WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 552
(By Senators Minard and Kessler)
[Passed April 11, 2009; in effect from passage.]
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AN ACT to repeal §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-16-3t; to amend and reenact §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code; and to amend said code by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all relating to health insurance; providing a special enrollment period for continued employee group accident and sickness insurance coverage for certain involuntarily terminated employees and their dependents; providing legislative findings; defining terms; mandating notice to individuals eligible for coverage; providing for a disregard of certain periods for purposes of calculating creditable coverage; establishing a program to provide affordable health care insurance coverage; requiring the Insurance Commissioner to invite
carriers and other entities to submit proposals for affordable health insurance plans; defining terms; specifying that plans do not create an entitlement; establishing eligibility and standards for such plans; providing for evaluation of the plans and reports to the Legislature; providing for continuation of existing limited benefit plans; and authorizing emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-16-3t; that §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all to read as follows:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.


(a) The Legislature finds that recent attempts to assist unemployed persons during the economic downturn beginning at the end of 2008 included a federal initiative to provide subsidies to certain persons who have lost their employer-sponsored health insurance coverage. As part of the American Recovery and Reinvestment Act of 2009, certain involuntarily terminated employees and their dependents were given a second opportunity to elect subsidized COBRA coverage. This federal initiative also included relief to certain persons not covered by the federal COBRA laws, but access to such relief was made dependent on the states acting to require that such persons be given notice of their right to elect such coverage. Therefore, the Legislature intends that this section be
interpreted in such a manner as to maximize the opportunity of West Virginians to obtain these much needed subsidies.

(b) Definitions. – As used in this section:

(1) “Assistance eligible individual” means any qualified beneficiary who was eligible for continuation coverage between September 1, 2008, and February 17, 2009, due to a covered employee’s termination from employment during this period and who elected such coverage.

(2) “Continuation coverage” means accident and sickness insurance coverage offered to persons pursuant to policy provisions required by subsection (e), section three of this article.

(3) “Covered employee” means a person who was involuntarily terminated by a small employer between September 1, 2008, and February 16, 2009, and at the time of his or her termination either: (i) Was eligible for but did not elect to enroll in continuation coverage; or (ii) enrolled but subsequently discontinued enrollment in continuation coverage.

(4) “Qualified beneficiary” has the same meaning as that term is defined in §607(3) of the Employee Retirement Income Security Act of 1974, 29 U. S. C.§1167(3).

(5) “Small employer” means any employer that had fewer than twenty (20) employees during fifty percent (50%) or more of its typical business days in the previous calendar year.

(c) An individual who does not have an election of continuation coverage in effect on February 17, 2009, but who would be an assistance eligible individual if such election were in effect, may elect continuation coverage pursuant to this section. Such election shall be made no later than sixty days after the date the administrator of
the group health plan (or other entity involved) provides the notice required by Section 3001(a)(7) of the American Recovery and Reinvestment Act of 2009. The administrator of the group health plan (or other entity involved) shall provide such individuals with additional notice of the right to elect coverage pursuant to this subsection prior to April 18, 2009.

(d) Continuation coverage elected pursuant to subsection (c) of this section shall commence with the first period of coverage beginning on or after February 17, 2009: Provided, That continuation coverage elected pursuant to this subsection shall not extend beyond the maximum eighteen-month period provided for by subsection (e), section three of this article.

(e) With respect to an individual who elects continuation coverage pursuant to subsection (b) of this section, the period beginning on the date of the involuntary termination and ending on the date of the first period of coverage on or after February 17, 2009, shall be disregarded for purposes of determining the sixty-three day period referred to in subsection (b), section three-m of this article.

ARTICLE 16F. WEST VIRGINIA AFFORDABLE HEALTH CARE PLAN.

§33-16F-1. Legislative intent.

The Legislature finds that the inability of a significant number of state residents to obtain affordable health insurance coverage adversely affects everyone in our state. Therefore, it is the intent of the Legislature to expand the availability of health care options for uninsured residents by developing affordable health care products that emphasize coverage for basic and preventive health care services, provide inpatient hospital and emergency care services and offer optional catastrophic coverage.
§33-16F-2. Definitions.

1 As used in this article:

2 "West Virginia affordable health care plan" means a
3 health insurance plan approved under this article.

4 "West Virginia affordable health care plan entity” or
5 “plan entity” means an entity licensed under this chapter
6 that develops and proposes a West Virginia affordable
7 health care plan and, if the plan is approved, is responsible
8 for administering the plan and paying claims of plan
9 enrollees.

10 "Enrollee” means an individual who has been deter-
11 mined to be eligible for and is receiving health insurance
12 coverage under a West Virginia affordable health care
13 plan.

§33-16F-3. Plan proposals; approval of plans.

1 (a) The commissioner shall announce, no later than July
2 1, 2009, an invitation to prospective West Virginia afford-
3 able health care plan entities to submit West Virginia
4 affordable health care plan proposals. The invitation shall
5 include guidelines for the review of West Virginia afford-
6 able health care plan applications, policies and associated
7 rates.

8 (b) In reviewing proposals under this article, the
9 commissioner shall consider the proposed plans' effective-
10 ness in improving the health status of individuals, their
11 impact on maintaining and improving health and their
12 potential to reduce the unnecessary consumption of health
13 care services.

§33-16F-4. Required plan provisions; grounds for disapproval;
alternative plans.

1 (a) To be approved, plan entities must assure that each
2 proposed plan will provide cost containment through the
(b) To provide consumer choice, plan entities must develop and submit two alternative benefit option plans having different cost and benefit levels, including at least one plan that provides catastrophic coverage. Plans providing catastrophic coverage must, at a minimum, provide coverage for preventive health services and inpatient hospital stays and may also include coverage of one or more of the following: Hospital emergency care services and outpatient facility services; outpatient surgery; or outpatient diagnostic services.

(c) All plans must offer prescription drug benefit coverage.

(d) Plan enrollment materials must provide information in plain language on policy benefit coverage, benefit limits, cost-sharing requirements, exclusions and a clear representation of what is not covered in the plan. The enrollment materials must include a standard disclosure form developed by the commissioner that must be reviewed and executed by all consumers purchasing West Virginia affordable health care plan coverage.

(e) The commissioner shall disapprove any plan that:

1. Contains any ambiguous, inconsistent or misleading provisions or any exceptions or conditions that deceptively affect or limit the benefits purported to be assumed in the general coverage provided by the plan;

2. Provides benefits that are unreasonable in relation to the premium charged; or

3. Contains provisions that are unfair or inequitable, contrary to the public policy of this state, encourage misrepresentation or result in unfair discrimination in sales practices.
§33-16F-5. Eligibility of individuals and groups.

(a) Individuals. — Eligibility to enroll in an individual West Virginia affordable health care plan is limited to any resident of this state who:

1. Is not covered by a private insurance policy and is not eligible for coverage under an employer-sponsored group plan or through a public health insurance program, such as Medicare, Medicaid or the state Children's Health Insurance Program; and

2. Has not been covered by any health insurance program at any time during the past six months, unless coverage under a health insurance program was terminated within the previous six months due to loss of a job that provided an employer-sponsored health benefit plan or death of, or divorce from, a spouse who was provided an employer-sponsored health benefit plan or, with respect to a public health insurance program, eligibility for such program was lost due to an inability to meet income or categorical requirements: Provided, That an individual may not be excluded from enrollment in a West Virginia affordable health care plan on the ground that he or she is eligible for or is enrolled in a COBRA plan.

(b) Group. — An otherwise eligible group may not obtain coverage under a West Virginia affordable health care plan unless the group has not had coverage under any health insurance plan at any time during the previous six months.

§33-16F-6. Regulation and marketing of plans.

(a) The commissioner shall issue guidelines to ensure that West Virginia affordable health care plans meet minimum standards for quality of and access to care.

(b) Initial filings and changes in West Virginia affordable health care plan benefits, premiums and policy forms are subject to regulatory oversight by the commissioner.
7 (c) The commissioner shall develop a public awareness program to be implemented throughout the state for the promotion of the plans approved under this article, which may include assistance from state health insurance benefits advisors.

12 (d) Each West Virginia affordable health care plan must maintain enrollment data and provide network data and reasonable records to enable the commissioner to assess the plans.

§33-16F-7. Applicability of certain provisions; commissioner's authority to forbear from applying certain provisions.

1 (a) Individual plans. — Only the following provisions of article fifteen of this chapter apply to West Virginia entities offering individual plans pursuant to this article: Sections two-a, two-d, two-e, three, four, four-c, four-e, four-f, four-g, five, six, seven, eight, nine, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty. Notwithstanding any other provision of this code, the provisions of article twenty-eight of this chapter and legislative rules regulating individual accident and sickness policies, including the rule contained in series 12, title 114 of the West Virginia Code of State Rules, do not apply to individual plans issued pursuant to this article unless and to the extent specifically incorporated in rules promulgated pursuant to the authority conferred by section eleven of this article.

16 (b) Group plans. — Only the following provisions of article sixteen of this chapter apply to insurers offering group plans pursuant to this article: Sections one-a, three, three-g, three-j, three-k, three-l, three-m, three-n, three-o, three-p, four, five, six, seven, nine, ten, eleven, twelve, thirteen, fourteen and fifteen; all other provisions of article sixteen do not apply to group plans approved pursuant to this article unless and to the extent the
provisions are specifically incorporated in rules promulgated by the commissioner. Notwithstanding any other provision of this code or of the code of state rules, the provisions of article sixteen-e of this chapter and of legislative rules regulating group accident and sickness policies, including the rule set forth in series 39, title 114 of the West Virginia Code of State Rules, do not apply to group plans approved pursuant to this article unless and to the extent specifically incorporated in rules promulgated by the commissioner pursuant to the authority conferred by section eleven of this article.

(c) **Small group plans.** – With respect to any group plan approved under this article and offered to any “small employer”, as that term is defined in section two, article sixteen-d of this chapter, the following provisions of article sixteen-d apply: Sections two, four, seven, eight, twelve, thirteen and fourteen: Provided, That only the sentence preceding the proviso in section thirteen, article sixteen-d of this chapter applies to small employer plans approved pursuant to this article. Notwithstanding any other provision of this code, all other provisions of article sixteen-d of this chapter do not apply to small employer plans approved pursuant to this article unless and to the extent such provisions are specifically incorporated in rules promulgated by the commissioner.

(d) **Forbearance by the commissioner.** – The commissioner may forbear from applying any other statutory or regulatory requirements to an insurer offering an individual or group plan approved pursuant to this article, including any requirements in articles twenty-four and twenty-five-a of this chapter, if he or she determines that such forbearance serves the principles set forth in section one of this article.

(e) **Existing limited benefit plans.** – Plans approved pursuant to the provisions of article fifteen-d of this chapter, as that article existed prior to its repeal during
the 2009 regular legislative session, and this article, as that it existed prior to its amendment and reenactment during the 2009 regular legislative session, remain in effect and are subject to those provisions.

§33-16F-8. Assessment of the West Virginia program.

The commissioner shall:

(1) Provide an assessment of the West Virginia affordable health care plans and their potential applicability in other settings;

(2) Use West Virginia affordable health care plans to gather more information to evaluate low-income, consumer-driven benefit packages; and

(3) Submit by March 1, 2011, and annually thereafter, a report to the Governor, the President of the Senate and the Speaker of the House of Delegates that provides the information specified in this section and recommendations relating to the successful implementation and administration of the program.


Coverage under a West Virginia affordable health care plan is not an entitlement and a cause of action does not arise against the state, a local government entity, any other political subdivision of the state or any agency for failure to make coverage available to eligible persons under this article.

§33-16F-10. Emergency and legislative rules authorized.

The commissioner may promulgate emergency and legislative rules under the provisions of article three, chapter twenty-nine-a of this code, to prescribe requirements regarding rate making, which may include rules establishing loss ratio standards for the plans; to place limitations on eligibility for coverage under the
approved plans; to establish standards to determine whether a plan qualifies as creditable coverage; to determine what medical treatments, procedures and related health services benefits must be included in the plans; and to provide for any other matters deemed necessary to further the intent of this article.
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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 is approved the 16th Day of April, 2009.

Governor
PRESENTED TO THE GOVERNOR

APR 15 2009

Time 11:50 am