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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

ENROLLED

Com. Sub. For

HOUSE BILL No. *2467*

(By Delegates *Walters, Kiss, Peterson, Gallagher,*
Rutledge, Michael and Facomyer)

— ● —

Passed *April 8,* 1993

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2467

(By DELEGATES WALTERS, KISS, PETERSEN, GALLAGHER,
RUTLEDGE, MICHAEL AND FACEMYER)

[Passed April 8, 1993; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-b, relating to authorizing nonprofit corporations to provide federal insurance subsidy for children's health funds; providing definitions; powers of corporation; administration; civil penalties; voucher applications; duties and responsibilities of corporation; training sessions by the department of health and human resources; annual reports and audits; tax exempt status; and limiting personal liability of members of corporation.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five-b, to read as follows:

ARTICLE 25B. FEDERAL INSURANCE SUBSIDY FOR CHILDREN'S HEALTH.

§33-25B-1. Definitions.

- 1 The following words, as used in this article, have the
- 2 meanings set forth below, unless the context clearly

3 requires otherwise:

4 (a) "Applicant aide" means an individual licensed by
5 the state to care for the physical or emotional needs of
6 children or an employee authorized by his employer
7 where the employer is an institution licensed by the
8 state to care for the physical or emotional needs of
9 children and who has received an applicant aide
10 certificate. Individuals include, but are not limited to,
11 licensed teachers, child care workers, social workers,
12 guidance counselors, psychologists, nurses and physi-
13 cians. Licensed institutions include, but are not limited
14 to, hospitals, schools, local human services offices, child
15 care centers and medical clinics;

16 (b) "Approved providers" means any accident and
17 health insurer licensed by the state or any health
18 services organization licensed by the state or any other
19 entity approved by the insurance commissioner for
20 provision of health care coverage for children;

21 (c) "Corporation" means a nonprofit corporation
22 organized under the laws of West Virginia which has
23 undertaken to implement a federal insurance subsidy
24 for children's health insurance created by this article;
25 and

26 (d) "Insurance subsidy fund" or "fund" means a fund
27 or account established by the corporation for the deposit
28 of moneys to implement the insurance subsidy program.

§33-25B-2. Purpose.

1 The purpose of this article is to:

2 (a) Assist, promote, encourage, develop and advance
3 the knowledge of lower to moderate income families
4 with dependent children of the earned income credit
5 available for money spent on health insurance;

6 (b) Cooperate and act in conjunction with other
7 organizations, public and private, the objects of which
8 are the promotion and education of lower to moderate
9 income families with dependent children of the earned
10 income credit available for money spent on health
11 insurance;

12 (c) Establish a system of qualified applicant aides who
13 shall be trained by the department of health and human
14 services and, who, for a modest dollar incentive, will on
15 a volunteer basis make knowledge of this program
16 available to the targeted families; and

17 (d) Establish a mechanism by which to provide
18 counseling and assistance to families and aid them in
19 filing for the insurance voucher, selecting an appropri-
20 ate health insurance policy and completing the
21 required federal income tax return.

§33-25B-3. General powers.

1 In order for a nonprofit corporation to participate in
2 the program provided pursuant to this article, the
3 nonprofit corporation must be organized and incorpor-
4 ated as a nonprofit corporation pursuant to the
5 provisions of article one, section thirty-one of this code.
6 The nonprofit corporation, in addition to all other lawful
7 powers, shall have the power to provide counseling
8 services to West Virginia families on the purchase of
9 federally subsidized health insurance and to accept
10 gifts, grants, or loans from and enter into contracts or
11 other transactions with any federal or state agency, any
12 municipality, any private organization or any other
13 source as may be authorized by law.

§33-25B-4. Voucher applications; contents.

1 A guardian or applicant aide may file with a nonprofit
2 corporation, organized for the purposes of this article,
3 a sworn voucher application signed by the guardian
4 asserting:

5 (a) That the guardian meets the requirements for the
6 federal earned income credit for child health insurance
7 for the current or next calendar year;

8 (b) The good-faith estimate value of the health
9 insurance earned income credit for the year in question;

10 (c) That the guardian will use the voucher to purchase
11 health insurance covering dependent children;

12 (d) That the guardian will prepare a federal tax
13 return for the year in question; and

14 (e) That the guardian agrees to assign the value of any
15 federal tax refund, in the amount of the voucher issued
16 by the corporation to the corporation when filing the
17 guardian's federal tax return.

§33-25B-5. Duties and responsibilities of corporation.

1 Upon presentation of a valid voucher application, the
2 corporation shall issue from its insurance subsidy fund
3 a voucher to the guardian or applicant aide, made out
4 in behalf of the guardian and redeemable for the face
5 amount by any approved provider. The corporation shall
6 retain in the fund all moneys received from refundable
7 tax credits of guardians. These moneys shall be used to
8 extend additional vouchers. The corporation may solicit
9 and receive donations of moneys for the fund. No
10 corporation may require that vouchers be presented to
11 a specific approved provider in order to be eligible to
12 participate in the program.

**§33-25B-6. Duties and responsibilities of department of
health and human resources to provide
training and other services.**

1 (a) The department of health and human resources
2 shall design and provide the vouchers to any corporation
3 wishing to participate in the program at a cost not to
4 exceed the actual cost of the voucher.

5 (b) No later than ninety days after a request is made
6 by a corporation wishing to participate in the insurance
7 subsidy program, the department of health and human
8 resources in cooperation with the corporations partici-
9 pating in the program, shall begin to conduct regional
10 training and information sessions in all regions of the
11 state. The purpose of these sessions is to train guardians
12 and potential applicant aides in the necessary rules to
13 qualify under the federal guidelines for earned income
14 credits and the requirements of this section. These
15 sessions shall be open to the public and potential
16 applicant aides, at a charge not to exceed ten dollars
17 which shall be used solely to defray the costs of
18 conducting the training sessions. Sessions shall be
19 available in at least the first and fourth quarter of the
20 calendar year in all regions of the state after a request

21 has been made by a corporation to commence such
22 training sessions. The department of health and human
23 resources may waive the fee for guardians.

24 (c) Potential applicant aides shall be tested by the
25 department of health and human resources. Potential
26 applicant aides who successfully complete the test shall
27 be awarded a certificate entitling them to work as an
28 applicant aide. The department of health and human
29 resources shall propose legislative rules for promulga-
30 tion in accordance with the provisions of article three,
31 chapter twenty-nine-a of this code.

**§33-25B-7. Allowable commission for applicant aides;
prohibited practices.**

1 (a) Applicant aides may receive a commission not to
2 exceed five percent of the voucher, from an approved
3 provider. No commission may be paid until the fund is
4 fully reimbursed for the voucher. Applicant aides may
5 not solicit or accept any compensation from guardians
6 or potential guardians.

7 (b) An applicant aide shall be prohibited from
8 entering into any agreement with an approved provider,
9 whether such agreement is for profit or not for profit,
10 to recommend a specific approved provider, to the
11 exclusion of all other approved providers, in the course
12 of counseling guardians or applicants.

13 (c) Applicant aides who engage in deceptive practices
14 or who aid or encourage deception or fraud may, upon
15 hearing by the corporation, have their certificate as an
16 applicant aide revoked for a period of not less than five
17 years. This action shall be in addition to any other
18 penalties available at law.

19 (d) The corporation may pursue triple damages in
20 civil court for any losses to the fund attributable to
21 actions or the conduct of applicant aides or guardians.

**§33-25B-8. Activities not deemed the sale of insurance;
exemptions from benefits and taxation.**

1 (a) Assisting individuals in the preparation of appli-
2 cations to the fund and selection of the providers does

3 not constitute the sale of insurance and shall not be
4 subject to regulation by the insurance commissioner.

5 (b) Insurance coverage bought by the guardian
6 through the use of a voucher provided pursuant to the
7 provisions of this article will be exempt from state law
8 and regulations requiring certain mandatory state
9 insurance coverages or benefits.

10 (c) Insurance coverage bought by guardians through
11 the use of a voucher provided pursuant to the provisions
12 of this article shall not be subject to state premium
13 taxes.

§33-25B-9. Annual report and audits.

1 On the first day of January of each year the corpo-
2 ration shall report on its operations for the preceding
3 fiscal year to the governor and the state Legislature. The
4 report shall include a summary of the activities of the
5 corporation and a complete operating and financial
6 statement. A corporation shall cause an annual audit to
7 be made by a resident certified public accountant or a
8 registered public accountant of its books, accounts and
9 records, with respect to its receipts, disbursements and
10 all other matters related to the operation of the
11 insurance subsidy program. The person performing
12 such audit shall also furnish copies of the audit report
13 to the joint committee on government and finance and
14 the legislative auditor.

§33-25B-10. Tax exemption.

1 Any corporation organized for the purposes of this
2 article is exempt from all franchise, corporate, business
3 and taxes of every nature levied by the state.

§33-25B-11. Personal liability of members or persons acting on behalf of the corporation.

1 No person acting on behalf of the corporation execut-
2 ing any contracts, commitments or agreements issued
3 pursuant to this article may be liable personally upon
4 the contracts, commitments or agreements or be subject
5 to any personal liability or accountability by reason
6 thereof.

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

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Adams
.....
Clerk of the Senate

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

Wesley S. Smith
.....
President of the Senate

Paul C. Calhoun
.....
Speaker of the House of Delegates

The within *is* approved this the *12th*
day of *May* 1993.

Lyndon C. Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/22/93

Time 11:47 am