

**Senate Bill No. 309**

(By Senators Foster, Wells and McCabe)

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[Introduced January 27, 2011; referred to the Committee on  
Banking and Insurance; then to the Committee on Health and Human  
Resources; and then to the Committee on Finance.]  
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**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §5-16-27; to amend  
said code by adding thereto a new section, designated §33-15-  
22; and to amend said code by adding thereto a new section,  
designated §33-16-18, all relating to requiring individual and  
group health insurance providers and the West Virginia Public  
Employees Insurance Agency to offer wellness programs with  
incentives for participation.

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

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new section, designated §5-16-27; that said  
code be amended by adding thereto a new section, designated §33-15-  
22; and that said code be amended by adding thereto a new section,  
designated §33-16-18, 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.****§5-16-27. Wellness coverage.**

(a) Notwithstanding any provision in this article to the contrary, a group or individual policy of accident and health insurance or managed care plan amended, delivered, issued, or renewed after the effective date of this act that provides coverage for hospital or medical treatment on an expense incurred basis shall offer a reasonably designed program for wellness coverage that allows for a reward, a contribution, a reduction in premiums or reduced medical, prescription drug, or equipment copayments, coinsurance, or deductibles, or a combination of these incentives, for participation in any health behavior wellness, maintenance, or improvement program approved or offered by the insurer or managed care plan. The insured or enrollee may be required to provide evidence of participation in a program. Individuals unable to participate in these incentives due to an adverse health factor may not be penalized based upon an adverse health status.

(b) For purposes of this section, "wellness coverage" means health care coverage with the primary purpose to engage and motivate the insured or enrollee through: incentives; provision of health education, counseling, and self-management skills; identification of modifiable health risks; and other activities to influence health behavior changes. For purposes of this section, "reasonably designed program" means a program of wellness coverage that has a reasonable chance of improving health or preventing disease; is not overly burdensome; does not discriminate based upon

1 factors of health; and is not otherwise contrary to law.

2 (c) Incentives as outlined in this section are specific and  
3 unique to the offering of wellness coverage and have no application  
4 to any other required or optional health care benefit.

5 (d) Such wellness coverage must satisfy the requirements for  
6 an exception from the general prohibition against discrimination  
7 based on a health factor under the federal Health Insurance  
8 Portability and Accountability Act of 1996 (P.L. 104-191; 110 Stat.  
9 1936), including any federal regulations that are adopted pursuant  
10 to that Act.

11 (e) A plan offering wellness coverage must do the following:

12 (1) Give participants the opportunity to qualify for offered  
13 incentives at least once a year;

14 (2) Allow a reasonable alternative to any individual for whom  
15 it is unreasonably difficult, due to a medical condition, to  
16 satisfy otherwise applicable wellness program standards. Plans may  
17 seek physician verification that health factors make it  
18 unreasonably difficult or medically inadvisable for the participant  
19 to satisfy the standards; and

20 (3) Not provide a total incentive that exceeds twenty percent  
21 of the cost of employee-only coverage. The cost of employee-only  
22 coverage includes both employer and employee contributions. For  
23 plans offering family coverage, the twenty percent limitation  
24 applies to cost of family coverage and applies to the entire  
25 family.

26 **CHAPTER 33. INSURANCE.**

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

1 **§33-15-22. Wellness coverage.**

2 (a) Notwithstanding any provision in this chapter to the  
3 contrary, a group or individual policy of accident and health  
4 insurance or managed care plan amended, delivered, issued, or  
5 renewed after the effective date of this act that provides coverage  
6 for hospital or medical treatment on an expense incurred basis  
7 shall offer a reasonably designed program for wellness coverage  
8 that allows for a reward, a contribution, a reduction in premiums  
9 or reduced medical, prescription drug, or equipment copayments,  
10 coinsurance, or deductibles, or a combination of these incentives,  
11 for participation in any health behavior wellness, maintenance, or  
12 improvement program approved or offered by the insurer or managed  
13 care plan. The insured or enrollee may be required to provide  
14 evidence of participation in a program. Individuals unable to  
15 participate in these incentives due to an adverse health factor  
16 shall not be penalized based upon an adverse health status.

17 (b) For purposes of this section, "wellness coverage" means  
18 health care coverage with the primary purpose to engage and  
19 motivate the insured or enrollee through: incentives; provision of  
20 health education, counseling, and self-management skills;  
21 identification of modifiable health risks; and other activities to  
22 influence health behavior changes. For purposes of this section,  
23 "reasonably designed program" means a program of wellness coverage  
24 that has a reasonable chance of improving health or preventing  
25 disease; is not overly burdensome; does not discriminate based upon  
26 factors of health; and is not otherwise contrary to law.

27 (c) Incentives as outlined in this section are specific and

1 unique to the offering of wellness coverage and have no application  
2 to any other required or optional health care benefit.

3 (d) Such wellness coverage must satisfy the requirements for  
4 an exception from the general prohibition against discrimination  
5 based on a health factor under the federal Health Insurance  
6 Portability and Accountability Act of 1996 (P.L. 104-191; 110 Stat.  
7 1936), including any federal regulations that are adopted pursuant  
8 to that Act.

9 (e) A plan offering wellness coverage must do the following:

10 (1) Give participants the opportunity to qualify for offered  
11 incentives at least once a year;

12 (2) Allow a reasonable alternative to any individual for whom  
13 it is unreasonably difficult, due to a medical condition, to  
14 satisfy otherwise applicable wellness program standards. Plans may  
15 seek physician verification that health factors make it  
16 unreasonably difficult or medically inadvisable for the participant  
17 to satisfy the standards; and

18 (3) Not provide a total incentive that exceeds twenty percent  
19 of the cost of employee-only coverage. The cost of employee-only  
20 coverage includes both employer and employee contributions. For  
21 plans offering family coverage, the twenty percent limitation  
22 applies to cost of family coverage and applies to the entire  
23 family.

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

25 **§33-16-18. Wellness coverage.**

26 (a) Notwithstanding any provision in this chapter to the  
27 contrary, a group or individual policy of accident and health

1 insurance or managed care plan amended, delivered, issued, or  
2 renewed after the effective date of this act that provides coverage  
3 for hospital or medical treatment on an expense incurred basis  
4 shall offer a reasonably designed program for wellness coverage  
5 that allows for a reward, a contribution, a reduction in premiums  
6 or reduced medical, prescription drug, or equipment copayments,  
7 coinsurance, or deductibles, or a combination of these incentives,  
8 for participation in any health behavior wellness, maintenance, or  
9 improvement program approved or offered by the insurer or managed  
10 care plan. The insured or enrollee may be required to provide  
11 evidence of participation in a program. Individuals unable to  
12 participate in these incentives due to an adverse health factor  
13 shall not be penalized based upon an adverse health status.

14 (b) For purposes of this section, "wellness coverage" means  
15 health care coverage with the primary purpose to engage and  
16 motivate the insured or enrollee through: incentives; provision of  
17 health education, counseling, and self-management skills;  
18 identification of modifiable health risks; and other activities to  
19 influence health behavior changes. For purposes of this section,  
20 "reasonably designed program" means a program of wellness coverage  
21 that has a reasonable chance of improving health or preventing  
22 disease; is not overly burdensome; does not discriminate based upon  
23 factors of health; and is not otherwise contrary to law.

24 (c) Incentives as outlined in this section are specific and  
25 unique to the offering of wellness coverage and have no application  
26 to any other required or optional health care benefit.

27 (d) Such wellness coverage must satisfy the requirements for

1 an exception from the general prohibition against discrimination  
2 based on a health factor under the federal Health Insurance  
3 Portability and Accountability Act of 1996 (P.L. 104-191; 110 Stat.  
4 1936), including any federal regulations that are adopted pursuant  
5 to that Act.

6 (e) A plan offering wellness coverage must do the following:

7 (1) Give participants the opportunity to qualify for offered  
8 incentives at least once a year;

9 (2) Allow a reasonable alternative to any individual for whom  
10 it is unreasonably difficult, due to a medical condition, to  
11 satisfy otherwise applicable wellness program standards. Plans may  
12 seek physician verification that health factors make it  
13 unreasonably difficult or medically inadvisable for the participant  
14 to satisfy the standards; and

15 (3) Not provide a total incentive that exceeds twenty percent  
16 of the cost of employee-only coverage. The cost of employee-only  
17 coverage includes both employer and employee contributions. For  
18 plans offering family coverage, the twenty percent limitation  
19 applies to cost of family coverage and applies to the entire  
20 family.

NOTE: The purpose of this bill is to require individual and group health insurance providers and the West Virginia Public Employees Insurance Agency to offer wellness programs with incentives for participation.

§5-16-27, §33-15-22 and §33-16-18 are new; therefore, strike-throughs and underscoring have been omitted.