

SB 431

FILED

2009 APR 21 PM 4:50

WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA
CLERK OF STATE

**SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009**

—●—
ENROLLED

Senate Bill No. 431

(BY SENATORS MINARD, HELMICK,
McCABE AND BARNES)

[Passed April 7, 2009; in effect ninety days from passage.]

FILED

2009 APR 21 PM 4: 50

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 431

(BY SENATORS MINARD, HELMICK, MCCABE AND BARNES)

[Passed April 7, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §33-16D-16 of the Code of West Virginia, 1931, as amended, relating to notice to in-state medical providers of the participation provisions of the small group health benefit plan.

Be it enacted by the Legislature of West Virginia:

That §33-16D-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-16. Authorization of uninsured small group health benefit plans.

- 1 (a) Upon filing with and approval by the commissioner,
- 2 any carrier licensed pursuant to this chapter which
- 3 accesses a health care provider network to deliver services
- 4 may offer a health benefit plan and rates associated with

5 the plan to a small employer subject to the conditions of
6 this section and subject to the provisions of this article.
7 The health benefit plan is subject to the following condi-
8 tions:

9 (1) The health benefit plan may be offered by the carrier
10 only to small employers which have not had a health
11 benefit plan covering their employees for at least six
12 consecutive months before the effective date of this
13 section. After the passage of six months from the effective
14 date of this section, the health benefit plan under this
15 section may be offered by carriers only to small employers
16 which have not had a health benefit plan covering their
17 employees for twelve consecutive months;

18 (2) If a small employer covered by a health benefit plan
19 offered pursuant to this section no longer meets the
20 definition of a small employer as a result of an increase in
21 eligible employees, that employer shall remain covered by
22 the health benefit plan until the next annual renewal date;

23 (3) The small employer shall pay at least fifty percent of
24 its employees' premium amount for individual employee
25 coverage;

26 (4) The commissioner shall promulgate emergency rules
27 under the provisions of article three, chapter
28 twenty-nine-a of this code on or before September 1, 2004,
29 to place additional restrictions upon the eligibility re-
30 quirements for health benefit plans authorized by this
31 section in order to prevent manipulation of eligibility
32 criteria by small employers and otherwise implement the
33 provisions of this section;

34 (5) Carriers must offer the health benefit plans issued
35 pursuant to this section through one of their existing
36 networks of health care providers;

37 (A) The West Virginia Health Care Authority shall, on or
38 before May 1, 2004, and each year thereafter, by regular
39 mail, provide a written notice to all known in-state health
40 care providers that:

41 (i) Informs the health care provider regarding the
42 provisions of this section; and

43 (ii) Notifies the health care provider that if the health
44 care provider does not give written refusal to the West
45 Virginia Health Care Authority within thirty days from
46 receipt of the notice or the health care provider has not
47 previously filed a written notice of refusal to participate,
48 the health care provider must participate with and accept
49 the products and provider reimbursements authorized
50 pursuant to this section;

51 (B) The carrier's network of health care providers, as
52 well as any health care provider which provides health
53 care goods or services to beneficiaries of any departments
54 or divisions of the state, as identified in article
55 twenty-nine-d, chapter sixteen of this code, shall accept
56 the health care provider reimbursement rates set pursuant
57 to this section unless the health care provider gives written
58 refusal to the West Virginia Health Care Authority
59 between May 1 and June 1 that the provider will not
60 participate in this program for the next calendar year.
61 Notwithstanding any provision of this code to the con-
62 trary, health care providers may not be mandated to
63 participate in this program except under the opt-out
64 provisions of subdivision (5), subsection (a) of this section
65 and therefore the health care provider shall annually have
66 the ability to file with the West Virginia Health Care
67 Authority written notice that the health care provider will
68 not participate with products issued pursuant to this
69 section. Once a health care provider has filed a notice of
70 refusal with the West Virginia Health Care Authority, the
71 notice shall remain effective until rescinded by the pro-

72 vider and the provider shall not be required to renew the
73 notice each year;

74 (C) The West Virginia Health Care Authority is responsi-
75 ble for receiving the responses, if any, from the health care
76 providers that have elected not to participate and for
77 providing a list to the commissioner of those health care
78 providers that have elected not to participate;

79 (D) Those health care providers that do not file a notice
80 of refusal shall be considered to have accepted participa-
81 tion in this program and to accept Public Employees
82 Insurance Agency health care provider reimbursement
83 rates for their services as set by this section;

84 (E) Health care provider reimbursement rates used by
85 the carrier for a health benefit plan offered pursuant to
86 this section shall have no effect on provider rates for other
87 products offered by the carrier and most-favored-nation
88 clauses do not apply to the rates;

89 (6) With respect to the health benefit plans authorized by
90 this section, the carrier shall reimburse network health
91 care providers at the same health care provider reimburse-
92 ment rates in effect for the managed care and health
93 maintenance organization plans offered by the West
94 Virginia Public Employees Insurance Agency. Beginning
95 in the year 2004, and in each year thereafter, the health
96 care provider reimbursement rates set under this section
97 may not be lowered from the level of the rates in effect on
98 the July 1 of that year for the managed care and health
99 maintenance plans offered by the Public Employees
100 Insurance Agency. While it is the intent of this paragraph
101 to govern rates for plans offered pursuant to this section
102 for annual periods, this paragraph in no way prevents the
103 Public Employees Insurance Agency from making provider
104 reimbursement rate adjustments to Public Employees
105 Insurance Agency plans during the course of each year. If
106 there is a dispute regarding the determination of appropri-

107 ate rates pursuant to this section, the Director of the
108 Public Employees Insurance Agency shall, in his or her
109 sole discretion, specify the appropriate rate to be applied;

110 (A) The health care provider reimbursement rates as
111 authorized by this section shall be accepted by the health
112 care provider as payment in full for services or products
113 provided to a person covered by a product authorized by
114 this section;

115 (B) Except for the health care provider rates authorized
116 under this section, a carrier's payment methodology,
117 including copayments and deductibles and other condi-
118 tions of coverage, remains unaffected by this section;

119 (C) The provisions of this section do not require the
120 Public Employees Insurance Agency to give carriers access
121 to the purchasing networks of the Public Employees
122 Insurance Agency. The Public Employees Insurance
123 Agency may enter into agreements with carriers offering
124 health benefit plans under this section to permit the
125 carrier, at its election, to participate in drug purchasing
126 arrangements pursuant to article sixteen-c, chapter five of
127 this code, including the multistate drug purchasing
128 program. This paragraph provides authorization of the
129 agreements pursuant to section four of said article;

130 (7) Carriers may not underwrite products authorized by
131 this section more strictly than other small group policies
132 governed by this article;

133 (8) With respect to health benefit plans authorized by
134 this section, a carrier shall have a minimum anticipated
135 loss ratio of seventy-seven percent to be eligible to make
136 a rate increase request after the first year of providing a
137 health benefit plan under this section;

138 (9) Products authorized under this section are exempt
139 from the premium taxes assessed under sections fourteen
140 and fourteen-a, article three of this chapter;

141 (10) A carrier may elect to nonrenew any health benefit
142 plan to an eligible employer if, at any time, the carrier
143 determines, by applying the same network criteria which
144 it applies to other small employer health benefit plans,
145 that it no longer has an adequate network of health care
146 providers accessible for that eligible small employer. If
147 the carrier makes a determination that an adequate
148 network does not exist, the carrier has no obligation to
149 obtain additional health care providers to establish an
150 adequate network;

151 (11) Upon thirty days' advance notice to the commis-
152 sioner, a carrier may, at any time, elect to nonrenew all
153 health benefit plans issued pursuant to this section. If a
154 carrier nonrenews all its business issued pursuant to this
155 section for any reason other than the adequacy of the
156 provider network, the carrier may not offer this health
157 benefit plan to any eligible small employer for a period of
158 at least two years after the last eligible small employer is
159 nonrenewed; and

160 (12) The Insurance Commissioner may not approve any
161 health benefit plan issued pursuant to this section until it
162 has obtained any necessary federal governmental authori-
163 zations or waivers. The Insurance Commissioner shall
164 apply for and obtain all necessary federal authorizations
165 or waivers.

166 (b) Health benefit plans authorized by this section are
167 not intended to violate the prohibition set out in subsec-
168 tion (a), section four of this article.

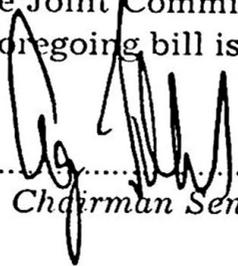
169 (c) The commissioner shall appoint a policy advisory
170 committee to provide advice to the commissioner regard-
171 ing providing health insurance to uninsureds and to

172 monitor the effectiveness of this section. The committee
173 shall contain members the commissioner considers appro-
174 priate, but shall have members representing at least the
175 following interest groups: Labor, hospital providers,
176 physician providers, private business, local government,
177 insurance carriers and the uninsured.

178 (d) Carriers offering health benefit plans pursuant to this
179 section shall annually or before December 1 of each year
180 report in a form acceptable to the commissioner the
181 number of health benefit plans written by the carrier and
182 the number of individuals covered under the health benefit
183 plans.

184 (e) To the extent that provisions of this section differ
185 from those contained elsewhere in this chapter, the
186 provisions of this section control.

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



.....
Chairman Senate Committee



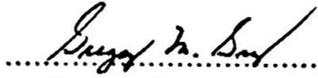
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.



.....
Clerk of the Senate



.....
Clerk of the House of Delegates



.....
President of the Senate



.....
Speaker House of Delegates

The within is approved this the 21st
Day of April, 2009.



.....
Governor

PRESENTED TO THE
GOVERNOR

APR 20 2009

Time 9:49am