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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 2675**

(By Delegates Beane, Amores, Campbell, Craig, Mahan, Michael and Webster)



Passed March 8, 2003

In Effect Ninety Days from Passage

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OF THE HOUSE OF DELEGATES

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FOR

## H. B. 2675

(BY DELEGATES BEANE, AMORES, CAMPBELL,  
CRAIG, MAHAN, MICHAEL AND WEBSTER)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections seven-d and seven-e; to amend article sixteen-b of said chapter by adding thereto two new sections, designated sections six-a and six-b; to amend article two, chapter nine of said code by adding thereto two new sections, designated sections twelve and twelve-a; to amend article fifteen, chapter thirty-three of said code by adding thereto a new section, designated section four-h; to amend article sixteen of said chapter by adding thereto a new section, designated section three-q; to amend article twenty-four of said chapter by adding thereto a new section, designated section four-a; to amend and reenact section six, article twenty-five of said chapter; to amend article twenty-five-a of said chapter by adding thereto a new section, designated section twenty-four-a; and to

further amend said chapter by adding thereto a new article, designated article twenty-five-f, all relating to mandating coverage for certain clinical trials under public employees insurance, children's health program, medicaid program, accident and sickness insurance, groups accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, healthcare corporations and health maintenance organizations.

*Be it enacted by the Legislature of West Virginia:*

That article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections seven-d and seven-e; that article sixteen-b of said chapter be amended by adding thereto two new sections, designated sections six-a and six-b; that article two, chapter nine of said code be amended by adding thereto two new sections, designated sections twelve and twelve-a; that article fifteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section four-h; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-q; that article twenty-four of said chapter be amended by adding thereto a new section, designated four-a; that section six, article twenty-five of said chapter be amended and reenacted; that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section twenty-four-a; and that said chapter be further amended by adding thereto a new article, designated article twenty-five-f, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-7d. Coverage for patient cost of clinical trials.**

1 (a) The provisions of this section and section seven-e of this  
2 article apply to the health plans regulated by this article.

3 (b) This section does not apply to a policy, plan or contract  
4 paid for under Title XVIII of the Social Security Act.

5 (c) A policy, plan or contract subject to this section shall  
6 provide coverage for patient cost to a member in a clinical trial,  
7 as a result of:

8 (1) Treatment provided for a life-threatening condition; or

9 (2) Prevention of, early detection of or treatment studies on  
10 cancer.

11 (d) The coverage under subsection (c) of this section is  
12 required if:

13 (1)(A) The treatment is being provided or the studies are  
14 being conducted in a Phase II, Phase III or Phase IV clinical  
15 trial for cancer and has therapeutic intent; or

16 (B) The treatment is being provided in a Phase II, Phase III  
17 or Phase IV clinical trial for any other life-threatening condition  
18 and has therapeutic intent;

19 (2) The treatment is being provided in a clinical trial  
20 approved by:

21 (A) One of the national institutes of health;

22 (B) An NIH cooperative group or an NIH center;

23 (C) The FDA in the form of an investigational new drug  
24 application or investigational device exemption;

25 (D) The federal department of veterans affairs; or

26 (E) An institutional review board of an institution in the  
27 state which has a multiple project assurance contract approved  
28 by the office of protection from research risks of the national  
29 institutes of health;

30 (3) The facility and personnel providing the treatment are  
31 capable of doing so by virtue of their experience, training and  
32 volume of patients treated to maintain expertise;

33 (4) There is no clearly superior, noninvestigational treat-  
34 ment alternative;

35 (5) The available clinical or preclinical data provide a  
36 reasonable expectation that the treatment will be more effective  
37 than the noninvestigational treatment alternative;

38 (6) The treatment is provided in this state: *Provided*, That,  
39 if the treatment is provided outside of this state, the treatment  
40 must be approved by the payor designated in subsection (a) of  
41 this section;

42 (7) Reimbursement for treatment is subject to all  
43 coinsurance, copayment and deductibles and is otherwise  
44 subject to all restrictions and obligations of the health plan; and

45 (8) Reimbursement for treatment by an out of network or  
46 noncontracting provider shall be reimbursed at a rate which is  
47 no greater than that provided by an in network or contracting  
48 provider. Coverage shall not be required if the out of network  
49 or noncontracting provider will not accept this level of reim-  
50 bursement.

51 (e) Payment for patient costs for a clinical trial is not  
52 required by the provisions of this section, if:

53 (1) The purpose of the clinical trial is designed to extend  
54 the patent of any existing drug, to gain approval or coverage of  
55 a metabolite of an existing drug, or to gain approval or coverage  
56 relating to additional clinical indications for an existing drug;  
57 or

58 (2) The purpose of the clinical trial is designed to keep a  
59 generic version of a drug from becoming available on the  
60 market; or

61 (3) The purpose of the clinical trial is to gain approval of or  
62 coverage for a reformulated or repackaged version of an  
63 existing drug.

64 (f) Any provider billing a third party payor for services or  
65 products provided to a patient in a clinical trial shall provide  
66 written notice to the payor that specifically identifies the  
67 services as part of a clinical trial.

68 (g) Notwithstanding any provision in this section to the  
69 contrary, coverage is not required for Phase I of any clinical  
70 trial.

**§5-16-7e. Definitions.**

1 For purposes of section seven-d of this article:

2 (a) A “clinical trial” is a study that determines whether new  
3 drugs, treatments or medical procedures are safe and effective  
4 on humans. To determine the efficacy of experimental drugs,  
5 treatments or procedures, a study is conducted in four phases  
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or  
8 a procedure is performed on, a larger group of people to further  
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the  
11 effectiveness of the drug, treatment or procedure, to monitor the  
12 side effects, to compare commonly used treatments and to  
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is  
15 marketed, investigators continue testing to determine the effects  
16 on various populations and to determine whether there are side  
17 effects associated with long-term use.

18 (b) "Cooperative group" means a formal network of  
19 facilities that collaborate on research projects and have an  
20 established NIH-approved peer review program operating  
21 within the group.

22 (c) "Cooperative group" includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical  
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) "FDA" means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has  
30 a terminal condition or illness that according to current diagno-  
31 sis has a high probability of death within two years, even with  
32 treatment with an existing generally accepted treatment  
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,  
35 certificate holder or a covered dependent of a policyholder,  
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract  
38 between an institution and the federal department of health and  
39 human services that defines the relationship of the institution to  
40 the federal department of health and human services and sets  
41 out the responsibilities of the institution and the procedures that  
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically  
45 necessary health care service that is incurred by a member as a  
46 result of the treatment being provided pursuant to the protocols  
47 of the clinical trial. Routine costs of a clinical trial include all  
48 items or services that are otherwise generally available to  
49 beneficiaries of the insurance policies. "Patient cost" does not  
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may  
53 be required to receive as a result of the treatment being pro-  
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor  
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated  
58 with the clinical trial, including but not limited to, services  
59 furnished to satisfy data collection and analysis needs that are  
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's  
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those  
64 that reflect the natural history of the disease, or its progression,  
65 and those that are unique in the experimental treatment. Costs

66 for the former are the responsibility of the payor as provided in  
67 section two of this article, and costs for the later are the  
68 responsibility of the sponsor. The sponsor shall hold harmless  
69 any payor for any losses and injuries sustained by any member  
70 as a result of his or her participation in the clinical trial.

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

**§5-16B-6a. Coverage for patient cost of clinical trials.**

1 (a) The provisions of this section and section six-b of this  
2 article apply to the health plans regulated by this article.

3 (b) This section does not apply to a policy, plan or contract  
4 paid for under Title XVIII of the Social Security Act.

5 (c) A policy, plan or contract subject to this section shall  
6 provide coverage for patient cost to a member in a clinical trial,  
7 as a result of:

8 (1) Treatment provided for a life-threatening condition; or

9 (2) Prevention of, early detection of or treatment studies on  
10 cancer.

11 (d) The coverage under subsection (c) of this section is  
12 required if:

13 (1)(A) The treatment is being provided or the studies are  
14 being conducted in a Phase II, Phase III or Phase IV clinical  
15 trial for cancer and has therapeutic intent; or

16 (B) The treatment is being provided in a Phase II, Phase III  
17 or Phase IV clinical trial for any other life-threatening condition  
18 and has therapeutic intent;

19 (2) The treatment is being provided in a clinical trial  
20 approved by:

- 21 (A) One of the national institutes of health;
- 22 (B) An NIH cooperative group or an NIH center;
- 23 (C) The FDA in the form of an investigational new drug  
24 application or investigational device exemption;
- 25 (D) The federal department of veterans affairs; or
- 26 (E) An institutional review board of an institution in the  
27 state which has a multiple project assurance contract approved  
28 by the office of protection from research risks of the national  
29 institutes of health;
- 30 (3) The facility and personnel providing the treatment are  
31 capable of doing so by virtue of their experience, training and  
32 volume of patients treated to maintain expertise;
- 33 (4) There is no clearly superior, noninvestigational treat-  
34 ment alternative;
- 35 (5) The available clinical or preclinical data provide a  
36 reasonable expectation that the treatment will be more effective  
37 than the noninvestigational treatment alternative;
- 38 (6) The treatment is provided in this state: *Provided*, That,  
39 if the treatment is provided outside of this state, the treatment  
40 must be approved by the payor designated in subsection (a) of  
41 this section;
- 42 (7) Reimbursement for treatment is subject to all  
43 coinsurance, copayment and deductibles and is otherwise  
44 subject to all restrictions and obligations of the health plan; and
- 45 (8) Reimbursement for treatment by an out of network or  
46 noncontracting provider shall be reimbursed at a rate which is  
47 no greater than that provided by an in network or contracting  
48 provider. Coverage shall not be required if the out of network

49 or noncontracting provider will not accept this level of reim-  
50 bursement.

51 (e) Payment for patient costs for a clinical trial is not  
52 required by the provisions of this section, if:

53 (1) The purpose of the clinical trial is designed to extend  
54 the patent of any existing drug, to gain approval or coverage of  
55 a metabolite of an existing drug, or to gain approval or coverage  
56 relating to additional clinical indications for an existing drug;  
57 or

58 (2) The purpose of the clinical trial is designed to keep a  
59 generic version of a drug from becoming available on the  
60 market; or

61 (3) The purpose of the clinical trial is to gain approval of or  
62 coverage for a reformulated or repackaged version of an  
63 existing drug.

64 (f) Any provider billing a third party payor for services or  
65 products provided to a patient in a clinical trial shall provide  
66 written notice to the payor that specifically identifies the  
67 services as part of a clinical trial.

68 (g) Notwithstanding any provision in this section to the  
69 contrary, coverage is not required for Phase I of any clinical  
70 trial.

**§5-16B-6b. Definitions.**

1 For purposes of section six-a of this article:

2 (a) A “clinical trial” is a study that determines whether new  
3 drugs, treatments or medical procedures are safe and effective  
4 on humans. To determine the efficacy of experimental drugs,

5 treatments or procedures, a study is conducted in four phases  
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or  
8 a procedure is performed on, a larger group of people to further  
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the  
11 effectiveness of the drug, treatment or procedure, to monitor the  
12 side effects, to compare commonly used treatments and to  
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is  
15 marketed, investigators continue testing to determine the effects  
16 on various populations and to determine whether there are side  
17 effects associated with long-term use.

18 (b) “Cooperative group” means a formal network of  
19 facilities that collaborate on research projects and have an  
20 established NIH-approved peer review program operating  
21 within the group.

22 (c) “Cooperative group” includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical  
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) “FDA” means the federal food and drug administration.

29 (e) “Life-threatening condition” means that the member has  
30 a terminal condition or illness that according to current diagno-  
31 sis has a high probability of death within two years, even with

32 treatment with an existing generally accepted treatment  
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,  
35 certificate holder or a covered dependent of a policyholder,  
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract  
38 between an institution and the federal department of health and  
39 human services that defines the relationship of the institution to  
40 the federal department of health and human services and sets  
41 out the responsibilities of the institution and the procedures that  
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically  
45 necessary health care service that is incurred by a member as a  
46 result of the treatment being provided pursuant to the protocols  
47 of the clinical trial. Routine costs of a clinical trial include all  
48 items or services that are otherwise generally available to  
49 beneficiaries of the insurance policies. "Patient cost" does not  
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may  
53 be required to receive as a result of the treatment being pro-  
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor  
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated  
58 with the clinical trial, including but not limited to, services  
59 furnished to satisfy data collection and analysis needs that are  
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's  
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those  
64 that reflect the natural history of the disease, or its progression,  
65 and those that are unique in the experimental treatment. Costs  
66 for the former are the responsibility of the payor as provided in  
67 section two of this article, and costs for the later are the  
68 responsibility of the sponsor. The sponsor shall hold harmless  
69 any payor for any losses and injuries sustained by any member  
70 as a result of his or her participation in the clinical trial.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SER- VICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.**

#### **§9-2-12. Coverage for patient cost of clinical trials.**

1 (a) The provisions of this section and section twelve-a of  
2 this article apply to the health plans regulated by this article.

3 (b) This section does not apply to a policy, plan or contract  
4 paid for under Title XVIII of the Social Security Act.

5 (c) A policy, plan or contract subject to this section shall  
6 provide coverage for patient cost to a member in a clinical trial,  
7 as a result of:

8 (1) Treatment provided for a life-threatening condition; or

9 (2) Prevention of, early detection of or treatment studies on  
10 cancer.

11 (d) The coverage under subsection (c) of this section is  
12 required if:

13 (1)(A) The treatment is being provided or the studies are  
14 being conducted in a Phase II, Phase III or Phase IV clinical  
15 trial for cancer and has therapeutic intent; or

16 (B) The treatment is being provided in a Phase II, Phase III  
17 or Phase IV clinical trial for any other life-threatening condition  
18 and has therapeutic intent;

19 (2) The treatment is being provided in a clinical trial  
20 approved by:

21 (A) One of the national institutes of health;

22 (B) An NIH cooperative group or an NIH center;

23 (C) The FDA in the form of an investigational new drug  
24 application or investigational device exemption;

25 (D) The federal department of veterans affairs; or

26 (E) An institutional review board of an institution in the  
27 state which has a multiple project assurance contract approved  
28 by the office of protection from research risks of the national  
29 institutes of health;

30 (3) The facility and personnel providing the treatment are  
31 capable of doing so by virtue of their experience, training and  
32 volume of patients treated to maintain expertise;

33 (4) There is no clearly superior, noninvestigational treat-  
34 ment alternative;

35 (5) The available clinical or preclinical data provide a  
36 reasonable expectation that the treatment will be more effective  
37 than the noninvestigational treatment alternative;

38 (6) The treatment is provided in this state: *Provided*, That,  
39 if the treatment is provided outside of this state, the treatment

40 must be approved by the payor designated in subsection (a) of  
41 this section;

42 (7) Reimbursement for treatment is subject to all  
43 coinsurance, copayment and deductibles and is otherwise  
44 subject to all restrictions and obligations of the health plan; and

45 (8) Reimbursement for treatment by an out of network or  
46 noncontracting provider shall be reimbursed at a rate which is  
47 no greater than that provided by an in network or contracting  
48 provider. Coverage shall not be required if the out of network  
49 or noncontracting provider will not accept this level of reim-  
50 bursement.

51 (e) Payment for patient costs for a clinical trial is not  
52 required by the provisions of this section, if:

53 (1) The purpose of the clinical trial is designed to extend  
54 the patent of any existing drug, to gain approval or coverage of  
55 a metabolite of an existing drug, or to gain approval or coverage  
56 relating to additional clinical indications for an existing drug;  
57 or

58 (2) The purpose of the clinical trial is designed to keep a  
59 generic version of a drug from becoming available on the  
60 market; or

61 (3) The purpose of the clinical trial is to gain approval of or  
62 coverage for a reformulated or repackaged version of an  
63 existing drug.

64 (f) Any provider billing a third party payor for services or  
65 products provided to a patient in a clinical trial shall provide  
66 written notice to the payor that specifically identifies the  
67 services as part of a clinical trial.

68 (g) Notwithstanding any provision in this section to the  
69 contrary, coverage is not required for Phase I of any clinical  
70 trial.

**§9-2-12a. Definitions.**

1 For purposes of section twelve of this article:

2 (a) A “clinical trial” is a study that determines whether new  
3 drugs, treatments or medical procedures are safe and effective  
4 on humans. To determine the efficacy of experimental drugs,  
5 treatments or procedures, a study is conducted in four phases  
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or  
8 a procedure is performed on, a larger group of people to further  
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the  
11 effectiveness of the drug, treatment or procedure, to monitor the  
12 side effects, to compare commonly used treatments and to  
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is  
15 marketed, investigators continue testing to determine the effects  
16 on various populations and to determine whether there are side  
17 effects associated with long-term use.

18 (b) “Cooperative group” means a formal network of  
19 facilities that collaborate on research projects and have an  
20 established NIH-approved peer review program operating  
21 within the group.

22 (c) “Cooperative group” includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical  
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) "FDA" means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has  
30 a terminal condition or illness that according to current diagno-  
31 sis has a high probability of death within two years, even with  
32 treatment with an existing generally accepted treatment  
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,  
35 certificate holder or a covered dependent of a policyholder,  
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract  
38 between an institution and the federal department of health and  
39 human services that defines the relationship of the institution to  
40 the federal department of health and human services and sets  
41 out the responsibilities of the institution and the procedures that  
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically  
45 necessary health care service that is incurred by a member as a  
46 result of the treatment being provided pursuant to the protocols  
47 of the clinical trial. Routine costs of a clinical trial include all  
48 items or services that are otherwise generally available to  
49 beneficiaries of the insurance policies. "Patient cost" does not  
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may  
53 be required to receive as a result of the treatment being pro-  
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor  
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated  
58 with the clinical trial, including but not limited to, services  
59 furnished to satisfy data collection and analysis needs that are  
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's  
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those  
64 that reflect the natural history of the disease, or its progression,  
65 and those that are unique in the experimental treatment. Costs  
66 for the former are the responsibility of the payor as provided in  
67 section two of this article, and costs for the later are the  
68 responsibility of the sponsor. The sponsor shall hold harmless  
69 any payor for any losses and injuries sustained by any member  
70 as a result of his or her participation in the clinical trial.

### **CHAPTER 33. INSURANCE.**

#### **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

##### **§33-15-4h. Coverage for patient cost of clinical trials.**

1 The provisions relating to clinical trials established in  
2 article twenty-five-f of this chapter shall apply to the individual  
3 market regulated by this article.

#### **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

##### **§33-16-3q. Coverage for patient cost of clinical trials.**

1 The provisions relating to clinical trials established in  
 2 article twenty-five-f of this chapter shall apply to the health  
 3 benefit plans regulated by this article.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.**

**§33-24-4a. Coverage for patient cost of clinical trials.**

1 The provisions relating to clinical trials established in  
 2 article twenty-five-f of this chapter shall apply to the insurance  
 3 regulated by this article.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.**

1 Corporations organized under this article are subject to  
 2 supervision and regulation of the insurance commissioner. The  
 3 corporations organized under this article, to the same extent  
 4 these provisions are applicable to insurers transacting similar  
 5 kinds of insurance and not inconsistent with the provisions of  
 6 this article, shall be governed by and be subject to the provisions as hereinbelow indicated of the following articles of this  
 7 chapter: Article four (general provisions), except that section  
 8 sixteen of said article shall not be applicable thereto; article six-  
 9 c (guaranteed loss ratio); article seven (assets and liabilities);  
 10 article eight (investments); article ten (rehabilitation and  
 11 liquidation); section two-a, article fifteen (definitions); section  
 12 two-b, article fifteen (guaranteed issue); section two-d, article  
 13 fifteen (exception to guaranteed renewability); section two-e,  
 14 article fifteen (discontinuation of coverage); section two-f,  
 15 article fifteen (certification of creditable coverage); section  
 16 two-g, article fifteen (applicability); section four-e, article  
 17 fifteen (benefits for mothers and newborns); section fourteen,  
 18 article fifteen (individual accident and sickness insurance);  
 19

20 section sixteen, article fifteen (coverage of children); section  
21 eighteen, article fifteen (equal treatment of state agency);  
22 section nineteen, article fifteen (coordination of benefits with  
23 medicaid); article fifteen-c (diabetes insurance); section three,  
24 article sixteen (required policy provisions); section three-a,  
25 article sixteen (mental health); section three-j, article sixteen  
26 (benefits for mothers and newborns); section three-k, article  
27 sixteen (preexisting condition exclusions); section three-l,  
28 article sixteen (guaranteed renewability); section three-m,  
29 article sixteen (creditable coverage); section three-n, article  
30 sixteen (eligibility for enrollment); section eleven, article  
31 sixteen (coverage of children); section thirteen, article sixteen  
32 (equal treatment of state agency); section fourteen, article  
33 sixteen (coordination of benefits with medicaid); section  
34 sixteen, article sixteen (diabetes insurance); article sixteen-a  
35 (group health insurance conversion); article sixteen-c (small  
36 employer group policies); article sixteen-d (marketing and rate  
37 practices for small employers); article twenty-five-f (coverage  
38 for patient cost of clinical trials); article twenty-six-a (West  
39 Virginia life and health insurance guaranty association act);  
40 article twenty-seven (insurance holding company systems);  
41 article thirty-three (annual audited financial report); article  
42 thirty-four-a (standards and commissioner's authority for  
43 companies deemed to be in hazardous financial condition);  
44 article thirty-five (criminal sanctions for failure to report  
45 impairment); article thirty-seven (managing general agents);  
46 and article forty-one (privileges and immunity)); and no other  
47 provision of this chapter may apply to these corporations unless  
48 specifically made applicable by the provisions of this article.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-24a. Coverage for patient cost of clinical trials.**

1 The provisions relating to clinical trials established in  
2 article twenty-five-f of this chapter shall apply to the insurance  
3 regulated by this article.

**ARTICLE 25F. COVERAGE FOR PATIENT COST OF CLINICAL TRIALS.**

**§33-25F-1. Definitions.**

1 For purposes of this article:

2 (a) A “clinical trial” is a study that determines whether new  
3 drugs, treatments or medical procedures are safe and effective  
4 on humans. To determine the efficacy of experimental drugs,  
5 treatments or procedures, a study is conducted in four phases  
6 including the following:

7 Phase II: The experimental drug or treatment is given to, or  
8 a procedure is performed on, a larger group of people to further  
9 measure its effectiveness and safety.

10 Phase III: Further research is conducted to confirm the  
11 effectiveness of the drug, treatment or procedure, to monitor the  
12 side effects, to compare commonly used treatments and to  
13 collect information on safe use.

14 Phase IV: After the drug, treatment or medical procedure is  
15 marketed, investigators continue testing to determine the effects  
16 on various populations and to determine whether there are side  
17 effects associated with long-term use.

18 (b) “Cooperative group” means a formal network of  
19 facilities that collaborate on research projects and have an  
20 established NIH-approved peer review program operating  
21 within the group.

22 (c) “Cooperative group” includes:

23 (1) The national cancer institute clinical cooperative group;

24 (2) The national cancer institute community clinical  
25 oncology program;

26 (3) The AIDS clinical trial group; and

27 (4) The community programs for clinical research in AIDS.

28 (d) "FDA" means the federal food and drug administration.

29 (e) "Life-threatening condition" means that the member has  
30 a terminal condition or illness that according to current diagno-  
31 sis has a high probability of death within two years, even with  
32 treatment with an existing generally accepted treatment  
33 protocol.

34 (f) "Member" means a policyholder, subscriber, insured,  
35 certificate holder or a covered dependent of a policyholder,  
36 subscriber, insured or certificate holder.

37 (g) "Multiple project assurance contract" means a contract  
38 between an institution and the federal department of health and  
39 human services that defines the relationship of the institution to  
40 the federal department of health and human services and sets  
41 out the responsibilities of the institution and the procedures that  
42 will be used by the institution to protect human subjects.

43 (h) "NIH" means the national institutes of health.

44 (i) "Patient cost" means the routine costs of a medically  
45 necessary health care service that is incurred by a member as a  
46 result of the treatment being provided pursuant to the protocols  
47 of the clinical trial. Routine costs of a clinical trial include all  
48 items or services that are otherwise generally available to  
49 beneficiaries of the insurance policies. "Patient cost" does not  
50 include:

51 (1) The cost of the investigational drug or device;

52 (2) The cost of nonhealth care services that a patient may  
53 be required to receive as a result of the treatment being pro-  
54 vided to the member for purposes of the clinical trial;

55 (3) Services customarily provided by the research sponsor  
56 free of charge for any participant in the trial;

57 (4) Costs associated with managing the research associated  
58 with the clinical trial, including but not limited to, services  
59 furnished to satisfy data collection and analysis needs that are  
60 not used in the direct clinical management of the participant; or

61 (5) Costs that would not be covered under the participant's  
62 policy, plan, or contract for noninvestigational treatments;

63 (6) Adverse events during treatment are divided into those  
64 that reflect the natural history of the disease, or its progression,  
65 and those that are unique in the experimental treatment. Costs  
66 for the former are the responsibility of the payor as provided in  
67 section two of this article, and costs for the later are the  
68 responsibility of the sponsor. The sponsor shall hold harmless  
69 any payor for any losses and injuries sustained by any member  
70 as a result of his or her participation in the clinical trial.

**§33-25F-2. Coverage applicable under this article.**

1 (a) This section applies to:

2 (1) Insurers and nonprofit health service plans that provide  
3 hospital, medical, surgical or pharmaceutical benefits to  
4 individuals or groups on an expense-incurred basis under a  
5 health insurance policy or contract issued or delivered in the  
6 state; and

7 (2) Health maintenance organizations that provide hospital,  
8 medical, surgical or pharmaceutical benefits to individuals or  
9 groups under contracts that are issued or delivered in the state.

10 (b) This section does not apply to a policy, plan or contract  
11 paid for under Title XVIII of the Social Security Act.

12 (c) A policy, plan or contract subject to this section shall  
13 provide coverage for patient cost to a member in a clinical trial,  
14 as a result of:

15 (1) Treatment provided for a life-threatening condition; or

16 (2) Prevention of, early detection of or treatment studies on  
17 cancer.

18 (d) The coverage under subsection (c) of this section is  
19 required if:

20 (1)(A) The treatment is being provided or the studies are  
21 being conducted in a Phase II, Phase III or Phase IV clinical  
22 trial for cancer and has therapeutic intent; or

23 (B) The treatment is being provided in a Phase II, Phase III  
24 or Phase IV clinical trial for any other life-threatening condition  
25 and has therapeutic intent;

26 (2) The treatment is being provided in a clinical trial  
27 approved by:

28 (A) One of the national institutes of health;

29 (B) An NIH cooperative group or an NIH center;

30 (C) The FDA in the form of an investigational new drug  
31 application or investigational device exemption;

32 (D) The federal department of veterans affairs; or

33 (E) An institutional review board of an institution in the  
34 state which has a multiple project assurance contract approved

35 by the office of protection from research risks of the national  
36 institutes of health;

37 (3) The facility and personnel providing the treatment are  
38 capable of doing so by virtue of their experience, training and  
39 volume of patients treated to maintain expertise;

40 (4) There is no clearly superior, noninvestigational treat-  
41 ment alternative;

42 (5) The available clinical or preclinical data provide a  
43 reasonable expectation that the treatment will be more effective  
44 than the noninvestigational treatment alternative;

45 (6) The treatment is provided in this state: *Provided*, That,  
46 if the treatment is provided outside of this state, the treatment  
47 must be approved by the payor designated in subsection (a) of  
48 this section;

49 (7) Reimbursement for treatment is subject to all  
50 coinsurance, copayment and deductibles and is otherwise  
51 subject to all restrictions and obligations of the health plan; and

52 (8) Reimbursement for treatment by an out of network or  
53 noncontracting provider shall be reimbursed at a rate which is  
54 no greater than that provided by an in network or contracting  
55 provider. Coverage shall not be required if the out of network  
56 or noncontracting provider will not accept this level of reim-  
57 bursement.

58 (e) Payment for patient costs for a clinical trial is not  
59 required by the provisions of this section, if:

60 (1) The purpose of the clinical trial is designed to extend  
61 the patent of any existing drug, to gain approval or coverage of  
62 a metabolite of an existing drug, or to gain approval or coverage

63 relating to additional clinical indications for an existing drug;  
64 or

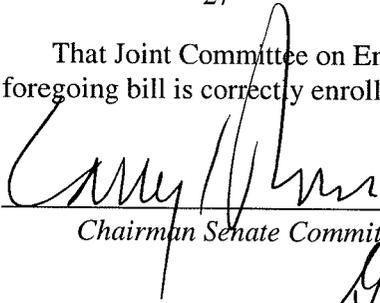
65 (2) The purpose of the clinical trial is designed to keep a  
66 generic version of a drug from becoming available on the  
67 market; or

68 (3) The purpose of the clinical trial is to gain approval of or  
69 coverage for a reformulated or repackaged version of an  
70 existing drug.

71 (f) Any provider billing a third party payor for services or  
72 products provided to a patient in a clinical trial shall provide  
73 written notice to the payor that specifically identifies the  
74 services as part of a clinical trial.

75 (g) Notwithstanding any provision in this section to the  
76 contrary, coverage is not required for Phase I of any clinical  
77 trial.

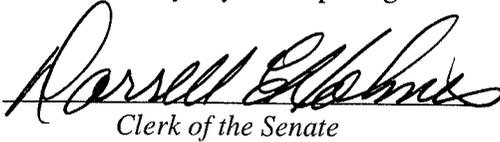
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

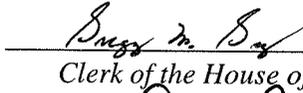
  
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Chairman Senate Committee

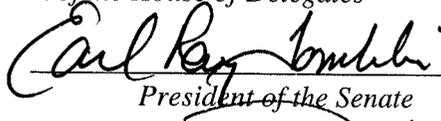
  
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Chairman House Committee

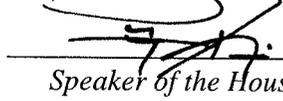
Originating in the House.

In effect ninety days from passage

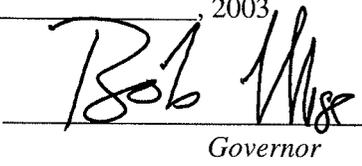
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 2nd  
day of April, 2003

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/26/03

Time 4:10 pm