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2001 MAY -2 P 7:39

OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

Committee Substitute for
SENATE BILL NO. 127

(By Senator Tomblin, Mr. President, and ~~Mr.~~
Sprouse, By Request of the Executive)

PASSED April 14, 2001

In Effect 90 days from Passage

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2001 MAY -2 P 7:40

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 127

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed April 14, 2001; in effect ninety days 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-c, all relating to prescription drug cost management; providing legislative findings and purpose; defining terms; providing for review and approval of certain contracts by the public employees insurance agency finance board; authorizing the director of the public employees insurance agency to execute certain prescription drug purchasing agreements, to amend existing contracts, and to execute pharmacy benefit manager contracts; exempting the agreements and contracts from certain purchasing requirements; requiring an audit and reports; authorizing the public employees insurance agency director to explore innovative strategies for managing

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prescription drug costs; requiring semi-annual report to the joint committee on government and finance; and providing for termination of authorizations.

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-c, to read as follows:

ARTICLE 16C. PRESCRIPTION DRUG COST MANAGEMENT ACT.

§5-16C-1. Legislative findings; purpose; short title.

1 The Legislature finds that the rapidly rising cost of
2 prescription drugs places an undue financial burden on the
3 state of West Virginia, the payors and the consumers of
4 prescription drugs. The purpose of this legislation is to
5 authorize the director of the public employees insurance
6 agency to act on behalf of specified agencies, programs
7 and political subdivisions to manage the steady increase in
8 prescription drug costs, thus benefitting the citizens and
9 fiscal strength of this state. This article shall be known
10 and may be cited as the "Prescription Drug Cost Manage-
11 ment Act".

§5-16C-2. Definitions.

1 As used in this article:
2 (1) "Audit" means a systematic examination and
3 collection of sufficient, competent evidential matter
4 needed for an auditor to attest to the fairness of manage-
5 ment's assertions in the financial statements and to
6 evaluate whether management has sufficiently and
7 effectively carried out its responsibilities and complied
8 with applicable laws and regulations, conducted by an
9 independent certified public accountant in accordance
10 with the applicable statement on standards: *Provided,*
11 That the report shall include an incurred-but-not-reported
12 calculation, where available.

13 (2) "Director" means the director of the public employ-
14 ees insurance agency created under article sixteen of this
15 chapter.

16 (3) "Finance board" means the public employees insur-
17 ance agency finance board created in section four, article
18 sixteen of this chapter.

19 (4) "Pharmacy benefit manager" means an entity that
20 procures prescription drugs at a negotiated rate under a
21 contract and which may serve as a third party prescription
22 drug benefit administrator.

23 (5) "Prescription drug purchasing agreement" means a
24 written agreement to pool all parties' prescription drug
25 buying power in order to negotiate the best possible prices
26 and which delegates authority to negotiate on behalf of the
27 parties to the director.

28 (6) "Prescription drugs" mean substances recognized as
29 drugs in the official "United States Pharmacopoeia,
30 official Homeopathic Pharmacopoeia of the United States
31 or National Formulary", or any supplement thereto,
32 dispensed pursuant to a prescription issued by an autho-
33 rized health care practitioner, for use in the diagnosis,
34 cure, mitigation, treatment or prevention of disease in a
35 human, as well as prescription drug delivery systems,
36 testing kits and related supplies.

**§5-16C-3. Finance board responsibilities for review and ap-
approval of certain contracts.**

1 The finance board is responsible for reviewing any
2 proposed contract authorized by this article before it is
3 executed by the director of the public employees insurance
4 agency. If the board determines that the proposed con-
5 tract meets the requirements of this article and would
6 assist in effectively managing the costs for the programs
7 involved and would not result in jeopardizing state funds
8 or funds due the state, it shall approve the contract and
9 authorize the director of the public employees insurance
10 agency to execute the contract.

§5-16C-4. Authorization to execute prescription drug purchasing agreements.

1 (a) The director may execute, subject to the provisions of
2 subsections (b), (c) and (d) of this section and as permitted
3 by applicable federal law, prescription drug purchasing
4 agreements with:

5 (1) All departments, agencies, authorities, institutions,
6 programs, quasipublic corporations and political subdivi-
7 sions of this state, including, but not limited to, the chil-
8 dren's health insurance program, the division of correc-
9 tions, the division of juvenile services, the regional jail and
10 correctional facility authority, the workers' compensation
11 fund, state colleges and universities, public hospitals, state
12 or local institutions such as nursing homes, veterans'
13 homes, the division of rehabilitation, public health depart-
14 ments and the bureau of medical services: *Provided*, That
15 any contract or agreement executed with or on behalf of
16 the bureau of medical services shall contain all necessary
17 provisions to comply with the provisions of Title XIX of
18 the Social Security Act, 42 U.S.C. §1396 *et seq.*, dealing
19 with pharmacy services offered to recipients under the
20 medical assistance plan of West Virginia;

21 (2) Governments of other states and jurisdictions and
22 their individual departments, agencies, authorities,
23 institutions, programs, quasipublic corporations and
24 political subdivisions;

25 (3) Regional or multistate purchasing alliances or
26 consortia, formed for the purpose of pooling the combined
27 purchasing power of the individual members in order to
28 increase bargaining power; and

29 (4) Arrangements with entities in the private sector,
30 including self-funded benefit plans, toward combined
31 purchasing of health care services, health care manage-
32 ment services, pharmacy benefits management services or
33 pharmaceutical products: *Provided*, That no private entity
34 may be compelled to participate in the prescription drug

35 purchasing pool: *Provided, however,* That the director may
36 not execute a contract with a private entity without
37 further enactment of the Legislature specifically authoriz-
38 ing the agreement.

39 (b) The finance board shall approve each agreement
40 before it is executed by the director and the director may
41 not execute any agreement not approved by the finance
42 board.

43 (c) The finance board may not approve and the director
44 may not execute any agreement that does not effectively
45 and efficiently manage rising drug costs on behalf of the
46 parties to the agreement.

47 (d) The finance board may not approve and the director
48 may not execute any agreement that grants the state's
49 credit for the purchase of prescription drugs by any entity
50 other than this state.

§5-16C-5. Authorization to amend existing contracts.

1 The director may renegotiate and amend existing
2 prescription drug contracts to which the public employees
3 insurance agency is a party for the purpose of managing
4 rising drug costs.

§5-16C-6. Authorization to execute pharmacy benefit management contract.

1 The director may negotiate and execute pharmacy
2 benefit management contracts for the purpose of manag-
3 ing rising drug costs for this state and all parties which
4 have executed prescription drug purchasing agreements
5 with the director.

§5-16C-7. Exemption from purchasing division requirements.

1 The provisions of article three, chapter five-a of this
2 code do not apply to the agreements and contracts exe-
3 cuted under the provisions of this article, except that the
4 contracts and agreements shall be approved as to form and
5 conformity with applicable law by the attorney general.

§5-16C-8. Audit required; reports.

1 (a) The director shall cause to be conducted an audit of
2 any funds expended pursuant to any prescription drug
3 purchasing agreement or pharmacy benefit management
4 contract executed under the provisions of this article for
5 each fiscal year that the prescription drug purchasing
6 agreement or pharmacy benefit management contract is in
7 effect. The director shall submit the audit to the joint
8 committee on government and finance upon completion,
9 but in no event later than the thirty-first day of December
10 after the end of the fiscal year subject to audit.

11 (b) The director shall provide written notice to the joint
12 committee on government and finance before executing a
13 prescription drug purchasing agreement or a pharmacy
14 benefit management contract or amending an existing
15 prescription drug contract.

§5-16C-9. Innovative strategies.

1 (a) The director may explore innovative strategies by
2 which West Virginia may manage the increasing costs of
3 prescription drugs and increase access to prescription
4 drugs for all of the state's citizens, including:

5 (1) Enacting fair prescription drug pricing policies;

6 (2) Providing for discount prices or rebate programs for
7 seniors and persons without prescription drug insurance;

8 (3) Coordinating programs offered by pharmaceutical
9 manufacturers that provide prescription drugs for free or
10 at reduced prices;

11 (4) Requiring prescription drug manufacturers to
12 disclose to the state expenditures for advertising, market-
13 ing and promotion, as well as for provider incentives and
14 research and development efforts;

15 (5) Establishing counter-detailing programs aimed at
16 educating health care practitioners authorized to prescribe

17 prescription drugs about the relative costs and benefits of
18 various prescription drugs, with an emphasis on generic
19 substitution for brand name drugs when available and
20 appropriate; prescribing older, less costly drugs instead of
21 newer, more expensive drugs, when appropriate; and
22 prescribing lower dosages of prescription drugs, when
23 available and appropriate;

24 (6) Establishing disease state management programs
25 aimed at enhancing the effectiveness of treating certain
26 diseases identified as prevalent among this state's popula-
27 tion with prescription drugs;

28 (7) Studying the feasibility and appropriateness of
29 executing prescription drug purchasing agreements with
30 large private sector purchasers of prescription drugs and
31 including those private entities in pharmacy benefit
32 management contracts;

33 (8) Studying the feasibility and appropriateness of
34 authorizing the establishment of voluntary private buying
35 clubs, cooperatives or purchasing alliances comprised of
36 small businesses and or individuals for the purpose of
37 purchasing prescription drugs at optimal prices; and

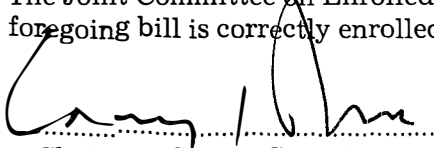
38 (9) Other strategies, as permitted under state and federal
39 law, aimed at managing escalating prescription drug
40 prices and increasing affordable access to prescription
41 drugs for all West Virginia citizens.

42 (b) The director shall report to the joint committee on
43 government and finance on a semi-annual basis regarding
44 activities and recommendations relating to the mandates
45 of this section.

§5-16-10. Termination.

1 The authorizations provided for in this article terminate
2 pursuant to the provisions of article ten, chapter four of
3 this code on the first day of July, two thousand five, unless
4 continued pursuant to the provisions of that article by
5 legislation enacted prior to the termination.

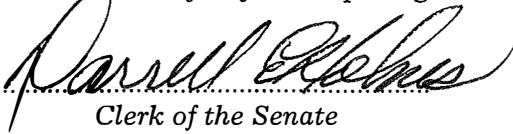
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

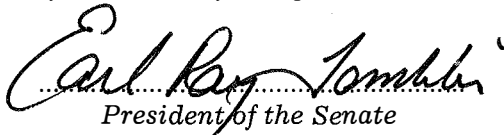

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Chairman House Committee

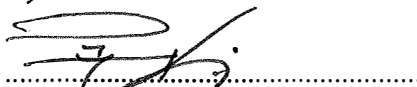
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate

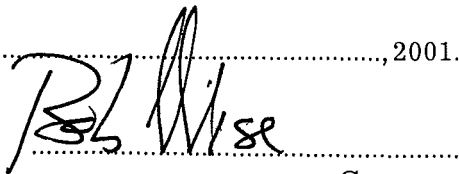

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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 2nd

Day of May, 2001.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:20 pm