WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

---

ENROLLED

Committee Substitute for
SENATE BILL NO. 565

(By Senators Walker and Prezioso)

---

PASSED March 11, 2000
In Effect from Passage
AN ACT to repeal section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five and six, article sixteen-b, chapter five of said code; and to amend and reenact section two-b, article four-a, chapter nine of said code, all relating to the children's health insurance program; creating the agency within the department of administration; adding certain definitions; authority to transfer personnel, equipment and funds; and expanding availability of insurance coverage to certain eligible children.

Be it enacted by the Legislature of West Virginia:

That section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; that sections one, two, three, four, five and six, article sixteen-b, chapter five of said code be amended and reenacted; and that section two-b, article four-a, chapter nine be amended and reenacted, 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 INSURANCE 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 insurance program is hereby created. The program shall be administered by the children’s health insurance agency within the department of administration 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 governs.

(b) In developing a children’s health insurance 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.

(d) Upon the transfer of the functions of the children’s
health insurance program from the department of health
and human resources to the children’s health insurance
agency within the department of administration, the
secretary of the department of health and human resources
and the secretary of the department of administration,
acting jointly, are empowered to authorize and shall
authorize such transfers of program funds including, but
not limited to, the West Virginia children’s health fund
created in section seven of this article and associated
investment accounts; and transfers of children’s health
insurance program personnel and equipment, as are
necessary, to facilitate an orderly transfer of the functions
of the children’s health insurance program. Authority to
make transfers pursuant to this subsection expires on the
thirty-first day of December, two thousand.

(e) In order to enroll as many eligible children as possible
in the program created by this article and to expedite the
effective date of their health insurance coverage, the board
shall develop and implement a plan whereby applications
for enrollment may be taken at any primary care center or
other health care provider, as determined by the director,
and transmitted electronically to the program’s offices for
eligibility screening and other necessary processing. The
board may use any funds available to it in the development
and implementation of the plan, including grant funds or
other private or public moneys.

§5-16B-2. Definitions.

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

(a) "Agency" means the children's health insurance
agency within the department of administration;

(b) "Board" means the children's health insurance
program board;

(c) "Director" means the director of the children's health
insurance agency;

(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
constitute 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, Essential
community health service provider includes, but is 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
insurance program.

§5-16B-3. Reporting requirements.
(a) Annually on the first day of January, 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 estimated number of remaining uninsured children; and 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. The report 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 agency, 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.

§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 insurance 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 six citizen members appointed by the governor, one of whom shall represent children's 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 five citizen members first appointed, one shall serve one year, two shall serve two years and two shall serve three years. All subsequent appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only: Provided, That the citizen member to be appointed upon the reenactment of this section during the regular session of the Legislature, two thousand, shall serve a term which corresponds to the term of the member initially appointed to serve one year. 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. The director of the agency shall serve as the chairperson of the board. 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 speci-
ified 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 dis-
charge 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 insurance program;
qualifications; powers and duties.
(a) An agency 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 that 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 annual plans and other actions undertaken by the board in furtherance of this article.

(c) The director is responsible for the administration and management of the program and has the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in this article may be construed as limiting the director's otherwise lawful authority to manage the program on a day-to-day basis.

(d) The director has exclusive authority to execute any contracts that 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 purchasing 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 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 propos-
al 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 on a
regional or statewide basis from essential community
health service providers for defined portions of services
under the children’s health insurance plan and shall, to the
greatest extent practicable, either contract directly 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 contain-
ment 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 finan-
(b) Actuary requirements. — 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.

(c) Annual plans. — The board shall review implementation of its current financial plan in light of actual experience and shall prepare an annual financial plan for each fiscal year 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 fifteenth day of October preceding the fiscal year. 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. The board shall submit its final, approved financial plan, subject to the actuarial 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 becomes effective and shall be implemented by the director on the first day of July of
that fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsections (a) and (b) 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; and

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

(d) 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.

(e) 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: Provided, That upon the effective date of this article, the board may expand coverage to any child eligible under the provisions of Title XXI of the Social Security Act of 1997: Provided, however, That the board shall implement cost-sharing provisions for children who may qualify for such expanded coverage and whose family income exceeds one hundred fifty percent of the federal
poverty guideline. Such cost-sharing provisions may be imposed through any one or a combination of the following: enrollment fees, premiums, copayments and deductibles.

(f) The board may develop and implement programs that provide for family coverage and or employer subsidies within the limits authorized by the provisions of Title XXI of the Social Security Act of 1997 or the federal regulations promulgated thereunder: Provided, That any family health insurance coverage offered by or through the program shall be structured so that the board assumes no financial risk: Provided, however, That families covered by any insurance offered by or through the program shall be subject to cost-sharing provisions which may include, without limitation, enrollment fees, premiums, copayments and or deductibles, as determined by the board, which shall be based on ability to pay: Provided further, That enrollment fees or premiums, if imposed, may be paid, in whole or in part, through employer subsidies or other private funds or public funds, subject to availability, all as allowed by applicable state and federal law.

(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.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill.

(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; and

(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 guideline. 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.

(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 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) Annually on the first day of January, the department
shall report to the governor and to the Legislature infor-
mation 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 uncom-
pensated care in hospitals as a result of the programs.
The 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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within.......................... approved this the.............. Day of.......................... 2000.

Governor