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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

HOUSE BILL No. 2979

(By ~~MR.~~ Debs. Murensky and White)

— ● —

Passed March 9, 1991

In Effect 90 days from Passage

ENROLLED
H. B. 2979

(By DELEGATES MURENSKY AND WHITE)

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact sections five and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three and four, article twenty-nine-d, chapter sixteen of said code, all relating to the purpose, powers and duties of the finance board; the initial financial plan; plan for the following year and annual financial plans; providing for an eighteen-month initial financial plan; allowing the rating separately or together of the claims experience of active and retired employees, spouses and dependents with coverage under the public employees insurance program; removing the provision requiring health care providers agreeing to deliver services to a beneficiary of any one state health care program to provide services for beneficiaries of all state health care programs; removing the time-specific conditions for preferred provider contracts; and extending the provision prohibiting balance billing of medical bills under the public employees insurance program.

Be it enacted by the Legislature of West Virginia:

That sections five and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three and four, article twenty-nine-d, chapter sixteen, of said code, be amended and reenacted 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

1 (a) The purpose of the finance board created by this
2 article is to bring fiscal stability to the public employees
3 insurance agency through development of an annual
4 financial plan designed to meet the agency's estimated
5 total financial requirements, taking into account all
6 revenues projected to be made available to the agency,
7 and apportioning necessary costs equitably among
8 participating employers, employees and retired em-
9 ployees and providers of health care services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated
12 experience in analysis of large group health insurance
13 plans, to estimate the total financial requirements of the
14 public employees insurance agency for each fiscal year
15 and to review and render written professional opinions
16 as to financial plans proposed by the finance board. The
17 finance board shall also employ the actuary to develop
18 alternative financing options and to perform such other
19 services as may be requested by the finance board. All
20 reasonable fees and expenses for actuarial services shall
21 be paid by the public employees insurance agency. Any
22 financial plan or modifications to a financial plan
23 approved or proposed by the finance board pursuant to
24 this section shall be submitted to and reviewed by the
25 actuary, and may not be finally approved and submitted
26 to the governor and to the Legislature without the
27 actuary's written professional opinion that the plan may
28 be reasonably expected to generate sufficient revenues
29 to meet all estimated program and administrative costs
30 of the agency, excluding incurred but unreported
31 claims, for the fiscal year for which the plan is proposed.

32 The actuary's opinion on the initial plan required by
33 subsection (d) of this section shall allow for a target of
34 forty-five days of accounts payable to be carried over
35 into the next fiscal year. The actuary's opinion on the
36 financial plan for fiscal year one thousand nine hundred
37 ninety-two shall allow for between thirty and forty-five
38 days of accounts payable to be carried over into the next
39 fiscal year. The actuary's opinion on the financial plan
40 for any succeeding fiscal year shall allow for no more
41 than thirty days of accounts payable to be carried over
42 into the next fiscal year. The actuary's opinion for any
43 fiscal year shall not include a requirement for establish-
44 ment of a reserve fund.

45 (c) All financial plans required by this section shall
46 include the design of a benefit plan or plans. All
47 financial plans shall establish:

48 (1) Maximum levels of reimbursement which the
49 public employees insurance agency makes to categories
50 of health care providers;

51 (2) Any necessary cost containment measures for
52 implementation by the director;

53 (3) The levels of premium costs to participating
54 employers; and

55 (4) The types and levels of cost to participating
56 employees and retired employees.

57 The financial plans may provide for different levels
58 of costs based on the insureds' ability to pay. The
59 financial plans may also include optional alternative
60 benefit plans with alternative types and levels of cost.
61 The finance board may develop policies which encour-
62 age the use of West Virginia health care providers.

63 (d) *Initial plan.* — The director shall convene the first
64 meeting of the finance board no later than the fifteenth
65 day of September, one thousand nine hundred ninety.
66 For presentation by the director at the first meeting, the
67 governor shall prepare an estimate of the total amount
68 of general and special revenues which the state has or
69 will have available to fund the public employees
70 insurance agency and its programs for the fiscal year

71 ending on the thirtieth day of June, one thousand nine
72 hundred ninety-one.

73 Notwithstanding any provision of this article to the
74 contrary, during any meeting authorized by subsection
75 (h) of this section to review implementation of the initial
76 financial plan in light of actual experience, the finance
77 board, in its discretion, may elect to redesign the initial
78 financial plan so that revenues generated will meet all
79 incurred and projected program and administrative
80 costs of the public employees insurance agency by the
81 end of the fiscal year ending on the thirtieth day of June,
82 one thousand nine hundred ninety-two, rather than by
83 the thirtieth day of June, one thousand nine hundred
84 ninety-one. Before implementing any such modifica-
85 tions, the finance board shall obtain a written profes-
86 sional opinion from its actuary stating that the modified
87 plan may be reasonably expected to generate sufficient
88 revenues to meet all estimated program and administra-
89 tive costs of the public employees insurance agency for
90 the remainder of fiscal year one thousand nine hundred
91 ninety-one and for fiscal year one thousand nine
92 hundred ninety-two, allowing for between thirty and
93 forty-five days of accounts payable to be carried over
94 into fiscal year one thousand nine hundred ninety-three.
95 The finance board shall also afford interested and
96 affected persons an opportunity to offer comment on the
97 modified plan at a public meeting of the finance board.
98 Regardless of whether or not the finance board modifies
99 the initial financial plan as authorized by this subsec-
100 tion, the finance board shall prepare a financial plan for
101 fiscal year one thousand nine hundred ninety-two in
102 accordance with subsection (e) of this section.

103 The finance board shall prepare, no later than the
104 tenth day of November, one thousand nine hundred
105 ninety, a proposed financial plan designed to generate
106 revenues sufficient to meet all program and administra-
107 tive costs of the public employees insurance agency
108 which have already been incurred but are unpaid, or
109 which the actuary estimates will be incurred and paid
110 during the remainder of fiscal year one thousand nine
111 hundred ninety-one, excluding incurred but unreported

112 claims. The finance board shall establish in the proposed
113 financial plan a target of forty-five days of accounts
114 payable which may be carried over into the next fiscal
115 year.

116 The finance board shall request its actuary to review
117 the proposed financial plan and to render a written
118 professional opinion stating whether the plan may be
119 reasonably expected to generate sufficient revenues to
120 meet all estimated program and administrative costs of
121 the public employees insurance agency for the fiscal
122 year. The actuary's report shall explain the basis of his
123 or her opinion. If the actuary concludes that the
124 proposed financial plan will not generate sufficient
125 revenues to meet all anticipated costs, then the finance
126 board shall make necessary modifications to the pro-
127 posed plan to ensure that all actuarially-determined
128 financial requirements of the agency will be met.

129 Upon obtaining the actuary's opinion and making all
130 necessary modifications to the proposed plan, the
131 finance board shall conduct two or more public hearings
132 to receive public comment on the proposed financial
133 plan, shall review such comments, and shall finalize and
134 approve the financial plan no later than the twentieth
135 day of November, one thousand nine hundred ninety.
136 Employees shall be notified of any changes in the types
137 and levels of employee costs or benefits contained in the
138 financial plan at least thirty days prior to the date of
139 implementation of the financial plan.

140 The finance board shall submit to the governor and
141 to the Legislature the final, approved financial plan no
142 later than the first day of December, one thousand nine
143 hundred ninety. The financial plan shall become
144 effective and shall be implemented by the director on
145 the first day of January, one thousand nine hundred
146 ninety-one.

147 (e) *Plan for fiscal year one thousand nine hundred*
148 *ninety-two.* — No later than the first day of December,
149 one thousand nine hundred ninety, the governor shall
150 prepare and provide to the finance board an estimate
151 of the total amount of general and special revenues

152 which the state will have available to fund the public
153 employees insurance agency and its programs for the
154 fiscal year beginning the first day of July, one thousand
155 nine hundred ninety-one. The finance board shall
156 request its actuary to estimate the total financial
157 requirements of the public employees insurance agency
158 for the fiscal year.

159 The finance board shall prepare a proposed financial
160 plan designed to generate revenues sufficient to meet all
161 estimated program and administrative costs of the
162 public employees insurance agency for the fiscal year.
163 The proposed financial plan shall allow for between
164 thirty and forty-five days of accounts payable to be
165 carried over into the next fiscal year. Before final
166 adoption of the proposed financial plan, the finance
167 board shall request its actuary to review the plan and
168 to render a written professional opinion stating whether
169 the plan will generate sufficient revenues to meet all
170 estimated program and administrative costs of the
171 public employees insurance agency for the fiscal year.
172 The actuary's report shall explain the basis of its
173 opinion. If the actuary concludes that the proposed
174 financial plan will not generate sufficient revenues to
175 meet all anticipated costs, then the finance board shall
176 make necessary modifications to the proposed plan to
177 ensure that all actuarially-determined financial
178 requirements of the agency will be met.

179 Upon obtaining the actuary's opinion, the finance
180 board shall conduct one or more public hearings in each
181 congressional district to receive public comment on the
182 proposed financial plan, shall review such comments,
183 and shall finalize and approve the financial plan.

184 The finance board shall submit to the governor and
185 to the Legislature its final, approved financial plan for
186 fiscal year one thousand nine hundred ninety-two,
187 together with the actuary's final written opinion, no
188 later than the first day of May, one thousand nine
189 hundred ninety-one. The financial plan shall become
190 effective and shall be implemented by the director on
191 the first day of July, one thousand nine hundred ninety-
192 one.

193 (f) *Annual plans.* — The finance board shall prepare,
194 in the manner provided in subsection (e) of this section,
195 an annual financial plan for fiscal year one thousand
196 nine hundred ninety-three and each fiscal year thereaf-
197 ter during which the finance board remains in exist-
198 ence. Any such financial plan shall be designed to allow
199 thirty days or less of accounts payable to be carried over
200 into the next fiscal year. For each such fiscal year, the
201 governor shall provide his estimate of total revenues to
202 the finance board no later than the first day of July of
203 the preceding fiscal year. The finance board shall
204 submit its final, approved financial plan, after obtaining
205 the necessary actuary's opinion and conducting one or
206 more public hearings in each congressional district, to
207 the governor and to the Legislature no later than the
208 first day of January preceding the fiscal year. The
209 financial plan for a fiscal year shall become effective
210 and shall be implemented by the director on the first
211 day of July of such fiscal year.

212 (g) The provisions of chapter twenty-nine-a of this
213 code shall not apply to the preparation, approval and
214 implementation of the financial plans required by this
215 section.

216 (h) The finance board shall meet on at least a
217 quarterly basis to review implementation of its current
218 financial plan in light of the actual experience of the
219 public employees insurance agency. The board shall
220 review actual costs incurred, any revised cost estimates
221 provided by the actuary, expenditures, and any other
222 factors affecting the fiscal stability of the plan, and may
223 make any additional modifications to the plan necessary
224 to ensure that the total financial requirements of the
225 agency for the current fiscal year are met. The financial
226 board may not increase the types and levels of cost to
227 employees during its quarterly review except in the
228 event of a true emergency.

229 (i) For any fiscal year in which legislative appropri-
230 ations differ from the governor's estimate of general and
231 special revenues available to the agency, the finance
232 board shall, within thirty days after passage of the
233 budget bill, make any modifications to the plan neces-

234 sary to ensure that the total financial requirements of
235 the agency for the current fiscal year are met.

236 (j) The types and levels of costs to employers, em-
237 ployees and retired employees participating in public
238 employees insurance agency group insurance plans
239 which are currently in effect on the effective date of this
240 article, are hereby authorized. The types and levels of
241 costs to employees participating in public employees
242 insurance agency group insurance plans which are
243 currently in effect on the effective date of this article
244 shall remain in effect unless and until changed or
245 authorized to be changed by the finance board in a
246 financial plan prepared and approved in accordance
247 with this section.

**§5-16-24. Rules and regulations for administration of
article; eligibility of certain retired em-
ployees and dependents of deceased
members for coverage; employees on medi-
cal leave of absence entitled to coverage; life
insurance.**

1 The director shall promulgate such rules and regula-
2 tions as may be required for the effective administration
3 of the provisions of this article. Except as specifically
4 provided in subsection (e), section four of this article, all
5 rules and regulations of the public employees insurance
6 agency and all hearings held by the public employees
7 insurance agency shall be exempt from the provisions
8 of chapter twenty-nine-a of this code. Any rules and
9 regulations now in existence promulgated by the public
10 employees insurance board or director shall remain in
11 full force and effect until they are amended or replaced
12 by the director.

13 Such regulations shall provide that any employee of
14 the state who has been compelled or required by law to
15 retire before reaching the age of sixty-five years shall
16 be eligible to participate in the public employees' health
17 insurance program at his own expense for the cost of
18 coverage after any extended coverage to which he, his
19 spouse and dependents may be entitled by virtue of his
20 accrued annual leave or sick leave, pursuant to the

21 provisions of section thirteen of this article, has expired.
22 Any employee who voluntarily retires, as provided by
23 law, shall be eligible to participate in the public
24 employees' health insurance program at his own expense
25 for the cost of coverage after any extended coverage to
26 which he, his spouse and dependents may be entitled by
27 virtue of his accrued annual leave or sick leave,
28 pursuant to the provisions of section thirteen of this
29 article, has expired. The dependents of any deceased
30 retired employee shall be entitled to continue their
31 participation and coverage upon payment of the total
32 cost for such coverage. In establishing the cost of health
33 insurance coverage for retired employees and their
34 spouses and dependents, the finance board, in its
35 discretion, may cause the claims experience of such
36 retired employees and their spouses and dependents to
37 be rated separately from that of active employees and
38 their spouses and dependents, or may cause the claims
39 experience of retired and active employees, and their
40 spouses and dependents, to be rated together.

41 Any employee who is on a medical leave of absence,
42 approved by his employer, shall, subject to the following
43 provisions of this paragraph, be entitled to continue his
44 coverage until he returns to his employment, and such
45 employee and employer shall continue to pay their
46 proportionate share of premium costs as provided by
47 this article: *Provided*, That the employer shall be
48 obligated to pay its proportionate share of the premium
49 cost only for a period of one year: *Provided, however*,
50 That during the period of such leave of absence, the
51 employee shall, at least once each month, submit to the
52 employer the statement of a qualified physician certifying
53 that the employee is unable to return to work.

54 Any retiree, retiring heretofore or hereafter, shall be
55 eligible to participate in the public employees' life
56 insurance program, including the optional life insurance
57 coverage as already available to active employees under
58 this article, at his own expense for the cost of coverage,
59 based upon actuarial experience; and the director shall
60 prepare, by rule and regulation, for such participation
61 and coverages under declining term insurance and

62 optional additional coverage for such retirees.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

1 (a) All departments and divisions of the state,
2 including, but not limited to, the bureau of employment
3 programs, the division of health and the division of
4 human services within the department of health and
5 human resources; the public employees insurance
6 agency within the department of administration; the
7 division of rehabilitation services or such other depart-
8 ment or division as shall supervise or provide rehabil-
9 itation; and the university of West Virginia board of
10 trustees, as the governing board for the state's medical
11 schools, are authorized and directed to cooperate in
12 order, among other things, to ensure the quality of the
13 health care services delivered to the beneficiaries of
14 such departments and divisions and to ensure the
15 containment of costs in the payment for such services.

16 (b) It is expressly recognized that no other entity may
17 interfere with the discretion and judgment given to the
18 single state agency which administers the state's
19 medicaid program. Thus, it is the intention of the
20 Legislature that nothing contained in this article shall
21 be interpreted, construed, or applied to interfere with
22 the powers and actions of the single state agency which,
23 in keeping with applicable federal law, shall administer
24 the state's medicaid program as it perceives to be in the
25 best interest of that program and its beneficiaries.

26 (c) Such departments and divisions shall develop a
27 plan or plans to ensure that a reasonable and appro-
28 priate level of health care is provided to the beneficiar-
29 ies of the various programs including the public
30 employees insurance agency and the workers' compen-
31 sation fund, the division of rehabilitation services and,
32 to the extent permissible, the state medicaid program.

33 The plan or plans may include, among other things, and
34 the departments and divisions are hereby authorized to
35 enter into:

36 (1) Utilization review and quality assurance
37 programs;

38 (2) The establishment of a schedule or schedules of the
39 maximum reasonable amounts to be paid to health care
40 providers for the delivery of health care services covered
41 by the plan or plans. Such a schedule or schedules may
42 be either prospective in nature or cost reimbursement
43 in nature, or a mixture of both: *Provided*, That any
44 payment methods or schedules for institutions which
45 provide inpatient care shall be institution-specific and
46 shall, at a minimum, take into account a disproportion-
47 ate share of medicaid, charity care and medical
48 education: *Provided, however*, That in no event may any
49 rate set in this article for an institutional health care
50 provider be greater than such institution's current rate
51 established and approved by the health care cost review
52 authority pursuant to article twenty-nine-b of this
53 chapter;

54 (3) Provisions for making payments in advance of the
55 receipt of health care services by a beneficiary, or in
56 advance of the receipt of specific charges for such
57 services, or both;

58 (4) Provisions for the receipt or payment of charges
59 by electronic transfers;

60 (5) Arrangements, including contracts, with preferred
61 provider organizations; and

62 (6) Arrangements, including contracts, with particu-
63 lar health care providers to deliver health care services
64 to the beneficiaries of the programs of the departments
65 and divisions at agreed upon rates in exchange for
66 controlled access to the beneficiary populations.

67 (d) The director of the public employees insurance
68 agency shall contract with an independent actuarial
69 company for a review every four years of the claims
70 experience of all governmental entities whose employees
71 participate in the public employees insurance agency

72 program, including, but not limited to, all branches of
73 state government, all state departments or agencies
74 (including those receiving funds from the federal
75 government or a federal agency), all county and
76 municipal governments, or any other similar entities for
77 the purpose of determining the cost of providing
78 coverage under the program, including administrative
79 cost, to each such governmental entity.

80 (e) Nothing in this section shall be construed to give
81 or reserve to the Legislature any further or greater
82 power or jurisdiction over the operations or programs
83 of the various departments and divisions affected by this
84 article than that already possessed by the Legislature in
85 the absence of this article.

86 (f) For the purchase of health care or health care
87 services by a health care provider participating in a
88 plan under this section on or after the first day of
89 September, one thousand nine hundred eighty-nine, by
90 the public employees insurance agency, the division of
91 rehabilitation services and the division of workers'
92 compensation, a state check shall be issued in payment
93 thereof within sixty-five days after a legitimate uncon-
94 tested invoice is actually received by such division or
95 agency. Any state check issued after sixty-five days shall
96 include interest at the current rate, as determined by
97 the state tax commissioner under the provisions of
98 section seventeen-a, article ten, chapter eleven of this
99 code, which interest shall be calculated from the sixty-
100 sixth day after such invoice was actually received by the
101 division or agency until the date on which the state
102 check is mailed to the vendor.

§16-29D-4. Prohibition on balance billing; exceptions.

1 (a) Except in instances involving the delivery of health
2 care services immediately needed to resolve an immi-
3 nent life-threatening medical or surgical emergency, the
4 agreement by a health care provider to deliver services
5 to a beneficiary of any department or division of the
6 state which participates in a plan or plans developed
7 under section three of this article shall be considered to
8 also include an agreement by that health care provider:

9 (1) To accept the assignment by the beneficiary of any
10 rights the beneficiary may have to bill such division or
11 department for, and to receive payment under such plan
12 or plans on account of, such services; and

13 (2) To accept as payment in full for the delivery of
14 such services the amount specified in plan or plans or
15 as determined by the plan or plans. In such instances,
16 the health care provider shall bill the division or
17 department, or such other person specified in the plan
18 or plans, directly for the services. The health care
19 provider shall not bill the beneficiary or any other
20 person on behalf of the beneficiary and, except for
21 deductibles or other payments specified in the applica-
22 ble plan or plans, the beneficiary shall not be personally
23 liable for any of the charges, including any balance
24 claimed by the provider to be owed as being the
25 difference between that provider's charge or charges
26 and the amount payable by the applicable department
27 or divisions. The plan or plans may specify what sums
28 are deductibles, copayments or are otherwise payable by
29 the beneficiary and the sums for which the health care
30 provider may bill the beneficiary: In addition, any
31 health care service which is not subject to payment by
32 the plan or plans shall be the responsibility of the
33 beneficiary and for those health care services which are
34 not covered by the plans, there shall be no prohibition
35 against billing the beneficiary directly.

36 (b) The prohibitions and limitations stated in subsec-
37 tion (a) of this section do not apply to the delivery of
38 health care services immediately needed to resolve an
39 imminent life-threatening medical or surgical emer-
40 gency. However, once the patient is stabilized, then the
41 delivery of any further health care services shall be
42 subject to subsection (a) of this section for those latter
43 services only.

44 (c) The exceptions provided in this section for the
45 delivery of health care services immediately needed to
46 resolve an imminent life-threatening medical or surgical
47 emergency shall not apply to health care providers
48 under contract with a department or division plan or
49 plans.

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

Homer Heck
.....
Chairman Senate Committee

Ernest C. MADUE
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell E. Helm
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Neil Andette
.....
President of the Senate

Robert C. Cole
.....
Speaker of the House of Delegates

The within *is approved* this the *14*
day of *April*, 1991.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/08/91

Time

10:20 am