WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Com. Sub. for Senate Bill No. 510

(By Senator Minard, et al.)

PASSED April 9, 1993

In Effect 90 days from Passage
AN ACT to amend and reenact sections one, two and four, article six-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen of said chapter by adding thereto a new section, designated section one-a; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten and twelve, article sixteen-d of said chapter; and to further amend said chapter by adding thereto a new article, designated article sixteen-e, all relating to accident and sickness insurance; excepting individual limited benefits accident and sickness insurance policies and certificates from optional guaranteed loss ratio provisions of article six-c, chapter thirty-three of said code; increasing the optional minimum guaranteed loss-ratio for individual accident and sickness insurance policies and certificates; establishing requirements for rate increase requests after the first day of July, one thousand nine hundred ninety-
four, for insurers issuing individual accident and
sickness insurance policies; revising certain definitions
and eliminating others relating to marketing and rate
practices for small employer accident and sickness
insurance policies; substituting the term "carrier" for
"insurer"; applying the provisions of article sixteen-d of
said chapter to any health benefit plan described
therein that covers one or more employees of a small
employer situate in West Virginia; specifying additional
premium rating restrictions; eliminating provisions on
the insurance commissioner conducting a public hear­ing
before increasing the anticipated loss ratio for a
small employer carrier; eliminating enumerated rule-
making mandates; granting permissive rule-making
authority to the insurance commissioner; requiring
disclosure of preexisting conditions limitations in such
health benefit plans; requiring certification of com­
pliance with statutory premium rating provisions;
creating a new article sixteen-e of said chapter on
limited benefits accident and sickness insurance policies
and certificates; defining the scope of and terms used in
said article; establishing loss ratio standards for premi­
um rate increase requests made after the first day of
July, one thousand nine hundred ninety-three for such
policies and certificates; establishing loss ratios requir­
ing premium refunds to be made after the first day of
July, one thousand nine hundred ninety-four; requiring
annual filing of verified statements of actual loss ratio;
requiring sixty days' notice of cancellation or non­
renewal of such policies or certificates; prohibiting
preexisting conditions limitations, waiting periods and
the like upon replacement of such policies and certifi­
cates; providing for extraterritorial jurisdiction of the
insurance commissioner over certain policies; specifying
severability of provisions of said article; providing for
the promulgation of rules; and making technical
corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6C. GUARANTEED LOSS RATIOS AS APPLIED TO INDIVIDUAL SICKNESS AND ACCIDENT INSURANCE POLICIES.

§33-6C-1. Loss ratio guarantees; definitions.

1 As used in this article:

2 (a) "Commissioner" means the insurance commissioner of West Virginia;

3 (b) "Experience period" means, for any given rate filing for which a loss ratio guarantee is made, the period beginning on the first day of the calendar year during which the guaranteed rates first take effect and ending on the last day of the calendar year during which the insurer earns one million dollars in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than one million dollars, earns nationally;

4 (c) "Form" means individual sickness and accident policy forms of any insurer offering such benefits, other than a form for a limited benefits policy or certificate as defined in section two, article sixteen-e of this chapter;

5 (d) "Loss ratio" means the ratio of incurred claims to earned premium; and

6 (e) "Successive experience period" means the experience period beginning on the first day following the end of the preceding experience period.

§33-6C-2. Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.
(a) The insurance commissioner shall establish a guaranteed loss ratio which may be implemented by any insurer offering individual sickness and accident insurance policies other than limited benefits accident and sickness insurance policies or certificates, which are subject to loss ratio requirements set forth in sections three and four, article sixteen-e of this chapter. The loss ratios shall be calculated by the commissioner and each individual insurer and shall be based upon studies and relevant information collected from various sources, including, but not limited to, the health care cost review authority and the national association of insurance commissioners' rate filing guidelines: Provided, That the guaranteed loss ratio shall not be less than sixty percent. The guaranteed loss ratio for each insurer shall be published by the insurance commissioner in the register maintained by the secretary of state.

(b) The guaranteed loss ratio shall be based upon experience periods during which the insurer earns one million dollars in premium in West Virginia: Provided, That if the annual earned premium volume in West Virginia is less than one million dollars, the loss ratio guarantee shall be based on such other actuarially sound methods as the commissioner may determine are appropriate, including, but not limited to, the actual nationwide loss ratios: Provided, however, That if the aggregate earned premium for all states is less than one million dollars, the experience period will be extended until the end of the calendar year in which one million dollars of earned premium is attained.

(c) Any insurer may apply to the commissioner to operate on a guaranteed loss ratio basis. The insurance commissioner may review each application and, in his or her discretion, approve or reject the same. Any insurer approved by the commissioner shall be exempt from filing rate increase applications as required by the commissioner and other provisions of this chapter.

§33-6C-4. Form of guarantee; requirements.

(a) Individual sickness and accident policy benefits
under a policy form other than a limited benefits
policy form or certificate shall be deemed reasonable
in relation to the premium charged, as required by
subdivision (e), section nine, article six of this chapter,
if the premium rates are filed pursuant to a loss ratio
guarantee which meets the requirements of this
article. The insurance commissioner shall not with-}

draw approval of a form on the grounds that benefits
are unreasonable in relation to premiums charged so
long as the insurer complies with the terms of the loss
ratio guarantee.

(b) Each insurer of individual sickness and accident
policy benefits other than benefits under limited
benefits policy forms or certificates shall execute and
deliver to the insurance commissioner a loss ratio
guarantee, to be provided by the commissioner, which
guarantee shall be signed by an officer of the insurer.

(c) Each loss ratio guarantee shall contain, at a
minimum, the following:

(1) A recitation of the anticipated lifetime and
durational target loss ratios contained in the original
actuarial memorandum filed with the policy form
when it was originally approved;

(2) A guarantee that the actual West Virginia loss
ratios for the experience period in which the new
rates take effect, and for each experience period
thereafter until new rates are filed, will meet or
exceed the anticipated lifetime and durational target
loss ratios contained in the original actuarial memo-
randum noted above;

(3) A guarantee that the actual West Virginia or, if
applicable, national, loss ratio results for the experi-
ence period at issue will be independently audited at
the insurer's expense; that such audit will be complet-
ed in the second quarter of the year following the end
of the experience period; and that the results of such
audit will be reported to the insurance commissioner
not later than the thirtieth day of June following the
end of the experience period;
(4) A guarantee that if the actual loss ratio during an experience period is less than the anticipated loss ratio for that period, then West Virginia policyholders will receive a proportional refund based on premium earned, which refunds shall be calculated and paid pursuant to section thirty-nine of this article; and

(5) A guarantee that the insurer does not engage in any discriminatory practices prohibited by section four, article eleven of this chapter or any such practice which discriminates against any individual on the basis of his or her legal occupation, race, religion or residence.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-la. Premium rate increase requests; loss ratio requirement.

To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-four, any insurer issuing accident and sickness insurance policies which are subject to the provisions of this article shall have a minimum anticipated loss ratio of sixty-five percent. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes for the same experience period which are attributable to the policy forms affected by this section and which were paid to the state of West Virginia pursuant to the provisions of article three of this chapter.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-2. Definitions.

As used in this article:

(a) "Actuarial certification" means a written statement by an actuary, or other individual acceptable to the commissioner, that a small employer carrier is in compliance with the provisions of section five of this article, based upon that person's examination, includ-
(b) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(c) "Carrier" means any person who provides accident and sickness insurance in this state. For purposes of this article, carrier includes a licensed insurance company; a hospital service corporation, medical service corporation or health service corporation organized pursuant to article twenty-four of this chapter; a health care corporation organized pursuant to article twenty-five of this chapter; a health maintenance organization organized pursuant to article twenty-five-a of this chapter; a multiple-employer trust or multiple-employer welfare arrangement; or any other person providing a plan of accident and sickness insurance subject to state insurance regulations.

(d) "Case characteristics" mean demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the carrier in the determination of premium rates for the small employer. Claim experience, health status and duration of coverage since issue are not case characteristics for the purposes of this article.

(e) "Class of business" means all or any distinct grouping of small employers as shown on the records of the small employer carrier, which shall be subject to the following requirements:

(1) A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:
(A) Are marketed and sold through individuals and organizations which are not participating in the marketing or sale of other distinct groupings of small employers for such small employer carrier;

(B) Have been acquired from another small employer carrier as a distinct grouping of plans;

(C) Are provided through an association with membership of not less than two small employers which has been formed for purposes other than obtaining insurance; or

(D) Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in paragraph (A), subdivision (1), subsection (a), section five of this article.

(2) A small employer carrier may establish no more than two additional groupings under subdivision (1) of this subsection on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

(3) The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

(f) "Commissioner" means the insurance commissioner of West Virginia.

(g) "Department" means the department of insurance.

(h) "Health benefit plan" means any hospital or medical expense incurred policy; health, hospital or medical service corporation contract; plan provided by a multiple-employer trust or a multiple-employer welfare arrangement; health maintenance organization contract offered by an employer; or any other policy or plan issued by a carrier which provides health related benefits to small employers: Provided, That for purposes of this article, a health benefit plan shall not include accident only, credit, dental or
disability income insurance; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(i) "Index rate" means for each class of business for small employers with similar case characteristics the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(j) "New business premium rate" means, for each class of business as to a rating period, the premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(k) "Rating period" means the calendar period of at least twelve months for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

(l) "Small employer" means any person, firm, corporation, partnership or association actively engaged in business in the state of West Virginia for at least one year who, on at least fifty percent of its working days during the preceding year, employed no more than sixty or not fewer than two eligible employees: Provided, That companies which are affiliated companies or which are eligible to file a combined tax return for state tax purposes shall be considered one employer.

(m) "Small employer carrier" means any carrier which offers health benefit plans covering the employees of a small employer situate within the state of West Virginia.

§33-16D-3. Health insurance plans subject to this article.

The provisions of this article apply to any health benefit plan which provides coverage to one or more
eligible employees of a small employer situate in the state of West Virginia: Provided, That the provisions of this article shall not apply to individual health insurance policies which are subject to policy form and premium rate approval as required by article sixteen-b of this chapter.

§33-16D-4. Discrimination in marketing prohibited; annual filing with commissioner; violations and penalties.

(a) All carriers subject to this article are strictly prohibited from marketing their product to a specific group, legal occupation, locale, zip code, neighborhood, race, religion, or any discriminatory group.

(b) All carriers subject to this article shall file any marketing information upon request of the commissioner. The commissioner shall review said information and shall have the authority to take appropriate action to eliminate discriminatory marketing practices, including imposing fines on violators of this section of not more than ten thousand dollars. Upon a second violation of this section, the commissioner shall have the authority to revoke the violator’s license to transact insurance.

§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.

(a) Premium rates for health benefit plans subject to this article shall be subject to the following provisions:

1. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent: Provided, That this subdivision shall not apply to a class of business if all of the following apply:

(A) The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status;
(B) The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefits plan into or out of the class of business; and

(C) The class of business is currently available for purchase.

(2) For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of the index rate.

(3) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(A) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate;

(B) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the carrier's rate manual for the class of business; and

(C) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(4) In the case of health benefit plans issued prior to the effective date of this article, a premium rate for a rating period may exceed the ranges described in subdivision (1) or (2) of this subsection for a period of five years following the effective date of this article. In that case, the percentage increase in the premium rate charged to a small employer in such a class of business
for a new rating period may not exceed the sum of the following:

(A) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate; and

(B) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.

(b) Nothing in this section is intended to affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

(c) Adjustments in rates for claim experience, health status and duration of coverage may not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

(d) A small employer carrier shall utilize industry as a case characteristic in establishing premium rates: Provided, That the highest rate factor associated with any industry classification shall not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.

(e) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due
to the nature of the groups assumed to select particular health benefit plans.

(f) A small employer carrier may not involuntarily transfer a small employer into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration since issue.

(g) To be eligible to make a rate increase request after the first day of July, one thousand nine hundred ninety-three, a carrier shall have a minimum anticipated loss ratio of seventy-three percent. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes for the same experience period which are attributable to the policy forms or certificates affected by this section and which were paid to the state of West Virginia pursuant to the provisions of article three of this chapter.

(h) All insurers carriers subject to this article, effective the first day of July, one thousand nine hundred ninety-three, shall be prohibited from distinguishing more than four classes of business within its small group insurance coverage.

(i) If any health benefit plan is provided by a carrier through an association of small employers not in the business of selling insurance and with not fewer than two hundred cumulative employees, and if such association is rated on the basis of the number of employees and not on the basis of the individual small employers, such association or group is exempt from the provisions of this article.

§33-16D-6. Insurance commissioner to promulgate rules.

Pursuant to chapter twenty-nine-a of this code, the insurance commissioner may promulgate rules necessary to implement the provisions of this article.

§33-16D-7. Renewability of coverage; exceptions.
(a) A health benefit plan subject to this article shall be renewable to all eligible employees at the option of the small employer: Provided, That a carrier may refuse to renew a health benefit plan for any of the following reasons:

1. Nonpayment of required premiums;
2. Fraud or misrepresentation by the small employer or by the insured individual;
3. Noncompliance with plan provisions;
4. The number of individuals covered under the plan is fewer than the number or less than the percentage of eligible individuals necessary pursuant to the percentage requirements under the plan; or
5. The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.

(b) A small employer carrier may cease to renew all plans under a class of business. Upon the small employer's election of nonrenewal, the carrier shall provide notice of such election not to renew to all affected health benefit plans and to the commissioner in each state in which an affected insured individual is known to reside at least ninety days prior to termination of coverage.

(c) A carrier which exercises its right to cease to renew all plans in a class of business may not:

1. Establish a new class of business for a period of five years after the nonrenewal of the plans without prior approval of the commissioner; or
2. Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees without regard to case characteristics, claim experience, health status or duration of coverage.

(a) Each small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers of the following:

1. The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status or duration of coverage of the employees of the small employer;
2. The provisions concerning the carrier’s right to change premium rates and the factors, including case characteristics, which affect changes in premium rates;
3. A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans;
4. The provisions relating to renewability of coverage;
5. The provisions relating to any preexisting conditions limitations; and
6. An explanation, if applicable, that the small employer is purchasing a minimum benefits plan issued pursuant to article sixteen-c of this chapter.

(b) All disclosure statements shall be presented in clear and understandable form and format and shall be separate from any policy, certificate or evidence of coverage otherwise provided.


(a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation which demonstrate that its rating methods and practices are based upon commonly accepted actuarial principles.

(b) Each small employer carrier shall file each first day of March with the commissioner an actuarial certification that the carrier is in compliance with the provisions of section five of this article and that the
rating methods of the carrier are actuarially sound. A copy of such certification shall be retained by the carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (a) of this section available to the commissioner upon request.

§33-16D-10. Suspension of requirements.

The insurance commissioner may suspend all or part of the requirements of this article applicable to one or more health benefit plans for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

§33-16D-12. Equality of terms; preexisting conditions; continuous coverage restrictions.

Health benefit plans and, to the extent permitted by the federal Employee Retirement Income Security Act (ERISA), other benefit arrangements covering small employers shall be subject to the following provisions:

(a) Preexisting conditions provisions may not exclude coverage for a period beyond twelve months following an individual's effective date of coverage and may only relate to conditions which had, during the twelve months immediately preceding the effective date of coverage, manifested themselves in such a manner as would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment or for which medical advice, diagnosis, care or treatment was recommended or received, or as to a pregnancy existing on the effective date of coverage.

(b) In determining whether a preexisting condition limitation provision applies to an eligible employee or dependent, all health benefit plans shall credit the time such person was covered under a previous employer-based health benefit plan, a comparable
individual health benefit plan, or a self-insured plan if
the previous coverage was continuous to a date not
more than thirty days prior to the effective date of the
new coverage, exclusive of any applicable waiting
period under such plan.

(c) Subject to subsections (a) and (b) of this section,
when a small group employer converts its health
benefit plan from one health benefit plan to another
health benefit plan or from one carrier to another
carrier, all eligible employees who at the time of
conversion are covered by the health benefit plan shall
be offered health benefits coverage under the subse-
quent plan, and no employee who at the time of
conversion is covered by a health benefit plan offered
by said employer may be treated any differently
relative to other covered employees under the new
health benefit plan than he or she is treated under the
current health benefit plan.

ARTICLE 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS
INSURANCE POLICIES AND CERTIFICATES.

§33-16E-1. Scope of article.
1 The provisions of this article shall apply to all
limited benefits policies and certificates in force on the
effective date of this article, as well as to any limited
benefits policy or certificate delivered or issued for
delivery in this state after the effective date hereof.

§33-16E-2. Definitions.
1 For purposes of this article:
2 (a) “Limited benefits policy or certificate” means
any individual or group accident and sickness insur-
ance policy that is not required to offer or provide all
benefits mandated by any other applicable provision of
this chapter. Such policies include, but are not limited
to, accident and sickness disability, accident only,
sickness only disability, sickness only, accident only
disability, hospital indemnity, specified disease, and
travel accident insurance policies: Provided, That the
following types of policies and certificates are excluded
from the definition of “limited benefits policy or
certificate” for purposes of this article:
(1) Credit accident and sickness insurance;
(2) Long-term care insurance;
(3) Medicare supplement insurance; and
(4) Minimum benefits accident and sickness insurance issued pursuant to section fifteen, article fifteen or article sixteen-c of this chapter.

(b) “Experience period” means the period beginning on the first day of the calendar year during which a premium rate first takes effect and ending on the last day of the calendar year during which the insurer earns five hundred thousand dollars in premiums on the form in West Virginia or, if the annual premium earned on the form in West Virginia is less than five hundred thousand dollars, earns nationally.

(c) “Successive experience period” means the experience period beginning on the first day following the end of the preceding experience period.

§33-16E-3. Premium rate increase requests; loss ratio requirements.

(a) To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-three, any insurer offering a limited benefits policy form or certificate form in West Virginia shall be expected to return to policyholders and certificateholders in the form of five-year aggregate loss ratios under the policy form or certificate form:

(1) At least seventy-five percent of the earned premiums in the case of a group policy or certificate;
(2) At least sixty-five percent of the earned premiums in the case of an individual policy; and
(3) At least fifty-five percent of the earned premiums in the case of an individual or group accident and sickness disability policy or certificate.

(b) With respect to a policy form or certificate form
which has been offered by an insurer in West Virginia or nationally for five years or less the insurer may use the anticipated loss ratio filed with and approved by the commissioner for that form to determine compliance with the requirements of this section.

(c) For purposes of this section, limited benefits policies and certificates issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

§33-16E-4. Premium refunds; calculation of refunds; payments.

(a) Beginning on the first day of July, one thousand nine hundred ninety-four, any insurer offering a limited benefits policy or certificate in West Virginia shall make premium refunds to policyholders and certificateholders if it fails to return to such policyholders and certificateholders in the form of annual loss ratios under the policy or certificate:

(1) At least sixty-five percent of the earned premiums in the case of a group policy or certificate;

(2) At least fifty-five percent of the earned premiums in the case of an individual policy; and

(3) At least forty-five percent of the earned premiums in the case of an individual or group accident and sickness disability policy or certificate.

(b) With respect to a policy form or certificate form which has been offered by an insurer either in West Virginia or nationally for more than five years, refunds to West Virginia policyholders or certificateholders made pursuant to the requirements of this section and based upon annual earned premium volume in West Virginia shall be calculated by multiplying the anticipated loss ratio by the applicable earned premium during the experience period and subtracting from that result the actual incurred claims during the experience period.

(c) With respect to a policy form or certificate form
which has been offered by an insurer for more than
five years, refunds to West Virginia policyholders or
certificateholders made pursuant to the requirements
of this section and based upon national annual earned
premium volume shall be calculated by:

(1) Multiplying the anticipated loss ratio by the
applicable earned premium during the experience
period and subtracting from that result the actual
incurred claims during the experience period; and

(2) Multiplying the results of subdivision (1) of this
subsection by the total earned premium during the
experience period from all West Virginia policyholders
or certificateholders eligible for refunds; and

(3) Dividing the results of subdivision (2) of this
subsection by the total earned premium during that
period in all states on the policy form.

(d) With respect to a policy form or certificate form
which has been offered by an insurer in West Virginia
or nationally for five years or less, the insurer may
use the anticipated loss ratio filed with and approved
by the commissioner to determine the amount of
premium refunds, if any, that must be made pursuant
to subsection (a) of this section.

(e) Refunds shall be made to all West Virginia
policyholders and certificateholders who are insured
under the applicable policy form or certificate as of
the last day of the experience period. Such refund
shall include interest, at the current accident and
health reserve interest rate established by the national
association of insurance commissioners, from the end
of the experience period until the date of payment.
Payment shall be made during the third quarter of the
year following the experience period for which a
refund is determined to be due.

(f) Refunds of less than ten dollars shall be aggregat-
ed and held by the insurer in a policyholders’ and
certificateholders’ liability fund and shall be used to
offset any future rate increases.
§33-16E-5. Statement of actual loss ratios to be filed with commissioner; form; examinations.

(a) Every insurer offering limited benefits policy forms or certificate forms which have been in effect for five years or more in West Virginia shall file with the commissioner, on or before the first day of September of each year, a statement of the actual loss ratios for each policy form or certificate form issued in this state. Such statement shall be made under the oath of the insurer's president or other authorized officer on a form prescribed by the commissioner.

(b) The commissioner shall have the authority to examine the records and files of any insurer offering limited benefits policy forms or certificate forms in West Virginia to determine compliance with the provisions of this article.

§33-16E-6. Notice of cancellation or nonrenewal.

No insurer may cancel or nonrenew a limited benefits policy or certificate unless written notice of such cancellation or nonrenewal is forwarded to the policyholder or certificateholder not less than sixty days prior to the expiration date of the policy or certificate.

§33-16E-7. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates.

(a) If a limited benefits policy or certificate replaces another limited benefits policy or certificate providing similar coverage, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new limited benefits policy or certificate to the extent that such time was spent under the original policy or certificate.

(b) If a limited benefits policy or certificate replaces another limited benefits policy or certificate providing similar coverage that has been in effect for at least six months, the replacing policy may not provide any time
§33-16E-8. Extraterritorial jurisdiction.

(a) No limited benefits policy or certificate may be offered to a resident of this state under a policy issued in another state, unless this state or another state having statutory and regulatory limited benefits policy or certificate requirements substantially similar to those adopted in this state has made a determination that such requirements have been met.

(b) Any such limited benefits policy form or certificate form offered to a resident of this state under a policy issued in another state shall be filed with the insurance commissioner.


Except as otherwise provided, and except where the context clearly requires otherwise, all the provisions of article fifteen of this chapter are applicable to individual limited benefits policies and all provisions of article sixteen of this chapter are applicable to group limited benefits policies and certificates.

§33-16E-10. Commissioner to promulgate rules.

The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the implementation, regulation and enforcement of the provisions of this article.


If any provision of this article or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the article and application of such provision to other persons or circumstances shall not be affected thereby.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
Date 4/24/93
Time 1:39 p.m.