SB 361

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 361

(By Senator HUNTER, ET AL)

PASSED MARCH 14, 1998
In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 361

(SENATORS HUNTER, WHITE, KESSLER
AND BALL, *original sponsors*)

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

AN ACT to amend and reenact section twenty-four, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto two new articles, designated articles twenty-five-c and forty-two, all relating to managed care plans and their patients' rights; and providing for direct access to women's health care providers.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted;

and that said chapter be further amended by adding thereto two new articles, designated articles twenty-five-c and forty-two, all to read as follows:

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to other laws.

(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-d (marketing and rate practices for small employers); article twenty-five-c (health maintenance organization patient bill of rights); 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); article forty-one (privileges and immunity); and article forty-two

(women's access to health care) 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.

ARTICLE 25C. HEALTH MAINTENANCE ORGANIZATION PATIENT BILL OF RIGHTS.

§33-25C-1. Short title.

This article may be referred to as the "Patients' Bill of Rights".

§33-25C-2. Definitions.

(a) "Commissioner" means the commissioner of insurance.

(b) "Managed care plan" or "plan" means any health maintenance organization or prepaid limited health care organization.

(c) "Provider" means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to provide health care services or supplies.

§33-25C-3. Notice of certain subscriber rights.

All managed care plans must provide to subscribers on a form prescribed by the commissioner a notice of certain subscriber rights. The notice shall address the following areas:

(1) The ability of the subscriber to pursue grievance and hearing procedures without reprisal from the managed care plan;

(2) How the subscriber may choose providers within the plan;

(3) The subscriber's right to privacy and confidentiality;

(4) The subscriber's ability to examine and offer corrections to their own medical records;

(5) The subscriber's right to be informed of plan policies and any charges for which the subscriber will be responsible;

(6) The subscriber's ability to obtain evidence of the medical credentials of a plan provider such as diploma and board certifications;

(7) The right of subscriber's to have coverage denials reviewed by appropriate medical professionals consistent with plan review procedures;

(8) Any other areas the commissioner may by rule

require.

ARTICLE 42. WOMEN'S ACCESS TO HEALTH CARE ACT.

§33-42-1. Short title.

This article shall be known and may be cited as the "Women's Access To Health Care Act".

§33-42-2. Legislative findings and purpose.

The Legislature finds and declares that adequate delivery of health care services to women requires direct access to primary and preventative obstetrical and gynecological services, which services may be provided as "well woman examinations", and direct access without prior authorization to prenatal and obstetrical services for pregnant women.

§33-42-3. Definitions.

For purposes of this article:

(1) "Advanced nurse practitioner" means a certified nurse-midwife, or an advanced nurse practitioner certified to practice in family practice, women's health (ob/gyn), or primary care adult, geriatric or pediatric practice, practicing within the lawful scope of that provider's practice.

(2) "Health benefit policy" means any individual or group plan, policy or contract for health care services issued, delivered, issued for delivery, or renewed in this state by a health care corporation, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, nonprofit medical service corporation or similar entity, when the policy or plan covers hospital, medical or surgical expenses.

(3) "Women's health care provider" means an obstetrician/gynecologist, advanced nurse practitioner certified to practice in women's health (ob/gyn), certified nurse-midwife or physician assistant-midwife practicing within

the lawful scope of that provider's practice.

§33-42-4. Limitations on conditions of coverage.

No health benefits policy may require as a condition to the coverage of basic primary and preventative obstetrical and gynecological services that a woman first obtain a referral from a primary care physician: *Provided*, That for a health maintenance organization authorized under article twenty-five-a of this chapter, direct access, at least annually, to a women's health care provider for purposes of a well woman examination shall satisfy the foregoing requirement. No health benefits policy may require as a condition to the coverage of prenatal or obstetrical care that a woman first obtain a referral for those services by a primary care physician.

§33-42-5. Required disclosure.

Every health benefits policy that is issued, delivered, issued for delivery or renewed in this state on or after the first day of July, one thousand nine hundred ninety-eight, shall disclose in writing to enrollees, subscribers and insureds, in clear and accurate language, the female enrollee's right of direct access to a women's health care provider of her choice. The information required to be disclosed shall include, at a minimum, any specific women's health care services that are excluded from coverage and the health benefits policy's right to limit coverage to medically necessary and appropriate women's health care services.

§33-42-6. Certain cost-sharing prohibited.

No health benefits policy may impose additional copayments or deductibles for female enrollees' direct access to in-network, participating women's health care providers unless the same additional cost-sharing is imposed for other types of health care services not delineated in this article.

§33-42-7. Limitation on number of women's health care providers.

A health benefits policy may limit the number of women's health care providers in a network: *Provided,* That a sufficient number of providers are available to serve a defined population or geographic service area so that female enrollees will have direct and timely access to women's health care providers.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker House of Delegates

The within ..... this the .....

day of ....., 1998.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/98

Time 9:21 am