WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 473

(By Senator Walker)

PASSED March 9, 1996
In Effect Ninety Days From Passage
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[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, seven and twenty-two, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the administration of the West Virginia public employees insurance agency; definitions; salary of director; chief financial officer; providing that for plans which include maternity benefits that these plans not deny payment for specified minimum time periods where deemed medically necessary by the attending physician; optional life and accidental death insurance; and employer contributions.

Be it enacted by the Legislature of West Virginia:

That sections two, three, seven and twenty-two, article
sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

4 (1) "Advisory board" means the public employees insurance agency advisory board created by this article.

6 (2) "Agency" means the public employees insurance agency created by this article.

8 (3) "Director" means the director of the public employees insurance agency, created by this article.

10 (4) "Employee" means any person, including elected officers, who works regularly full time in the service of the state of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including elected officers, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the university of West Virginia board of trustees or the board of directors of the state college system; and any person who works regularly full
time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code. On and after the first day of January, one thousand nine hundred ninety-four, and upon election by a county board of education to allow elected board members to participate in the public employees insurance program pursuant to this article, any person elected to a county board of education shall be deemed to be an “employee” during the term of office of the elected member: Provided, That the elected member shall pay the entire cost of the premium if he or she elects to be covered under this act. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

(5) “Employer” means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an “employer” within the meaning of this article shall be decided by the director. The term “employer” does not include within its meaning the national guard.

(6) “Finance board” means the public employees insurance agency finance board created by this article.
(7) "Plan" means the medical indemnity plan or a managed care plan option offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the university of West Virginia board of trustees or the board of directors of the state college system or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article and meet the minimum eligibility requirements for their respective state retirement system: Provided, That for the purposes of this article the employees who are not covered by a state retirement system shall, in the case of education employees, meet the minimum eligibility requirements of the state teachers retirement system, and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

(a) The public employees insurance agency is continued, and consists of the director, the finance board, the advisory board and any employees who may be authorized by law. The director shall be appointed by the governor, with the advice and consent of the Senate. He or she shall serve at the will and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years experience in health insurance administration prior to appointment as director. The director shall receive an annual salary established by the governor not to exceed sixty-five thousand dollars and actual expenses incurred in the performance of official business.
The director shall employ such administrative, technical and clerical employees as are required for the proper administration of the insurance programs provided for in this article. The director shall perform such duties as are required of him or her under the provisions of this article and is the chief administrative officer of the public employees insurance agency.

(b) All positions in the agency, except for the director, his or her personal secretary and the chief financial officer shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.

(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility shall have the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article shall limit the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations,
provider contracting and payment, designation of
covered and noncovered services, offering of additional
coverage options or cost containment incentives, pursuit
of coordination of benefits and subrogation, or any other
actions which would serve to implement the plan or
plans designed by the finance board.

(d) The public employees insurance agency shall
terminate in the manner provided in article ten, chapter
four of this code, on the first day of July, two thousand
one, unless extended by legislation enacted before the
termination date: Provided, That the public employees
insurance agency advisory board, created in section six
of this article, shall terminate in the manner provided in
article ten, chapter four of this code on the first day of
July, one thousand nine hundred ninety-six.

§5-16-7. Authorization to establish group hospital and surgi­
cal insurance plan, group major medical
insurance plan, group prescription drug plan
and group life and accidental death insurance
plan; rules for administration of plans; man­
dated benefits; what plans may provide;
optional plans; separate rating for claims
experience purposes.

(a) The agency shall establish a group hospital and
surgical insurance plan or plans, a group prescription
drug insurance plan or plans, a group major medical
insurance plan or plans and a group life and accidental
death insurance plan or plans for those employees herein
made eligible, and to establish and promulgate rules for
the administration of such plans, subject to the limita­
tions contained in this article. Those plans shall include:

(1) Coverages and benefits for X-ray and laboratory
services in connection with mammograms and pap
smears when performed for cancer screening or diagnos­
tic services;

(2) Annual checkups for prostate cancer in men age
fifty and over;

(3) For plans that include maternity benefits, coverage
for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician deems medically necessary for the mother or her newly born child: Provided, That no such plan may deny payment for a mother or her new born child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section delivery, if the attending physician deems discharge medically inappropriate; and

(4) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision three of this subsection if such inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other things, medicines, medical equipment, prosthetic appliances, and such other inpatient and outpatient services and expenses deemed appropriate and desirable by the agency.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes: (1) All employees of the state of West Virginia; (2) all teaching and professional employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education; (3) all non-teaching employees of the university of West Virginia board of trustees or the board of directors of the state
§5-16-22. Permissive participation; exemptions.

1 The provisions of this article are not mandatory upon
2 any employee or employer who is not an employee of or
3 is not the state of West Virginia, its boards, agencies,
4 commissions, departments, institutions or spending units
5 or a county board of education, and nothing contained in
6 this article shall be construed so as to compel any
7 employee or employer to enroll in or subscribe to any
8 insurance plan authorized by the provisions of this
9 article.

10 Those employees enrolled in the insurance program
11 authorized under the provisions of article two-b, chapter
12 twenty-one-a of this code shall not be required to enroll
13 in or subscribe to an insurance plan or plans authorized
14 by the provisions of this article, and the employees of
15 any department which has an existing insurance pro-
16 gram for its employees to which the government of the
17 United States contributes any part or all of the premium
18 or cost of the premium may be exempted from the
19 provisions of this article. Any employee or employer
20 exempted under the provisions of this paragraph may
21 enroll in any insurance program authorized by the
22 provisions of this article at any time, to the same extent
23 as any other qualified employee or employer, but em-
24 ployee or employer shall not remain enrolled in both
25 programs. The provisions of articles fourteen, fifteen and
26 sixteen, chapter thirty-three of this code, relating to
27 group life insurance, accident and sickness insurance,
28 and group accident and sickness insurance, are not
29 applicable to the provisions of this article whenever the
30 provisions of articles fourteen, fifteen and sixteen,
31 chapter thirty-three of this code are in conflict with or
32 contrary to any provision set forth in this article or to
33 any plan or plans established by the public employees
34 insurance agency.
Employers, other than the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than ten days after the vote.

Any employer, whether the employer participates in the public employees insurance agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the public employees insurance agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: Provided, That after the thirtieth day of June, one thousand nine hundred ninety-six, an employer is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.
That 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 1st day of April, 1996.

Governor