WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2636

(By Mr. Speaker, Mr. Chambers, and Del. White)

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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.

This article may be cited as “The West Virginia Health Care Insurance Plan Act.”

§5-16A-2. Legislative findings.

The Legislature hereby finds and declares as follows:

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

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

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

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

(e) Studies show that the numbers of such uninsured persons are rising as a result of changing patterns of employment in which jobs are available in ever enlarging numbers in industries involving service and trade and that these are among the least likely industries to provide health insurance for employees;
(f) The system of cost shifting by providers of uncompensated health care to paying health care consumers creates increasing numbers of persons unable to afford health insurance and has resulted in a climate where the financial stability of health care providers is increasingly threatened; West Virginia taxpayers and private insurance companies provided one hundred thirty million dollars of uncompensated health care in the year one thousand nine hundred eighty-seven, which represents eight and three tenths percent of gross patient revenue, a rate that is twenty-five percent greater than the national average;

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

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

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

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

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

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

(m) To address these problems, the public employees
insurance agency created by article sixteen of this chapter is the appropriate logical entity to implement a health care insurance plan to target West Virginians and their dependents without health insurance, and to assist those unable to purchase health insurance with the cooperation and assistance of the legislative task force on uncompensated health care and medicaid expenditures created by article twenty-nine-c, chapter sixteen of this code.

§5-16A-3. Insurance plan; purpose; planning; development and implementation.

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

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

(a) There is hereby created in the state treasury the West Virginia health care insurance fund. The fund shall operate as a revolving fund whereby all appropriations, other payments and interest earned thereon shall be applied and reapplied for the purposes of this article. Any premiums, grants, gifts, legislative appropriations
or other income from any source shall be deposited into this fund.

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

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

§5-16A-5. Rules; contents.

(a) The public employees insurance agency shall develop and implement the plan through rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code. The legislative task force on uncompensated health care and medicaid expenditures shall share with the public employees insurance agency any and all pertinent data, studies, reports, analyses, research, summaries, information collected, filed or developed now or in the future in order to effect the development and implementation of the plan contemplated herein. Upon request, in the planning, development and implementation of the plan the insurance commissioner and the commissioner of human services shall cooperate with advice and assistance.

(b) The rules shall provide for the establishment of an insurance pool for the provision of basic acute and primary health care insurance coverage with measurable cost containment provisions to employers and employees of small businesses and individuals in this state and their respective dependents; shall develop a definition for “small business” which definition shall include nonprofit organizations and nonprofit corporations having nineteen or fewer employees; shall permit bids from qualified and licensed insurance companies or carriers, who may wish to offer plans or reinsurance for the insurance coverage desired; shall address incentives
for small business participation in the plan, and a
variety of effective cost controls; shall provide for an
appropriate application form for participation and
procedures for application; shall ensure accurate and
appropriate marketing of the health insurance coverage
to small businesses throughout the state; and shall
establish criteria for monitoring the effectiveness of the
insurance pool.

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

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

(e) The rules shall provide that benefit design and premium structures be developed with recommendations from the legislative task force on uncompensated health care and medicaid expenditures. The plan shall provide for differing premium and benefit structures based upon the enrollee’s level of income. To the extent feasible, the plan will limit enrollment to those individuals who have incomes at or below two hundred percent of the federal poverty level. Premium structures may include cost sharing methods including employer and employee sharing of cost and a sliding scale based on ability to pay. Provisions shall be included for a minimum two hundred fifty dollar annual deductible for inpatient acute care and a lifetime cap of two hundred fifty thousand dollars, per individual, for all benefits provided under the plan. The plan may provide for the subsidization of premiums for employees and individuals whose income is below the federal poverty rate but above medicaid payment standards. The plan may include such provisions as are necessary to allow full advantage to be taken of the provisions of the Family Support Act of 1988.

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

(g) The rules may provide that medical underwriting will take place after, rather than prior, to enrollment in the plan, although all participants will be required to complete a medical screen. Those who do not pass the medical screen may be able to participate. Premiums for such individuals may be at a rate higher than those established for other participants. The cost of the high
risk participants' health care insurance premiums may be partially subsidized by the health care insurance fund. The rules shall provide for a schedule of the subsidization, which shall be based on need, cost and funds available.

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

§5-16A-6. Legislative report.

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

§5-16A-7. Availability of data of department of employment security.

In furtherance of the purposes of this article, the department of employment security shall, notwithstanding the provisions of section eleven, article ten, chapter twenty-one-a of this code, cooperate to make available to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures such information as they may request for purposes consistent with this article to identify and facilitate contact with small business employers who may be eligible for participation in the plan. The provisions of this section shall be liberally construed by the department of employment security in order to effectuate the development of the health care insurance plan.
Information thus obtained by the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures shall be maintained as strictly confidential and shall be exempt from disclosure to the public.

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

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


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

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

Any person who knowingly secures or attempts to secure benefits payable under this article to which the person is not entitled, or willfully misrepresents any material fact relating to any other information requested by the public employees insurance agency or who willfully overcharges for services provided, or who willfully misrepresents the diagnosis or nature of the service provided, may be found to be overpaid and shall be civilly liable for any overpayment. In addition to the civil remedy provided herein, the public employees insurance agency shall withhold payment of any benefits due to that person until any overpayment has been recovered or may directly set off, after holding internal administrative proceedings to assure due process, any such overcharges or improperly derived payment against benefits due such person hereunder. Nothing in this section shall be construed to limit any other remedy or civil or criminal penalty provided by law.

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 L. Rose
Chairman Senate Committee

J. L. Ette
Chairman House Committee

Originating in the House.
Takes effect ninety days from passage.

Fred C. Wells
Clerk of the Senate

Donald E. Vogel
Clerk of the House of Delegates

George A. Handhaw
President of the Senate

E. R. Cricken
Speaker of the House of Delegates

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

Walter Fedor
Governor