WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4259
(By Mr. Speaker, Mr. Kiss, and Delegates Beane, L. White, Thompson, Faircloth and Johnson)

Passed March 14, 1998
In Effect Ninety Days from Passage
ENROLLED

H. B. 4259

(BY MR. SPEAKER, MR. KISS, AND DELEGATES
BEANE, L. WHITE, THOMPSON, FAIRCLOTH AND JOHNSON)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the regulation of limited benefits insurance policies; providing definitions; providing limitations on premium rate increases; providing for premium corrections; providing for the amount and timing of premium corrections; requiring reports to the commissioner; providing for civil penalties; requiring notice of cancellation or nonrenewal; providing requirements for limited benefits policy provisions; allowing the insurance commissioner to prevent an insurer from avoiding premium correction requirements by offering a new form of policy or certificate; and requiring a report to the Legislature by the commissioner.

Be it enacted by the Legislature of West Virginia:

That article sixteen-e, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

§33-16E-1. Scope of article.
The provisions of this article apply to all limited benefits policies and certificates delivered or issued for delivery in this state after the ninth day of July, one thousand nine hundred ninety-three.

§33-16E-2. Definitions.

For purposes of this article:

(a) "Limited benefits policy" means any individual or group accident and sickness insurance policy, including all riders thereto (and certificates in the case of a group policy), that covers one or more residents of this state and 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 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":

(1) Credit accident and sickness insurance;
(2) Long-term care insurance;
(3) Medicare supplement insurance;
(4) Minimum benefits accident and sickness insurance issued pursuant to section fifteen, article fifteen of this chapter or article sixteen-c of this chapter;
(5) Accident and sickness policies which provide benefits for loss of income due to disability;
(6) Major medical policies;
(7) Dental policies; and
(8) Vision policies.

(b) "Limited benefits form" means a compilation of policy terms that has been approved by the commissioner for use as a prototype for limited benefits policies, or a compilation of policy terms that has been used as the prototype for one or more limited benefits policies, regardless of whether that compilation has been approved.
by the commissioner. The existence of a form may be inferred from the existence of one or more policies that do not conform to any form that has been approved by the commissioner. Limited benefits forms that are used by a particular insurer and that, in the opinion of the commissioner, are substantially identical with respect to the risks covered and benefits provided shall be regarded as a single limited benefits form.

(c) "Insurer" means an insurer that offers or has in force any limited benefits policies.

(d) "Correction date" means the thirty-first day of December of the year one thousand nine hundred ninety-nine and of every third year thereafter.

(e) "Incurred claims" for a particular limited benefits form during a particular period of time means the aggregate amount of all claims incurred during that period on all limited benefits policies based on that form, regardless of when individual claims are paid: Provided, That if both West Virginia residents and residents of one or more other states are covered under a group limited benefits policy, only claims incurred on behalf of West Virginia residents shall be taken into account in determining the amount of claims incurred on the policy.

(f) "Earned premiums" for a particular limited benefits form during a particular period of time means the aggregate amount all premiums earned during that period on all policies based on that form, regardless of when specific premiums are paid: Provided, That if both West Virginia residents and residents of one or more other states are covered under group limited benefits policy, only premiums earned for coverage extended to West Virginia residents shall be taken into account in determining the amount of premiums earned on the policy.

(g) "Net level premium" for a particular limited benefits form means a hypothetical premium per limited benefits policy that is of such amount that, over the lifetime of the limited benefits policy beginning at the time of issue of the policy, the present value of the net
level premiums for the policy equals the present value of the claims expected to be incurred on the policy. The net level premium shall be determined using the same assumptions as are used in pricing calculations, with appropriate provision for adverse deviation.

(h) "Net level premium reserve" means a reserve calculated so that at any point in time the reserve amount is the present value of benefits expected to be incurred in the future minus the present value of future net level premiums.

(i) "Modified net level premium reserve" means net level premium reserve reduced by the investment income component of such reserve.

§33-16E-3. Identification of level premium limited benefits forms.

(a) A limited benefits form shall be regarded as a level premium limited benefits form only if the form has been identified as provided in this section.

(b) On or before the first day of December, one thousand nine hundred ninety-eight, each insurer shall identify, in writing to the commissioner, those limited benefits forms approved by the commissioner (pursuant to section eight, article six of this chapter) prior to the first day of July, one thousand nine hundred ninety-eight, that are level premium limited benefits forms.

(c) An insurer submitting a form to the commissioner for approval (pursuant to section eight, article six of this chapter) after the first day of July, one thousand nine hundred ninety-eight, shall clearly indicate, in the written documents filed with the commissioner to submit the form, that the form is a level premium limited benefits form.

(d) An insurer using a form that is not subject to prior approval by the commissioner shall identify the form as a level premium limited benefits form, in writing to the commissioner:
(1) On or before the first day of December, one thousand nine hundred ninety-eight, if at least one policy based on the form was delivered or issued for delivery in this state prior to the first day of July, one thousand nine hundred ninety-eight; or

(2) Within six months of the first instance in which a policy is delivered or issued for delivery in this state, if no such policies were delivered or issued for delivery in West Virginia prior to the first day of July, one thousand nine hundred ninety-eight.

(e) A limited benefits form that is subject to prior approval by the commissioner and that has not been so approved shall not be regarded as a level premium limited benefits form.

§33-16E-4. Premium rate increases.

(a) The commissioner may not approve a premium rate increase for a limited benefits form unless the form is expected, over its lifetime and given the rate increase, to return at least seventy-five percent (in the case of a group form) or sixty-five percent (in the case of an individual form) of its earned premiums to policyholders and certificate holders as incurred claims: Provided, That for purposes of this requirement, any premium refunds that have been paid for the form pursuant to this article shall be regarded as incurred claims. At the request of an insurer, the commissioner may apply a minimum percentage that is less than the applicable percentage otherwise provided in this subsection if the insurer demonstrates to the satisfaction of the commissioner that special circumstances justify the use of that lesser percentage in order to allow the insurer a reasonable profit on policies based on the form. Special circumstances include, but are not limited to:

(1) The cost of developing the form is unusually high; or

(2) The expenses of marketing or administering the form are unusually high; or
(3) The form covers unusual risks or incorporates unique features.

(b) For purposes of this article, the following shall be treated as individual limited benefits forms:

(1) Forms used as a prototypes for limited benefits policies (or certificates thereto in the case of group policies) that are marketed to individuals through the mail or mass media advertising, including both print and broadcast advertising; and

(2) Forms used as a prototypes for limited benefits policies (or certificates thereto in the case of group policies), however marketed, that are sold so that the individual insured makes the decision to purchase the insurance and is responsible for paying all costs of the insurance, including payment by salary reductions for cafeteria plans under section one hundred twenty-five of the Internal Revenue Code.

§33-16E-5. Premium corrections required.

(a) Except as otherwise provided in this section, an insurer shall make a premium correction for a particular limited benefits form and correction date if the comparison percentage for that form and date is not at least sixty-five percent (in the case of a group form) or fifty-five percent (in the case of an individual form). At the request of an insurer, the commissioner may apply a minimum percentage that is less than the applicable percentage otherwise provided in this subsection if the insurer demonstrates to the satisfaction of the commissioner that special circumstances justify the use of that lesser percentage in order to allow the insurer a reasonable profit on policies based on the form. Special circumstances include, but are not limited to:

(1) The cost of developing the form was unusually high; or

(2) The expenses of marketing or administering the form are unusually high; or
(3) The form covers unusual risks or incorporates unique features.

(b) The comparison percentage for a limited benefits form that is not a level premium limited benefits form shall be calculated by dividing the incurred claims for the form during the three-year period ending on the correction date by the earned premiums for the form during the same period, and multiplying that quotient by one hundred. Provided, That for correction dates after the thirty-first day of December, two thousand two, comparison percentages for level premium limited benefits forms also shall be calculated in this fashion.

(c) The comparison percentage for a level premium limited benefits form shall be calculated as follows: Provided, That for correction dates after the thirty-first day of December, two thousand two, the comparison percentage for such forms instead shall be calculated as described in subsection (b) of this section:

(1) Add the incurred claims for the form during the period that begins on the ninth day of July, one thousand nine hundred ninety-three, and ends on the correction date, to the modified net level premium reserve for the form as of the correction date: Provided, That any premium refunds that have been paid for the form pursuant to this article shall be added to the incurred claims when performing this calculation;

(2) Divide the sum thus obtained by the earned premiums for the form during the period that begins on the ninth day of July, one thousand nine hundred ninety-three, and ends on the correction date; and then

(3) Multiply the quotient thus obtained by one hundred.

(d) If, in the opinion of the commissioner, a comparison percentage that is calculated by the method described in subsection (c) of this section would not accurately predict the percentage of earned premiums returned to policyholders and certificate holders over the lifetime of a particular limited benefits form, the
commissioner may require that a different method be used to calculate a comparison percentage for the form.

(e) Notwithstanding any other provision of this section, an insurer may not be required to make a premium correction for a particular limited benefits form and correction date if the earned premiums for the form during the period that begins on the ninth day of July, one thousand nine hundred ninety-three, and ends on the correction date is less than five hundred thousand dollars.

§33-16E-6. Amount and timing of premium corrections.

(a) A premium correction may be a refund of premiums, a reduction in premiums, or an increase in benefits. All premium corrections shall satisfy the requirements of this section, and any refund or reduction of premiums, or increase in benefits that does not satisfy those requirements may not be regarded as a premium correction for purposes of this article.

(b) The total amount of a premium refund for a particular form shall equal the amount of additional claims that, if incurred on the correction date, would cause the comparison percentage for the form to equal the minimum percentage for the form, with both percentages being determined according to section five of this article. The refund shall be allocated among those persons who are policyholders as of the correction date for which the refund is made. Individual refunds shall be in proportion to the total amount of premiums earned for each individual’s policy over the entire period that the policy has been in force. A premium refund that satisfies the requirements of this section shall not be regarded as an instance of unfair discrimination in rates or premiums for purposes of subsection (7), section four, article eleven of this chapter or as a rebate of premiums for purposes of subsection (8) section four, article eleven of this chapter.

(c) A reduction of premiums or an increase in benefits shall be such that the amount returned to policyholders or certificate holders as incurred claims over the lifetime of the form is at least equal to the minimum percentage for the form determined according to section five of this
Provided, That for purposes of this requirement, any premium refunds that have been paid for the form pursuant to this article shall be regarded as incurred claims. Once implemented, the reduction or increase shall affect all policies, whether newly issued or renewed, that are based on the form for which the correction is made.

(d) A reduction of premiums or increase in benefits must be approved in advance by the commissioner. The commissioner may approve a reduction or increase only if the insurer establishes, to the satisfaction of the commissioner, that the reduction or increase satisfies the requirements of this section. Prior to approving or disapproving a reduction or increase, the commissioner may request, and the insurer shall provide, all information that, in the opinion of the commissioner, is reasonably related to the commissioner’s decision. To evaluate a reduction or increase, the commissioner may retain professionals or specialists, including, but not limited to, independent actuaries, to perform services that are reasonably necessary to evaluate the reduction or increase. The cost of those services shall be borne by the insurer that has requested approval of the reduction or increase: Provided, That the amount borne by an insurer in connection with a single reduction or increase shall not exceed two thousand five hundred dollars.

(e) Premium refunds shall be tendered to individual policyholders, and reductions in premiums or increases in benefits shall be implemented, on the later of the first day of October of the year immediately following the correction date for which the correction is made or the date which is sixty days after the commissioner issues a decision on a request for approval of a reduction in premiums or an increase in benefits. Every individual premium refund tendered later than the required tender date shall include interest for the period beginning on the required tender date and ending on the date on which the refund is tendered, at the rate established by the tax commissioner under section seventeen-a, article ten, chapter eleven of this code as of the actual tender date. The commissioner may withdraw approval of a premium reduction or benefit increase that is not implemented by
the date required by this subsection unless the insurer
establishes to the satisfaction of the commissioner, that the
failure to implement the reduction or increase by that date
was neither willful nor a result of the insurer's negligence.
Insurers shall request approval of a premium reduction or
benefits increase no later than the first day of July of the
same year: Provided, That the commissioner may accept
a request for approval made after that date if, in the
opinion of the commissioner, the timing of the request will
not impair the commissioner's evaluation of the request
and will allow any such reduction or increase to be
implemented on or before the date required by this
subsection. If the requirements of any other state or
federal law restrict the implementation of any premium
reduction or benefit increase on the date otherwise
required by this subsection, such reduction or increase
shall be implemented on the earliest date allowed by such
other state or federal law.

(f) A premium refund that, once allocated, would
result in individual refunds of less than ten dollars per
policyholder may be retained by the insurer and placed in
a fund to be used to offset any future rate increases for the
form: Provided, That if the insurer subsequently pays
individual refunds for the same form, any amount earlier
placed into the fund for the same form shall be added to
the amount of the premium refund, and the total amount
allocated among individual policyholders as described in
subsection (b) of this section.

(g) Notwithstanding any other provision of this article,
if a particular limited benefits policy was issued for
delivery prior to the ninth day of July, one thousand nine
hundred ninety-three, an insurer shall not be required to
pay individual refunds to the holder of that policy.

§33-16E-7. Report to be filed with commissioner; form;
examinations.

(a) Every insurer shall annually file with the
commissioner a report on the limited benefits forms used
or available for use by the insurer during the period.
The report shall be filed no later than the first day of June: Provided, That the commissioner for good cause shown may extend the filing date for a particular report for up to ninety days.

The report shall be prepared on a form prescribed by the commissioner, and shall contain all of the information required by that form. The report shall provide this information for every limited benefits form actually used by the insurer during the preceding calendar year, and for every form that as of the final day of the reporting period was approved by the commissioner.

The report shall be executed by the insurer in the manner prescribed by the commissioner.

The commissioner may examine the records and files of any insurer to determine whether the insurer has complied with the provisions of this article.

§33-16E-8. Penalties.

(a) Any insurer that fails to comply with the provisions of this article is subject to the following civil penalties:

(1) An insurer that has failed to file a limited benefits report by the applicable filing date (determined with regard to any extensions of time granted by the commissioner) is subject to a penalty of two thousand five hundred dollars, and an additional penalty of two thousand five hundred dollars for each month or fraction thereof during which the failure continues;

(2) An insurer that has filed a report that is incomplete or inaccurate in any material respect is subject to a penalty of two thousand five hundred dollars, and an additional penalty of two thousand five hundred dollars for every month or fraction thereof during which the insurer fails to correct all material defects in the report; and

(3) An insurer that has failed to make a premium correction during the time prescribed by this article is subject to a penalty of five thousand dollars, and an additional penalty of five thousand dollars for each month or fraction thereof during which the failure continues.
(b) Penalties established by this section may not be imposed if the insurer establishes, to the satisfaction of the commissioner, that the failure upon which the penalty is based was neither willful nor a result of the insurer’s negligence.

(c) Penalties imposed under this section shall be paid to the commissioner, who shall transfer amounts so received to the general revenue fund of this state. A penalty shall be due when the insurer receives written notice from the commissioner stating the amount of the penalty and describing the failure for which it is imposed. Notice of a penalty does not preclude the imposition of additional penalties for subsequent months or fractions thereof during which the failure identified in the notice continues, or the imposition of penalties for other failures.

(d) The imposition of penalties under this section are in addition to, and not in lieu of, any other penalties, charges, sanctions, or liabilities allowed by law.

§33-16E-9. Notice of cancellation or nonrenewal.

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

§33-16E-10. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies.

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

(b) If a limited benefits policy replaces another limited benefits policy providing similar coverage that has been in effect for at least six months, the replacement policy may
not provide any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

§33-16E-11. Applicability of other provisions.

Except as otherwise provided, 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.

§33-16E-12. 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.

§33-16E-13. Commissioner’s authority to reject new policy or certificate forms.

The commissioner may disapprove any new limited benefits form if the commissioner determines that the new form likely will be used by the insurer in lieu of an existing form so as to allow the insurer to avoid making premium corrections on the existing form.

§33-16E-14. Commissioner’s report to the Legislature.

The commissioner shall prepare a report to the Legislature, to be delivered during the regular session of the Legislature held in the year two thousand two. The commissioner’s report shall evaluate the provisions of this article (including, but not limited to, the provisions that establish a method for computed comparison percentages for level premium limited benefits policies) and may include proposed changes or alternatives to those provisions.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the ___ day of ___ , 1998.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR

Date 3/31/98
Time 11:55 a.m.