WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

ENROLLED

HOUSE BILL No. 2979

(By Dees Murrey and White)

Passed March 9, 1991

In Effect 90 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:
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.

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

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the public employees insurance agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The finance board shall also employ the actuary to develop alternative financing options and to perform such other services as may be requested by the finance board. All reasonable fees and expenses for actuarial services shall be paid by the public employees insurance agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary, and may not be finally approved and submitted to the governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, excluding incurred but unreported claims, for the fiscal year for which the plan is proposed.
The actuary’s opinion on the initial plan required by subsection (d) of this section shall allow for a target of forty-five days of accounts payable to be carried over into the next fiscal year. The actuary’s opinion on the financial plan for fiscal year one thousand nine hundred ninety-two shall allow for between thirty and forty-five days of accounts payable to be carried over into the next fiscal year. The actuary’s opinion on the financial plan for any succeeding fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary’s opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

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

1. Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;
2. Any necessary cost containment measures for implementation by the director;
3. The levels of premium costs to participating employers; and
4. The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds’ ability to pay. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

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

Notwithstanding any provision of this article to the contrary, during any meeting authorized by subsection (h) of this section to review implementation of the initial financial plan in light of actual experience, the finance board, in its discretion, may elect to redesign the initial financial plan so that revenues generated will meet all incurred and projected program and administrative costs of the public employees insurance agency by the end of the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-two, rather than by the thirtieth day of June, one thousand nine hundred ninety-one. Before implementing any such modifications, the finance board shall obtain a written professional opinion from its actuary stating that the modified plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the remainder of fiscal year one thousand ninety-one and for fiscal year one thousand nine hundred ninety-two, allowing for between thirty and forty-five days of accounts payable to be carried over into fiscal year one thousand nine hundred ninety-three. The finance board shall also afford interested and affected persons an opportunity to offer comment on the modified plan at a public meeting of the finance board. Regardless of whether or not the finance board modifies the initial financial plan as authorized by this subsection, the finance board shall prepare a financial plan for fiscal year one thousand nine hundred ninety-two in accordance with subsection (e) of this section.

The finance board shall prepare, no later than the tenth day of November, one thousand nine hundred ninety, a proposed financial plan designed to generate revenues sufficient to meet all program and administrative costs of the public employees insurance agency which have already been incurred but are unpaid, or which the actuary estimates will be incurred and paid during the remainder of fiscal year one thousand nine hundred ninety-one, excluding incurred but unreported
claims. The finance board shall establish in the proposed financial plan a target of forty-five days of accounts payable which may be carried over into the next fiscal year.

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

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

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

(e) Plan for fiscal year one thousand nine hundred ninety-two. — No later than the first day of December, one thousand nine hundred ninety, the governor shall prepare and provide to the finance board an estimate of the total amount of general and special revenues
which the state will have available to fund the public
employees insurance agency and its programs for the
fiscal year beginning the first day of July, one thousand
nine hundred ninety-one. The finance board shall
request its actuary to estimate the total financial
requirements of the public employees insurance agency
for the fiscal year.

The finance board shall prepare a proposed financial
plan designed to generate revenues sufficient to meet all
estimated program and administrative costs of the
public employees insurance agency for the fiscal year.
The proposed financial plan shall allow for between
thirty and forty-five days of accounts payable to be
carried over into the next fiscal year. Before final
adoption of the proposed financial plan, the finance
board shall request its actuary to review the plan and
to render a written professional opinion stating whether
the plan will generate sufficient revenues to meet all
estimated program and administrative costs of the
public employees insurance agency for the fiscal year.
The actuary's report shall explain the basis of its
opinion. If the actuary concludes that the proposed
financial plan will not generate sufficient revenues to
meet all anticipated costs, then the finance board shall
make necessary modifications to the proposed plan to
ensure that all actuarially-determined financial
requirements of the agency will be met.

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

The finance board shall submit to the governor and
to the Legislature its final, approved financial plan for
fiscal year one thousand nine hundred ninety-two,
together with the actuary's final written opinion, no
later than the first day of May, one thousand nine
hundred ninety-one. The financial plan shall become
effective and shall be implemented by the director on
the first day of July, one thousand nine hundred ninety-
one.
(f) Annual plans. — The finance board shall prepare, in the manner provided in subsection (e) of this section, an annual financial plan for fiscal year one thousand nine hundred ninety-three and each fiscal year thereafter during which the finance board remains in existence. Any such financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each such fiscal year, the governor shall provide his estimate of total revenues to the finance board no later than the first day of July of the preceding fiscal year. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year shall become effective and shall be implemented by the director on the first day of July of such fiscal year.

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

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

(i) For any fiscal year in which legislative appropriations differ from the governor's estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the budget bill, make any modifications to the plan neces-
sary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) The types and levels of costs to employers, employees and retired employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article, are hereby authorized. The types and levels of costs to employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article shall remain in effect unless and until changed or authorized to be changed by the finance board in a financial plan prepared and approved in accordance with this section.

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

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

Such regulations shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his spouse and dependents may be entitled by virtue of his accrued annual leave or sick leave, pursuant to the
provisions of section thirteen of this article, has expired. Any employee who voluntarily retires, as provided by
law, shall be eligible to participate in the public employees' health insurance program at his own expense
for the cost of coverage after any extended coverage to
which he, his spouse and dependents may be entitled by
virtue of his accrued annual leave or sick leave,
pursuant to the provisions of section thirteen of this
article, has expired. The dependents of any deceased
retired employee shall be entitled to continue their
participation and coverage upon payment of the total
cost for such coverage. In establishing the cost of health
insurance coverage for retired employees and their
spouses and dependents, the finance board, in its
discretion, may cause the claims experience of such
retired employees and their spouses and dependents to
be rated separately from that of active employees and
their spouses and dependents, or may cause the claims
experience of retired and active employees, and their
spouses and dependents, to be rated together.

Any employee who is on a medical leave of absence,
approved by his employer, shall, subject to the following
provisions of this paragraph, be entitled to continue his
coverage until he returns to his employment, and such
employee and employer shall continue to pay their
proportionate share of premium costs as provided by
this article: Provided, That the employer shall be
obligated to pay its proportionate share of the premium
cost only for a period of one year: Provided, however,
That during the period of such leave of absence, the
employee shall, at least once each month, submit to the
employer the statement of a qualified physician certify-
ing that the employee is unable to return to work.

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

(a) All departments and divisions of the state, including, but not limited to, the bureau of employment programs, the division of health and the division of human services within the department of health and human resources; the public employees insurance agency within the department of administration; the division of rehabilitation services or such other department or division as shall supervise or provide rehabilitation; and the university of West Virginia board of trustees, as the governing board for the state's medical schools, are authorized and directed to cooperate in order, among other things, to ensure the quality of the health care services delivered to the beneficiaries of such departments and divisions and to ensure the containment of costs in the payment for such services.

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

(c) Such departments and divisions shall develop a plan or plans to ensure that a reasonable and appropriate level of health care is provided to the beneficiaries of the various programs including the public employees insurance agency and the workers' compensation fund, the division of rehabilitation services and, to the extent permissible, the state medicaid program.
The plan or plans may include, among other things, and the departments and divisions are hereby authorized to enter into:

1) Utilization review and quality assurance programs;

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

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

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

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

6) Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed upon rates in exchange for controlled access to the beneficiary populations.

(d) The director of the public employees insurance agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency.
program, including, but not limited to, all branches of
state government, all state departments or agencies
(including those receiving funds from the federal
government or a federal agency), all county and
municipal governments, or any other similar entities for
the purpose of determining the cost of providing
coverage under the program, including administrative
cost, to each such governmental entity.

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

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

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

(a) Except in instances involving the delivery of health
care services immediately needed to resolve an immi-
nent life-threatening medical or surgical emergency, the
agreement by a health care provider to deliver services
to a beneficiary of any department or division of the
state which participates in a plan or plans developed
under section three of this article shall be considered to
also include an agreement by that health care provider:
(1) To accept the assignment by the beneficiary of any rights the beneficiary may have to bill such division or department for, and to receive payment under such plan or plans on account of, such services; and

(2) To accept as payment in full for the delivery of such services the amount specified in plan or plans or as determined by the plan or plans. In such instances, the health care provider shall bill the division or department, or such other person specified in the plan or plans, directly for the services. The health care provider shall not bill the beneficiary or any other person on behalf of the beneficiary and, except for deductibles or other payments specified in the applicable plan or plans, the beneficiary shall not be personally liable for any of the charges, including any balance claimed by the provider to be owed as being the difference between that provider's charge or charges and the amount payable by the applicable department or divisions. The plan or plans may specify what sums are deductibles, copayments or are otherwise payable by the beneficiary and the sums for which the health care provider may bill the beneficiary: In addition, any health care service which is not subject to payment by the plan or plans shall be the responsibility of the beneficiary and for those health care services which are not covered by the plans, there shall be no prohibition against billing the beneficiary directly.

(b) The prohibitions and limitations stated in subsection (a) of this section do not apply to the delivery of health care services immediately needed to resolve an imminent life-threatening medical or surgical emergency. However, once the patient is stabilized, then the delivery of any further health care services shall be subject to subsection (a) of this section for those latter services only.

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

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within...this the...day of...1991.

Governor