WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

HOUSE BILL No. 2091

Douglas, Hutchins, Fleischauer, Manuel and Caputo
(By Delegate Manuel and Caputo)

Passed April 12, 1997

In Effect Ninety Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2091

(BY DELEGATES DOUGLAS, HUTCHINS, FLEISCHAUER, MANUEL AND CAPUTO)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to prohibiting insurers from denying life or accident and sickness insurance coverage to an individual who has been or is the victim of abuse.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.
(a) For purposes of this section, the following definitions shall apply:

(1) "Abuse," as used in this section, means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(B) Placing another in reasonable apprehension of physical harm;

(C) Creating fear of physical harm by harassment, psychological abuse or threatening acts;

(D) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

(E) Holding, confining, detaining or abducting another person against that person's will;

(F) Intentionally or recklessly damaging, destroying or taking the tangible property of another individual;

(G) Insulting, taunting or challenging another individual or engaging in a course of alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly response or which is likely to cause humiliation, degradation or fear in another individual;

(H) Trespassing on or in the property of another individual, or on or in property from which the trespasser has been excluded by court order;

(I) Child abuse or neglect, as defined in section three, article one, chapter forty-nine of this code;

(J) Kidnapping, concealment or removal of a minor child from his or her custodian or from a person entitled to visitation, as set forth in sections fourteen through fourteen-e, article two, chapter sixty-one of this code.

(2) "Family or household member" means current or former spouses, persons living as spouses, persons who
formerly resided as spouses, parents, children and
stepchildren, current or former sexual or intimate partners,
other persons related by blood or marriage, persons who
are presently or in the past have resided or cohabited
together or a person with whom the victim has a child in
common.

(3) “Victim of abuse,” as used in this section, means
an individual who has been or is subject to abuse,
including but not limited to an individual who seeks, has
sought or should have sought medical or psychological
treatment for abuse, protection from abuse or shelter from
abuse.

(b) For all policies issued or renewed after the
effective date of this section, no person or entity engaged
in the business of providing life or health insurance, or
both, in this state may:

(1) Deny, refuse to issue, refuse to renew, refuse to
reissue, cancel or otherwise terminate an insurance policy
or restrict coverage on any individual because that
individual is, has been or may be the victim of abuse;

(2) Add any surcharge or rating factor to a premium
of an insurance policy because an individual has been or
may be the victim of abuse;

(3) Exclude or limit coverage for losses or deny a
claim incurred because an individual has been or may be
the victim of abuse; or

(4) Require as part of the application process any
information regarding whether that individual has been or
may be the victim of abuse.

(c) Nothing in this section may be construed to
prohibit a person from declining to issue an insurance
policy insuring the life of an individual who is or has been
the victim of abuse if the perpetrator of abuse is the
applicant or would be the owner of the insurance policy.

(d) Nothing in this section may be construed to
prohibit a person from underwriting or rating a risk on the
basis of a preexisting physical or mental condition, even if the condition had been caused by abuse: Provided, That:

(1) The person routinely underwrites or rates the condition in the same manner with respect to an insured or an applicant who is not a victim of abuse;

(2) The fact that an individual is, has been, or may be the victim of abuse may not be considered a physical or mental condition; and

(3) The underwriting or rating is not used to evade the intent of this law or any other provision of law. A person may not be held civilly or criminally liable for any cause of action which may be brought because of compliance with this section.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a “reciprocal state” means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section seven-a of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of
operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any health maintenance organization authorized under this article shall not be considered to be practicing medicine and is exempt from the provisions of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of sections fifteen and twenty, article four (general provisions); section seventeen, article six (noncomplying forms); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular disorder and craniomandibular disorder); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-seven (insurance holding company systems); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); article
thirty-nine (disclosure of material transactions); and article forty-one (privileges and immunity) shall be applicable to any health maintenance organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to health maintenance organizations by this section refer to the "insurer", the "corporation" or words of similar import, the language shall be construed to include health maintenance organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

(f) A health maintenance organization granted a certificate of authority under this article shall be exempt from paying municipal business and occupation taxes on gross income it receives from its enrollees, or from their employers or others on their behalf, for health care items or services provided directly or indirectly by the health maintenance organization. This exemption applies to all taxable years through the thirty-first day of December, one thousand nine hundred ninety-six. The commissioner and the tax department shall conduct a study of the appropriations of imposition of the municipal business and occupation tax or other tax on health maintenance organizations, and shall report to the regular session of the Legislature, one thousand nine hundred ninety-seven, on their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate their recommendations.
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 is approved this the 28th day of April, 1997.

Governor