WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

--- • ---

ENROLLED

Com. Sub. for
House Bill No. 4299

(Dy Mr. Speaker, Mr. Kiss, and Delegates Martin,
Sampson, Leach, Douglas, Stiles, and Capito)

--- • ---

Passed March 14, 1998

In Effect from Passage
AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b; to amend and reenact section two-b, article four-a, chapter nine of said code; and to further amend said article four-a by adding thereto a new section, designated section three, all relating to creating a children’s health program; expanding access to health services to certain eligible children; requiring reporting; defining terms; creating division; creating a children’s health policy board, specifying membership and qualifications of members, compensation and expenses, setting forth purpose, powers and duties; providing for employment of a director, setting forth powers and duties; requiring preparation of annual financial plan; creating a special revolving fund known as the West Virginia children’s health fund; providing guidelines to be considered by the board and director in developing and planning the program; providing for termination and reauthorization of the program; expanding medicaid coverage to certain eligible
children; and creating a special revolving fund known as the West Virginia Title XIX-Medicaid fund.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH PROGRAM.

§5-16B-1. Expansion of health care coverage to children; creation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia children’s health program is hereby created. The program shall be administered by the division of children’s health within the bureau for medical services of the department of health and human services in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which shall not create an entitlement to coverage in any person. Nothing in this article may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this article. In the
event that this article conflicts with the requirements of federal law, federal law shall govern.

(b) In developing a children’s health program that operates with the highest degree of simplicity and governmental efficiency, the board shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the board may consider any cost savings, administrative efficiency or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

§5-16B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(a) “Board” means the children’s health policy board;

(b) “Director” means the director of the children’s health program;

(c) “Division” means the division of children’s health created within the bureau for medical services in the department of health and human services;

(d) “Essential community health service provider” means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which make up a significant portion of its patient population, or, in the case of a sole community provider, serves medically indigent patients within its medical capability; and

(2) Either waives service fees or charges fees based on a sliding scale and does not restrict access or services because of a client’s financial limitations including, but
not limited to, community mental health centers, school
health clinics, primary care centers, pediatric health clinics
or rural health clinics.

(e) "Program" means the West Virginia children's
health program.

§5-16B-3. Reporting requirements.

(a) On the first day of January, one thousand nine
hundred ninety-nine and annually thereafter, the director
shall report to the governor and the Legislature regarding
the number of children enrolled in the program or
programs; the average annual cost per child per program;
the number of children enrolled in the Medicaid program,
pursuant to Title XIX of the Social Security Act, the
public employees insurance agency and private sector
insurance programs; the number of remaining uninsured
children; and the effectiveness of the outreach activities
for the previous year. The report shall include any
information that can be obtained regarding the prior
insurance and health status of the children enrolled in
programs created pursuant to this article. Beginning with
the second annual report, the director shall include
information regarding the cost, quality and effectiveness
of the health care delivered to enrollees of this program;
satisfaction surveys; and health status improvement
indicators. The board, in conjunction with other state
health and insurance agencies, shall develop indicators
designed to measure the quality and effectiveness of
children's health programs, which information shall be
included in the annual report.

(b) On a quarterly basis, the director shall provide
reports to the legislative oversight commission on health
and human resources accountability on the number of
children served, including the number of newly enrolled
children for the reporting period and current projections
for future enrollees; outreach efforts and programs;
statistical profiles of the families served and health status
indicators of covered children; the average annual cost of
coverage per child, the total cost of children served by
provider type, service type and contract type; outcome
measures for children served; reductions in
uncompensated care; performance with respect to the financial plan and any other information as the legislative oversight commission on health and human resources accountability may require.

(c) The director shall report initial statistical information on the children’s health program to the legislative oversight commission on health and human resources accountability. The report shall include, but not be limited to, the number of uninsured children eligible for the program, statistical information regarding the families of eligible children, and the projected average annual cost of coverage per child.

§5-16B-4. Children’s health policy board created; qualifications and removal of members; powers; duties; meetings; and compensation.

(a) There is hereby created the West Virginia children’s health policy board, which shall consist of the director of the public employees insurance agency, the secretary of the department of health and human resources or his or her designee, and five citizen members appointed by the governor, one of whom shall represent childrens’ interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment, pending the advice and consent of the senate. A member of the senate, as appointed by the senate president and a member of the house of delegates, as appointed by the speaker of the house of delegates, shall serve as nonvoting members. Of the citizen members first appointed, one shall serve one year, two shall serve two years and two shall serve three years. All future appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. Three of the citizen members shall have at least a bachelor’s degree and experience in the administration or design of public or private employee or group benefit programs and the children’s representative shall have experience that demonstrates knowledge in the health, educational and social needs of children. No more than three citizen members may be members of the same political party and
no board member shall represent or have a pecuniary interest in an entity reasonably expected to compete for contracts under this article. Members of the board shall assume the duties of the office immediately upon appointment and shall hold an initial meeting not later than the thirtieth day of June, one thousand nine hundred ninety-eight. The members shall elect a chairperson. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article, or gross immorality. Vacancies in the board shall be filled in the same manner as the original appointment.

(b) The purpose of the board is to develop plans for health services or health insurance that are specific to the needs of children and to bring fiscal stability to this program through development of an annual financial plan designed in accordance with the provisions of this article.

(c) Notwithstanding any other provisions of this code to the contrary, any insurance benefits offered as a part of the programs designed by the board are exempt from the minimum benefits and coverage requirements of articles fifteen and sixteen, chapter thirty-three of this code.

(d) The board may consider adopting the maximum period of continuous eligibility permitted by applicable federal law, regardless of changes in a family's economic status, so long as other group insurance does not become available to a covered child.

(e) The board shall meet at the time and place as specified by the call of the chairperson or upon the written request to the chairperson by at least two members. Notice of each meeting shall be given in writing to each member by the chairperson at least three days in advance of the meeting. Four voting members shall constitute a quorum.

(f) For each day or portion of a day spent in the discharge of duties pursuant to this article, the board shall pay each of its citizen members the same compensation
and expense reimbursement as is paid to members of the Legislature for their interim duties.

§5-16B-5. Director of the children’s health program; qualifications; powers and duties.

(a) A division director shall be appointed by the governor, with the advice and consent of the senate, and shall be responsible for the implementation, administration and management of the children’s health insurance program created under this article. The director shall have at least a bachelor’s degree and a minimum of three years experience in health insurance administration.

(b) The director shall employ any administrative, technical and clerical employees as are required for the proper administration of the program and for the work of the board. He or she shall present recommendations and alternatives for the design of the initial and annual plans and other actions undertaken by the board in furtherance of this article.

(c) The director, under the supervision of the board, is responsible for the administration and management of the program and shall have the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in this article shall limit the director's ability to manage the program on a day-to-day basis.

(d) The director shall have exclusive authority to execute any contracts as are necessary to effectuate the provisions of this article: Provided, That the board shall approve all contracts for the provision of services or insurance coverage under the program. The provisions of article three, chapter five-a of this code, relating to the division of purchases of the department of finance and administration, shall not apply to any contracts for any health insurance coverage, health services, or professional services authorized to be executed under the provisions of this article: Provided, however, That before entering into any such contract the director shall invite competitive bids from all qualified entities and shall deal directly with those entities in presenting specifications and receiving quotations for bid purposes. The director shall award
those contracts on a competitive basis taking into account the experience of the offering agency, corporation, insurance company or service organization. Before any proposal to provide benefits or coverage under the plan is selected, the offering agency, corporation, insurance company or service organization shall provide assurances of utilization of essential community health service providers to the greatest extent practicable. In evaluating these factors, the director may employ the services of independent, professional consultants. The director shall then award the contracts on a competitive basis.

(e) The director shall issue requests for proposals from essential community health service providers for defined portions of services under the children’s health plan regionally or statewide, and shall, to the greatest extent practicable, either directly contract with, or require participating providers to, contract with essential community health service providers to provide the services under the plan.

(f) Subject to the advice and consent of the board, the director may require reinsurance of primary contracts, as contemplated in the provisions of sections fifteen and fifteen-a, article four, chapter thirty-three of this code.

§5-16B-6. Financial plans requirements.

(a) Benefit plan design — All financial plans required by this section shall establish (1) the design of a benefit plan or plans, (2) the maximum levels of reimbursement to categories of health care providers, (3) any cost containment measures for implementation during the applicable fiscal year, and, (4) the types and levels of cost to families of covered children. To the extent compatible with simplicity of administration, fiscal stability and other goals of the program established in this article, the financial plans may provide for different levels of costs based on ability to pay.

(b) Initial plan — For presentation to the board at the first meeting, the governor shall prepare (1) a statement of goals and objectives of the children’s health program; and (2) an estimate of the total amount of general and special
revenues available to fund the program for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-nine. The initial plan is subject to the following guidelines:

1. The board shall establish a target date for implementation of the program during the state fiscal year one thousand nine hundred ninety-nine and may offer the same benefit package as that offered to children of state employees insured through the public employees insurance agency.

2. During state fiscal year one thousand nine hundred ninety-nine, benefits under this program shall be made available to children ages six through eighteen whose custodial parents or guardians have an income equal to or less than one hundred fifty percent of the federal poverty level as determined according to eligibility standards and other criteria approved by the board.

3. All program costs, including the administration of the program and incurred but unreported claims, shall not exceed eighty-five percent of the funding available to the program for the state fiscal year one thousand nine hundred ninety-nine.

4. The board shall afford interested and affected persons an opportunity to offer comment on the plan at a public meeting of the board and, in developing any proposed plan under this article, shall solicit comments in writing from interested and affected persons.

(c) Actuary requirements — Beginning with state fiscal year two thousand, any financial plan, or modifications, approved or proposed by the board shall be submitted to and reviewed by an actuary before final approval. The financial plan shall be submitted to the governor and the Legislature with the actuary’s written professional opinion that all estimated program and administrative costs of the agency under the plan, including incurred but unreported claims, will not exceed ninety percent of the funding available to the program for the fiscal year for which the plan is proposed; and, that the financial plan allows for no more than thirty days of accounts payable to be carried
over into the next fiscal year. This actuarial requirement is in addition to any requirement imposed by Title XXI of the Social Security Act of 1997.

(d) Subsequent annual plans — The board shall review implementation of its initial or current financial plan in light of actual experience and shall prepare an annual financial plan for fiscal year two thousand and each fiscal year thereafter during which the board remains in existence. For each fiscal year, the governor shall provide an estimate of requested appropriations and total funding available to the board no later than the first day of July of the preceding fiscal year. The board shall submit its final, approved financial plan, subject to the actuarial and public hearing requirements of this article, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year shall become effective and shall be implemented by the director on the first day of July of such fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsections (a) and (c) of this section and the following guidelines:

(1) The aggregate actuarial value of the plan established as the benchmark plan should be considered as a targeted maximum or limitation in developing the benefits package.

(2) All estimated program and administrative costs, including incurred but not reported claims, shall not exceed ninety percent of the funding available to the program for the applicable fiscal year.

(3) The state’s interest in achieving health care services for all its children at less than two hundred percent of the federal poverty level shall take precedence over enhancing the benefits available under this program.

(e) The provisions of chapter twenty-nine-a of this code do not apply to the preparation, approval and implementation of the financial plans required by this section.
(f) The board shall meet no less than once each quarter to review implementation of its current financial plan and, using actuarial data, shall make those modifications to the plan that are necessary to ensure its fiscal stability and effectiveness of service. The board may not increase the types and levels of cost to families of covered children during its quarterly review except in the event of a true emergency. The board may not expand the population of children to whom the program is made available except in its annual plan.

(g) For any fiscal year in which legislative appropriations differ from the governor’s estimate of general and special revenues available to the agency, the board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

§5-16B-7. West Virginia children’s health fund.

(a) There is hereby created in the state treasury a special revolving fund to be known as the “West Virginia children’s health fund”, which shall be an interest-bearing account. All moneys deposited or accrued in this fund shall be used exclusively:

(1) To provide the state’s share of the children’s health fund;

(2) To cover administrative costs associated with the children’s health program; and

(3) To cover outreach activities.

(b) Moneys from the following sources may be placed into the fund:

(1) All public funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal program laws;

(2) All private moneys contributed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal and state laws;
(3) Any accrued interest; and

(4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the children’s health fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

(d) Notwithstanding the provisions of section two, article two, chapter twelve of this code, funds of the West Virginia children’s health fund may not be redesignated for any purpose other than those set forth in this subsection. All state and private moneys received by the program shall be deposited in the West Virginia consolidated investment pool with the West Virginia investment management board, with the interest income a proper credit to all such funds.

§5-16B-8. Termination and reauthorization.

(a) The program established in this article abrogates and shall be of no further force and effect, without further action by the Legislature, upon the occurrence of any of the following:

(1) The date of entry of a final judgment or order by a court of competent jurisdiction which disallows the program;

(2) The effective date of any reduction in annual federal funding levels below the amounts allocated and/or projected in Title XXI of the Social Security Act of 1997;

(3) The effective date of any federal rule or regulation negating the purposes or effect of this article.

(4) For purposes of subdivisions (2) and (3) of this section, if a later effective date for such reduction or negation is specified, such date will control.
(b) Pursuant to the provisions of article ten, chapter four of this code, the board shall terminate on the first day of July, two thousand four, unless extended by legislation enacted before the termination date.

(c) Upon termination of the board and notwithstanding any provisions to the contrary, the director may change the levels of costs to covered families only in accordance with rules proposed to the Legislature pursuant to the provisions of chapter twenty-nine-a of this code.


The board and the director are authorized to work in conjunction with a nonprofit corporation organized pursuant to the corporate laws of the state, structured to permit qualification pursuant to section 501(c) of the Internal Revenue Code for purposes of assisting the children's health program and funded from sources other than the state or federal government. Members of the board may sit on the board of directors of the private nonprofit corporation.

CHAPTER 9. HUMAN SERVICES.

ARTICLE A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill; West Virginia children's health plan.

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the department of health and human resources shall undertake the following:

(1) The department shall provide a streamlined application form, which shall be no longer than two pages, for all families applying for medical coverage for children under any of the programs set forth in this section.

(2) The department shall provide the option of hospice care to terminally ill West Virginians who otherwise qualify for medicaid. The department shall provide quarterly reports to the legislative oversight
commission on health and human resources accountability created pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the program provided for in this subdivision. The report shall include, but not be limited to, the total number, by age, of newly eligible clients served, the average annual cost of coverage per client, and the total cost, by provider type, to serve all clients.

(3) The department shall accelerate the medicaid option for coverage of medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty level. The department shall provide quarterly reports to the legislative oversight commission on health and human resources accountability regarding the program acceleration provided for in this subdivision. The report shall include, but not be limited to, the number of newly eligible clients, by age, served as a result of the acceleration, the average annual cost of coverage per client and the total cost of all clients served by provider type.

(4) Effective the first day of July, one thousand nine hundred ninety-eight, the department shall expand medicaid coverage for only those West Virginia children below the age of six years whose family income is below one hundred fifty percent of the federal poverty level. This program will be known as the Title XXI-Medicaid program and administered in accordance with the applicable provisions contained in Titles XIX and XXI of the Social Security Act. The department shall coordinate the eligibility determination, outreach efforts, purchasing strategies, service delivery system and reporting requirements with the Title XXI program created pursuant to provisions of article sixteen-b, chapter five of this code.

(b) Notwithstanding the provisions of section two-a of this article, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in subdivisions (2) and (3) of subsection (a) of this section: Provided, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid
into the medical services trust fund after the thirtieth day of June, one thousand nine hundred ninety-four, may be applied to cover the cost of the specified programs.

(c) On the first day of January, one thousand nine hundred ninety-five and annually thereafter, the department shall report to the governor and to the Legislature information regarding the number of children and elderly covered by the programs in subdivisions (2) and (3) of subsection (a), the cost of services by type of service provided, a cost-benefit analysis of the acceleration and expansion on other insurers and the reduction of uncompensated care in hospitals as a result of the programs.

(d) On the first day of January, one thousand nine hundred ninety-nine, and annually thereafter, the department shall report to the governor and to the Legislature information regarding the number of children enrolled in the Title XIX-Medicaid program as a result of implementation of the provisions of subdivision (4), subsection (a) of this section; the number of children enrolled in the new Title XXI-Medicaid program; the estimated number of children eligible for enrollment in either program; the cost of services by type of service provided in both programs; an analysis of the impact of the programs on other insurers; and the reduction of uncompensated care in hospitals as a result of the programs. The annual report filed by the department shall also include information relating to any proposed expansion of the population to be served under the state’s medicaid program, other than the expansions specifically authorized in this section. The department may not expand the population to be served until sixty days following the filing of the report required in this subsection. The department shall make quarterly reports to the legislative oversight commission on health and human resources accountability, established pursuant to section four, article twenty-nine-e, chapter sixteen of this code regarding the development, implementation and monitoring of the program.

§9-4A-3. West Virginia Title XXI-Medicaid fund.
(a) There is hereby created in the state treasury a special revolving fund to be known as the “West Virginia Title XXI-Medicaid Fund”, which shall be an interest-bearing account established and maintained to purchase health services for low-income children.

(b) Funds paid into this account shall be derived from the following sources:

   (1) Any appropriations by the Legislature;
   (2) All public funds transferred by any public agency as permitted by applicable federal law;
   (3) Any private funds contributed, donated or bequeathed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal law; and
   (4) All interest or return on investments accruing to the fund.

(c) Moneys from this fund shall be used exclusively for the following purposes:

   (1) To purchase health care services for the program defined in subdivision (4), subsection (a) of this section, associated administrative costs, outreach activities and eligibility determination costs; and
   (2) To provide the state’s share of the enhanced federal medical assistance percentage funds.

(d) Notwithstanding the provisions of section two, article two, chapter twelve of this code, moneys with the Title XXI- Medicaid program may not be redesignated for any purpose other than those set forth in this subsection.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R.D. Scherer
Chairman Senate Committee

Mike Fantasio
Chairman House Committee

Originating in the House.

Takes effect from passage.

G. Mitchell
Clerk of the Senate

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

The within ______ approved ______ the _______ day of ________, 1998.

Julianna R. Anderson
Governor