the program, and
48 the plan may include a premium for those families.

49 (d) The rules shall provide that health care provided
50 pursuant to the plan be through an exclusive provider
51 organization consisting of acute care hospitals, primary
52 care centers, clinics, physician groups and physicians.
53 Inpatient care shall be provided by hospitals at a
54 discounted rate which will be at or below cost. Primary
55 care and outpatient services shall be provided on a per
56 capita basis to be negotiated with providers or provider
57 groups and such payment may be made in advance of
58 services rendered. A formulary prescription drug
59 program shall also be included on a near cost basis.
60 Health care provided outside the exclusive provider
61 organization will generally not be covered by the plan.
62 Outpatient services shall include a quality assurance
63 component to ensure that the level of care is adequate
64 and appropriate. Appropriate provisions may be in-
65 cluded to ensure that health care providers participat-
66 ing in the plan do not realize a financial windfall from
67 such participation and that subsequent charges reflect

68 the income received therefrom.

69 (e) The rules shall provide that benefit design and
70 premium structures be developed with recommenda-
71 tions from the legislative task force on uncompensated
72 health care and medicaid expenditures. The plan shall
73 provide for differing premium and benefit structures
74 based upon the enrollee's level of income. To the extent
75 feasible, the plan will limit enrollment to those individ-
76 uals who have incomes at or below two hundred percent
77 of the federal poverty level. Premium structures may
78 include cost sharing methods including employer and
79 employee sharing of cost and a sliding scale based on
80 ability to pay. Provisions shall be included for a
81 minimum two hundred fifty dollar annual deductible for
82 inpatient acute care and a lifetime cap of two hundred
83 fifty thousand dollars, per individual, for all benefits
84 provided under the plan. The plan may provide for the
85 subsidization of premiums for employees and individu-
86 als whose income is below the federal poverty rate but
87 above medicaid payment standards. The plan may
88 include such provisions as are necessary to allow full
89 advantage to be taken of the provisions of the Family
90 Support Act of 1988.

91 (f) The plan shall begin with a three-year pilot
92 program which shall include, at a minimum, two
93 thousand subscribers. The program will be established
94 in two pilot areas in the state. One pilot area will be
95 located in an urban area defined as a metropolitan
96 statistical area and one in a rural area, defined as a
97 nonmetropolitan statistical area. The plan authorized
98 pursuant to this section is a pilot plan only, and may be
99 discontinued or terminated at the end thereof without
100 further liability on behalf of the State of West Virginia
101 or any small businesses that are participating.

102 (g) The rules may provide that medical underwriting
103 will take place after, rather than prior, to enrollment
104 in the plan, although all participants will be required
105 to complete a medical screen. Those who do not pass the
106 medical screen may be able to participate. Premiums
107 for such individuals may be at a rate higher than those
108 established for other participants. The cost of the high

109 risk participants' health care insurance premiums may
110 be partially subsidized by the health care insurance
111 fund. The rules shall provide for a schedule of the
112 subsidization, which shall be based on need, cost and
113 funds available.

114 (h) The rules shall contain provisions that limit any
115 assistance provided pursuant to the plan to that which
116 can be provided within the funds available.

§5-16A-6. Legislative report.

1 The public employees insurance agency, with the
2 advice and assistance of the legislative task force on
3 uncompensated health care and medicaid expenditures,
4 shall cooperate to prepare and submit reports to the
5 Legislature before it convenes in the years, one thousand
6 nine hundred ninety, one thousand nine hundred ninety-
7 one and one thousand nine hundred ninety-two, with
8 studies, findings, conclusions and recommendations,
9 including any recommendations for legislation, all
10 relating to the purpose and effect of the health care
11 insurance plan created herein. Said report shall be in
12 addition to any report prepared by the legislative task
13 force on uncompensated health care and medicaid
14 expenditures pursuant to the provisions of article
15 twenty-nine-c, chapter sixteen of this code.

**§5-16A-7. Availability of data of department of employ-
ment security.**

1 In furtherance of the purposes of this article, the
2 department of employment security shall, notwithstand-
3 ing the provisions of section eleven, article ten, chapter
4 twenty-one-a of this code, cooperate to make available
5 to the public employees insurance agency and the
6 legislative task force on uncompensated health care and
7 medicaid expenditures such information as they may
8 request for purposes consistent with this article to
9 identify and facilitate contact with small business
10 employers who may be eligible for participation in the
11 plan. The provisions of this section shall be liberally
12 construed by the department of employment security in
13 order to effectuate the development of the health care
14 insurance plan.

15 Information thus obtained by the public employees
16 insurance agency and the legislative task force on
17 uncompensated health care and medicaid expenditures
18 shall be maintained as strictly confidential and shall be
19 exempt from disclosure to the public.

§5-16A-8. Exemption from state antitrust laws and insurance laws.

1 The health care insurance plan and those responsible
2 for developing and implementing it under the provisions
3 of this article are exempted from the provisions of
4 section five, article eighteen, chapter forty-seven of this
5 code and any otherwise applicable provisions of chapter
6 thirty-three of this code.

§5-16A-9. Termination of health care insurance plan.

1 The health care insurance plan shall be terminated
2 pursuant to the provisions of article ten, chapter four of
3 this code on the first day of July, one thousand nine
4 hundred ninety-two, unless continued or reestablished
5 pursuant to the provisions of that article.

§5-16A-10. Misrepresentation by employee or provider; penalty.

1 Any person who knowingly secures or attempts to
2 secure benefits payable under this article to which the
3 person is not entitled, or willfully misrepresents any
4 material fact relating to any other information re-
5 quested by the public employees insurance agency or
6 who willfully overcharges for services provided, or who
7 willfully misrepresents the diagnosis or nature of the
8 service provided, may be found to be overpaid and shall
9 be civilly liable for any overpayment. In addition to the
10 civil remedy provided herein, the public employees
11 insurance agency shall withhold payment of any benefits
12 due to that person until any overpayment has been
13 recovered or may directly set off, after holding internal
14 administrative proceedings to assure due process, any
15 such overcharges or improperly derived payment
16 against benefits due such person hereunder. Nothing in
17 this section shall be construed to limit any other remedy
18 or civil or criminal penalty provided by law.

§5-16A-11. Exceptions.

1 Even though a state agency or various state agencies
2 may implement this insurance program, the employers
3 and individuals provided insurance coverage by this
4 article are not entitled to access to health care providers
5 as presently mandated in article twenty-nine-d, chapter
6 sixteen of this code.

7 Health care providers may be given the right to treat
8 individuals under this plan but shall not be required to
9 provide health care service to any firm or individual
10 under the insurance plan provided in this article.

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

Frederick S. Parker
Chairman Senate Committee

J. L. Latta
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Fred C. Mullis
Clerk of the Senate

Donald L. Hoyle
Clerk of the House of Delegates

Sam R. Francis
President of the Senate

Robert C. Byrd
Speaker of the House of Delegates

The within *is approved* this the *27th*
day of *April*, 1989

Yastor Capen
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/89

Time 10:38