

1 **Senate Bill No. 408**

2 (By Senators Minard, Foster, Jenkins, Kessler (Acting President),
3 Chafin and Stollings)

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5 [Introduced February 3, 2011; referred to the Committee on Health
6 and Human Resources; and then to the Committee on Finance.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §33-16G-1, §33-16G-2,
13 §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-
14 16G-8, §33-16G-9 and §33-16G-10, all relating to the health
15 benefit exchange; setting forth purpose; defining terms;
16 providing for the establishment of the governing board of
17 directors; setting forth functions of the exchange; outlining
18 the board's duties and authority; authorizing rulemaking,
19 including emergency rulemaking; establishing a special revenue
20 account; and authorizing assessment of fees.

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

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new article, designated §33-16G-1, §33-16G-
24 2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8,

1 §33-16G-9 and §33-16G-10, all to read as follows:

2 **ARTICLE 16G. WEST VIRGINIA HEALTH BENEFIT EXCHANGE ACT.**

3 **§33-16G-1. Title.**

4 This article shall be known and may be cited as the West
5 Virginia Health Benefit Exchange Act.

6 **§33-16G-2. Purpose and intent.**

7 The purpose of this article is to establish a West Virginia
8 Health Benefit Exchange to facilitate the purchase and sale of
9 qualified health plans in the individual market in this state and
10 a Small Business Health Options Program within the exchange to
11 assist qualified small employers in this state in facilitating the
12 enrollment of their employees in qualified health plans.

13 **§33-16G-3. Definitions.**

14 For purposes of this article:

15 (a) "Commissioner" means the West Virginia Insurance
16 Commissioner.

17 (b) "Exchange" means the West Virginia Health Benefit
18 Exchange established pursuant to section four of this article.

19 (c) "Federal Act" means the Federal Patient Protection and
20 Affordable Care Act (Public Law 111-148), as amended by the federal
21 Health Care and Education Reconciliation Act of 2010 (Public Law
22 111-152), and any amendments thereto, or regulations or guidance
23 issued thereunder.

24 (d) "Health benefit plan" includes the same policies described

1 in section one-b, article sixteen of this chapter as the policies
2 to which said article is applicable.

3 (e) "Health carrier" or "carrier" means an entity subject to
4 the insurance laws of this state, or subject to the jurisdiction of
5 the commissioner, that contracts or offers to contract to provide,
6 deliver, arrange for, pay for, or reimburse any of the costs of
7 health care services, including a sickness and accident insurance
8 company, a health maintenance organization, a nonprofit hospital
9 and health service corporation, or any other entity providing a
10 plan of health insurance, health benefits or health services.

11 (f) "Public Health Service Act" or "PHSA" means the provisions
12 of 42 U.S.C. §300g *et seq.*, and any amendments thereto, or
13 regulations or guidance issued thereunder.

14 (g) "Qualified dental plan" means a limited scope dental plan
15 that has been certified in accordance with this article.

16 (h) "Qualified employer" means a small employer that elects to
17 make its full-time employees eligible for one or more qualified
18 health plans offered through the SHOP Exchange, and at the option
19 of the employer, some or all of its part-time employees, provided
20 that the employer:

21 (1) Has its principal place of business in this state and
22 elects to provide coverage through the SHOP Exchange to all of its
23 eligible employees, wherever employed; or

24 (2) Elects to provide coverage through the SHOP Exchange to

1 all of its eligible employees who are principally employed in this
2 state.

3 (i) "Qualified health plan" means a health benefit plan that
4 has in effect a certification that the plan meets the criteria for
5 certification described in this article.

6 (j) "Qualified individual" means a resident of this state or
7 a state that is a party to a regional exchange with West Virginia
8 who is seeking to enroll in a qualified health plan offered to
9 individuals through the exchange, who is not incarcerated due to a
10 conviction, and who is and is reasonably expected to be for the
11 entire period for which enrollment is sought, a citizen or national
12 of the United States or an alien lawfully present in the United
13 States.

14 (k) "Secretary" means the Secretary of the United States
15 Department of Health and Human Services.

16 (l) "SHOP Exchange" means the Small Business Health Options
17 Program established under this article.

18 (m) "Small employer" means an employer that employed an
19 average of not more than fifty employees during the preceding
20 calendar year: *Provided*, That an employer that makes enrollment in
21 qualified health plans available to its employees through the SHOP
22 Exchange and that would cease to be a small employer by reason of
23 an increase in the number of its employees, shall continue to be
24 treated as a small employer for purposes of this article as long as

1 it continuously makes enrollment through the SHOP Exchange
2 available to its employees.

3 **§33-16G-4. Establishment of exchange.**

4 (a) There is hereby established within the offices of the
5 Insurance Commissioner a body corporate and politic to be known as
6 the West Virginia Health Benefit Exchange which is a governmental
7 instrumentality of the state, and the exercise by the board of the
8 powers conferred by this article and the carrying out of its
9 purposes and duties are essential governmental functions and for a
10 public purpose.

11 (b) The exchange shall:

12 (1) Facilitate the purchase and sale of qualified health
13 plans;

14 (2) Provide for the establishment of a SHOP Exchange to assist
15 qualified small employers in this state in facilitating the
16 enrollment of their employees in qualified health plans; and

17 (3) Meet the requirements of this article and any rules
18 adopted hereunder.

19 (c) The exchange may accept gifts, grants and bequests,
20 contract with other persons, and enter into memoranda of
21 understanding with other governmental agencies to carry out any of
22 its functions, including agreements with other states to perform
23 joint administrative functions: *Provided*, That the provisions of
24 article three, chapter five-a of this code relating to the

1 Purchasing Division of the Department of Administration do not
2 apply to these contracts: *Provided, however,* That the exchange may
3 not enter into contracts with any health insurance carrier or an
4 affiliate of a health insurance carrier.

5 (d) The exchange may enter into information-sharing agreements
6 with federal and state agencies and other state exchanges to carry
7 out its responsibilities under this article, provided such
8 agreements include adequate protections with respect to the
9 confidentiality of the information to be shared and comply with all
10 state and federal laws and regulations.

11 (e) (1) The exchange shall operate subject to the supervision
12 and control of the board, which is composed of the following ten
13 persons:

14 (A) Four *ex officio* members who are entitled to vote: The
15 commissioner, who is the board's chairperson; the director of the
16 West Virginia State Medicaid Office; the Director of the West
17 Virginia Children's Health Insurance Program; and the chair of the
18 West Virginia Health Care Authority: *Provided,* That each *ex*
19 *officio* member may designate a representative to serve in his or
20 her place;

21 (B) Four persons appointed by the Governor, each to represent
22 the interests of one of the following groups: Individual health
23 care consumers; small employers; organized labor; and insurance
24 producers or navigators;

1 (C) One person to represent the interests of payers who is
2 selected by majority vote of an advisory group comprising
3 representatives of the ten carriers with the highest health
4 insurance premium volume in this state in the preceding calendar
5 year, as certified by the commissioner: *Provided*, That beginning
6 in 2014, the advisory group shall be comprised only of
7 representatives of those carriers that are offering qualified plans
8 in the exchange regardless of premium volume: *Provided, however*,
9 That the member selected pursuant to this paragraph may not be an
10 employee of a carrier or an affiliate of a carrier eligible to
11 select such member; and

12 (D) One person to represent the interests of health care
13 providers selected by the majority vote of an advisory group
14 comprised of a representative of each of the following: West
15 Virginia Hospital Association, West Virginia State Medical
16 Association, West Virginia Primary Care Association, West Virginia
17 Nurses Association, West Virginia Society of Osteopathic Medicine,
18 West Virginia Academy of Family Physicians, West Virginia
19 Pharmacists Association and West Virginia Dental Association.

20 (E) Selection of board members pursuant to paragraphs (C) and
21 (D) of this subdivision shall be conducted in a manner and at such
22 times designated by the commissioner.

23 (2) (A) Each member appointed pursuant to paragraph (B) of
24 subdivision (1) of this section or selected pursuant to paragraph

1 (C) or (D) of subdivision (1) of this section shall serve a term of
2 two years and is eligible to be reappointed: *Provided*, That any
3 appointed or selected member whose term has expired may continue to
4 serve until either he or she has been reappointed or his or her
5 successor has been duly appointed or selected.

6 (B) Board members may be removed by the Governor for cause.

7 (C) Members of the board are not entitled to compensation for
8 services performed as members but are entitled to reimbursement for
9 all reasonable and necessary expenses actually incurred in the
10 performance of their duties.

11 (3) Seven members of the board constitute a quorum, and the
12 affirmative vote of six members is necessary for any action taken
13 by vote of the board: *Provided*, That no vacancy in the membership
14 of the board impairs the rights of a quorum by such vote to
15 exercise all the rights and perform all the duties of the board.

16 (4) The board may employ an executive director who has overall
17 management responsibility for the exchange and such employees as
18 may be necessary: *Provided*, That the executive director and
19 employees of the exchange are exempt from the classified service
20 and not subject to the procedures and protections provided by
21 article two, chapter six-c of this code and article six, chapter
22 twenty-nine of this code;

23 (f) The board shall make an annual report to the Governor and
24 also file it with the Legislature. The report shall summarize the

1 activities of the exchange in the preceding calendar year.

2 (g) Neither the board nor its employees are liable for any
3 obligations of the exchange. No member of the board or employee of
4 the exchange is liable and no cause of action of any nature may
5 arise against them for any act or omission related to the
6 performance of their powers and duties under this article unless
7 the act or omission constitutes willful or wanton misconduct. The
8 board may provide in its bylaws or rules for indemnification of,
9 and legal representation for, its members and employees.

10 **§33-16G-5. Duties of exchange.**

11 (a) The exchange shall begin to make qualified health plans
12 available to qualified individuals and qualified employers
13 beginning no later than January 1, 2014, and it may not make
14 available any health benefit plan that is not a qualified health
15 plan.

16 (b) The exchange shall, consistent with any applicable
17 guidelines issued by the secretary:

18 (1) Implement procedures for the certification,
19 recertification and decertification of health benefit plans as
20 qualified health plans;

21 (2) Provide for the operation of a toll-free telephone hotline
22 to respond to requests for assistance;

23 (3) Provide for enrollment periods;

24 (4) Maintain an Internet website through which enrollees and

1 prospective enrollees of qualified health plans may obtain
2 standardized comparative information on such plans;

3 (5) Assign a rating to each qualified health plan offered
4 through the exchange in accordance with the criteria developed by
5 the secretary and determine each qualified health plan's level of
6 coverage;

7 (6) Use a standardized format for presenting health benefit
8 options in the exchange;

9 (7) Inform individuals of eligibility requirements for the
10 Medicaid program, the Children's Health Insurance Program or any
11 applicable state or local public program, and provide for the
12 enrollment of any individual determined to be eligible for any such
13 program;

14 (8) Establish and make available by electronic means a
15 calculator to determine the actual cost of coverage after
16 application of any applicable premium tax credit or cost-sharing
17 reduction;

18 (9) Establish a SHOP Exchange through which qualified
19 employers may access coverage for their employees;

20 (10) Grant a certification attesting that an individual is
21 exempt from the individual responsibility requirement or from the
22 penalty imposed by federal law;

23 (11) Transfer to the United States Secretary of the Treasury
24 the name and taxpayer identification number of each individual who:

1 (A) Was issued a certification under subdivision (10) of this
2 subsection;

3 (B) Was an employee who was determined to be eligible for the
4 premium tax credit under section 36B of the Internal Revenue Code
5 but who was determined to be eligible for the premium tax credit
6 under section 36B of the Internal Revenue Code of 1986 because
7 either the employer did not provide minimum essential coverage or
8 the employer provided the minimum essential coverage, but it was
9 determined under section 36B(c) (2) (C) of the Internal Revenue Code
10 to either be unaffordable to the employee or not provide the
11 required minimum actuarial value;

12 (C) Notifies the Exchange that he or she has changed
13 employers; and

14 (D) Ceases coverage under a qualified health plan during a
15 plan year and the effective date of that cessation;

16 (12) Provide to each employer the name of each employee of the
17 employer described in paragraph B, subdivision (11) of this
18 subsection who ceases coverage under a qualified health plan during
19 a plan year and the effective date of the cessation;

20 (13) Perform duties required of the exchange by the Secretary
21 or the Secretary of the Treasury related to determining eligibility
22 for premium tax credits, reduced cost-sharing or individual
23 responsibility requirement exemptions;

24 (14) Select entities qualified to serve as navigators in

1 accordance with the Federal Act and standards developed by the
2 secretary, and award grants to enable navigators to:

3 (A) Educate the public about the availability of qualified
4 health plans and of premium tax credits and cost-sharing
5 reductions;

6 (B) Distribute fair and impartial information concerning
7 enrollment in qualified health plans;

8 (C) Facilitate enrollment in qualified health plans;

9 (D) Provide referrals to the consumer services division of the
10 West Virginia offices of the Insurance Commissioner or any other
11 appropriate state agency for any enrollee with a grievance,
12 complaint or question regarding their health benefit plan, coverage
13 or a determination under that plan or coverage; and

14 (E) Provide information in a manner that is culturally and
15 linguistically appropriate to the needs of the population being
16 served by the exchange;

17 (15) Review the rate of premium growth within the exchange and
18 outside the exchange, and consider the information in developing
19 recommendations on whether to continue limiting qualified employer
20 status to small employers; and

21 (16) Credit the amount of any free choice voucher to the
22 monthly premium of the plan in which a qualified employee is
23 enrolled, in accordance with the federal act, and collect the
24 amount credited from the offering employer; and

1 (17) Consult with stakeholders relevant to carrying out the
2 activities required under this article; and

3 (18) Meet the following financial integrity requirements:

4 (A) Keep an accurate accounting of all activities, receipts
5 and expenditures and annually submit to the secretary, the
6 Governor, the commissioner and the Legislature a report concerning
7 such accountings:

8 (B) Fully cooperate with any investigation conducted by the
9 secretary pursuant to the secretary's authority under the Federal
10 Act and allow the secretary, in coordination with the Inspector
11 General of the United States Department of Health and Humans
12 Services, to:

13 (i) Investigate the affairs of the exchange;

14 (ii) Examine the properties and records of the exchange; and

15 (iii) Require periodic reports in relation to the activities
16 undertaken by the exchange; and

17 (C) In carrying out its activities under this article, not use
18 any funds intended for the administrative and operational expenses
19 of the exchange for staff retreats, promotional giveaways,
20 excessive executive compensation or promotion of federal or state
21 legislative and regulatory modifications.

22 (c) Prior to 2016, the requirements of this section are
23 contingent with the availability of sufficient funding, and in the
24 event of a decrease in anticipated funding from the federal

1 government or other sources, the board may reassess the feasibility
2 of meeting each of the requirements listed in this section and make
3 appropriate adjustments to the functions of the exchange as are
4 deemed necessary.

5 **§33-16G-6. Health benefit plan certification.**

6 (a) The exchange may certify a health benefit plan as a
7 qualified health plan if:

8 (1) The plan provides the essential health benefits package of
9 the federal act;

10 (2) The premium rates and contract language have been approved
11 by the commissioner;

12 (3) The plan provides at least a bronze level of coverage,
13 unless the plan is certified as a qualified catastrophic plan,
14 meets the requirements of the federal act and implementing rules
15 for catastrophic plans, and will only be offered to individuals
16 eligible for catastrophic coverage;

17 (4) The plan's cost-sharing requirements do not exceed the
18 limits established under the federal act, and if the plan is
19 offered through the SHOP Exchange, the plan's deductible does not
20 exceed the limits established under the federal act;

21 (5) The health carrier offering the plan:

22 (A) Is licensed and in good standing to offer health insurance
23 coverage in this state;

24 (B) Offers at least one qualified health plan in the silver

1 level and at least one plan in the gold level through each
2 component of the exchange in which the carrier participates, where
3 "component" refers to the SHOP Exchange and the exchange for
4 individual coverage;

5 (C) Charges the same premium rate for each qualified health
6 plan without regard to whether the plan is offered through the
7 exchange and without regard to whether the plan is offered directly
8 from the carrier or through an insurance producer;

9 (D) Does not charge any cancellation fees or penalties in
10 violation of subsection (c), section five of this article; and

11 (E) Complies with the regulations developed by the secretary
12 under section 1311(d) of the Federal Act, implementing rules and
13 such other requirements as the exchange may establish;

14 (6) The plan meets the requirements of certification as set
15 forth in rule; and

16 (7) The exchange determines that making the plan available
17 through the exchange is in the interest of qualified individuals
18 and qualified employers in this state.

19 (b) The exchange may not exclude a health benefit plan:

20 (1) On the basis that the plan is a fee-for-service plan;

21 (2) Through the imposition of premium price controls by the
22 exchange; or

23 (3) On the basis that the health benefit plan provides
24 treatments necessary to prevent patients' deaths in circumstances

1 the exchange determines are inappropriate or too costly.

2 (c) The exchange shall require each health carrier seeking
3 certification of a plan as a qualified health plan to:

4 (1) Submit a justification for any premium increase before
5 implementation of that increase. The carrier shall prominently
6 post the information on its Internet website. The exchange shall
7 take this information, along with the information and the
8 recommendations provided to the exchange by the commissioner, into
9 consideration when determining whether to allow the carrier to make
10 plans available through the Exchange;

11 (2) Make available to the public and submit to the exchange,
12 the secretary, and the commissioner, accurate and timely disclosure
13 of the following:

14 (i) Claims payment policies and practices;

15 (ii) Periodic financial disclosures;

16 (iii) Data on enrollment;

17 (iv) Data on disenrollment;

18 (v) Data on the number of claims that are denied;

19 (vi) Data on rating practices;

20 (vii) Information on cost-sharing and payments with respect to
21 any out-of-network coverage;

22 (viii) Information on enrollee and participant rights under
23 title I of the Federal Act; and

24 (ix) Other information as determined appropriate by the

1 secretary; and

2 (3) Permit individuals to learn, in a timely manner upon the
3 request, the amount of cost-sharing, including deductibles,
4 copayments, and coinsurance, under the individual's plan or
5 coverage that the individual would be responsible for with respect
6 to the furnishing of a specific item or service by a participating
7 provider. At a minimum, this information shall be made available
8 to the individual through an Internet website and through other
9 means for individuals without access to the Internet.

10 (d) The exchange may not exempt any health carrier seeking
11 certification of a qualified health plan, regardless of the type or
12 size of the carrier, from state licensure or solvency requirements
13 and shall apply the criteria of this section in a manner that
14 assures a level playing field between health carriers participating
15 in the exchange.

16 (e) The provisions of this article that are applicable to
17 qualified health plans also apply to the extent relevant to
18 qualified dental plans as set forth in rule.

19 **§33-16G-7. Funding; publication of costs.**

20 (a) On and after July 1, 2011, the board is authorized to
21 assess fees on health carriers licensed in this state, including
22 health carriers that do not participate in the exchange, and shall
23 establish the amount of such fees and the manner of the remittance
24 and collection of such fees in rule: *Provided*, That such fees

1 shall be based on premium volume of health insurance in this state.

2 (b) The exchange shall publish the average costs of licensing,
3 regulatory fees and any other payments required by the exchange,
4 and the administrative costs of the exchange, on an Internet
5 website to educate consumers on such costs. This information shall
6 include information on moneys lost to waste, fraud and abuse.

7 **§33-16G-8. Rules.**

8 The exchange may promulgate emergency rules and propose
9 legislative rules for adoption by the Legislature pursuant to the
10 provisions of article three, chapter twenty-nine-a of this code to
11 implement the provisions of this article: *Provided*, That rules
12 promulgated under this section may not conflict with or prevent the
13 application of the federal act or regulations promulgated by the
14 secretary under such act.

15 **§33-16G-9. Relation to other laws.**

16 Nothing in this article, and no action taken by the exchange
17 pursuant to this article, preempts or supersedes the authority of
18 the commissioner to regulate the business of insurance within this
19 state and, except as expressly provided to the contrary in this
20 article, all health carriers offering qualified health plans in
21 this state shall comply fully with all applicable health insurance
22 laws of this state and regulations adopted and orders issued by the
23 commissioner.

24 **§33-16G-10. Special revenue account created.**

1 (a) There is hereby created a special revenue account in the
2 State Treasury, designated the "West Virginia Health Benefits
3 Exchange Fund," which shall be an interest-bearing account and may
4 be invested in the manner permitted by article six, chapter twelve
5 of this code, with the interest income a proper credit to the fund,
6 unless otherwise designated in law. The fund shall be administered
7 by the board and used to pay all proper costs incurred in
8 implementing the provisions of this article. Moneys deposited into
9 this account are available for expenditure as the board may direct
10 in accordance with the provisions of this article. Expenditures
11 shall be for the purposes set forth in this article, are authorized
12 from collections and do not revert to the General Fund.

13 (b) The following shall be paid into this account:

14 (1) All funds from the federal government received and
15 dedicated to or otherwise able to be used for the purposes of this
16 article;

17 (2) All other payments, gifts, grants, bequests or income from
18 any source;

19 (3) Fees on health carriers established by the board; and

20 (4) Appropriations from the Legislature.

NOTE: The purpose of this bill is to provide for a health insurance exchange in accordance with the Patient Protection and Affordable Care Act.

This article is new; therefore, underscoring and strike-throughs have been omitted.