Senate Bill No. 518

(By Senators Tucker and Plymale)

[Introduced March 13, 2013; referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.]

A BILL to repeal §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all relating to adverse benefit determinations by insurance companies and managed care organizations; mandating utilization review and internal grievance processes; providing for external review of adverse determinations; defining terms; providing for judicial review of certain decisions; providing that a decision rendered by an independent review organization that is adverse to the issuer is binding on the issuer and not subject to further review; preserving other causes of action; deleting similar provisions applicable to only health maintenance organizations; and directing promulgation of emergency rules and proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all to read as follows:

ARTICLE 16H. REVIEW OF ADVERSE DETERMINATIONS.

§33-16H-1. Definitions.

As used in this article:

(1) "Adverse determination" means a decision by or on behalf of an issuer to:

(A) Rescind coverage; or

(B) Deny, reduce or terminate payment for a benefit, or fail to make payment, in whole or in part, for a benefit, based on a determination that:

(i) The benefit is not covered;

(ii) The benefit is experimental, investigational or does not meet the issuer's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness; or

(iii) The claimant is not eligible to participate in the health benefit plan.

(2) "External review" means a review of an adverse determination by an independent review organization.

(3) “Final adverse determination” means an adverse determination that has been upheld by the issuer at the completion of the internal appeals process or an adverse determination with respect to which the internal appeals process has been deemed exhausted.

(4) "Health plan issuer" or “issuer” means an entity required to be licensed under this chapter that contracts, or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services under a health benefit plan, including an accident and sickness insurance company, a health maintenance corporation, a health care corporation, a health or hospital service corporation, and a fraternal benefit society.

(5) “Health benefit plan" means a policy, contract, certificate or agreement entered into, offered or issued by an issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including short-term and catastrophic health insurance policies and policies that pay on a cost-incurred basis, and excluding policies, contracts, certificates or agreements excluded by rules promulgated pursuant to section four of this article.

(6) "Independent review organization" means an entity approved by the commissioner to conduct external reviews of final adverse determinations.

(7) “Utilization review” means a system for the evaluation of

the necessity, appropriateness and efficiency of the use of health care services, procedure and facilities.

(8) "Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect. The term does not include a cancellation or discontinuation that is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

§33-16H-2. Issuer requirements.

An issuer shall, in accordance with rules promulgated pursuant to section four of this article, develop processes for utilization review and internal appeals and shall make external review available with respect to all adverse determinations.

§33-16H-3. Binding nature of an independent review organization decision; judicial review; enforcement; rules.

(a) To the extent a decision rendered by an independent review organization in accordance with the rules promulgated pursuant to section four of this article is adverse to the issuer, it is binding on the issuer, not subject to further review in any judicial or administrative forum except for fraud on the part of the claimant, and may be enforced by the commissioner in the same manner as a decision issued by the commissioner.

(b) A claimant may seek judicial review of a final decision rendered by an independent review organization by filing a petition, at the election of the petitioner, in either the circuit

court of Kanawha County, or in the circuit court of the county in which the petitioner resides, within thirty days after he or she receives notice of the decision.

(c) This section does not create any new cause of action or eliminate any presently existing cause of action.

§33-16H-4. Rule-making authority; emergency rules; applicability.

(a) The commissioner shall promulgate emergency rules and, in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall propose legislative rules for approval by the Legislature, to implement the provisions of this article, including, but not limited to, rules to:

(1) Define the scope of the applicability of this article;

(2) Establish requirements for all issuers with regard to utilization review and for internal appeals and external review of adverse determinations, which rules shall be based on the corresponding model acts adopted by the National Association of Insurance Commissioners and, with respect to external review, shall meet or exceed the minimum consumer protections established by the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152); and

(3) Provide for judicial review pursuant to subsection (b), section three of this article, which rules shall be based on the provisions of this code and rules governing judicial review of

contested cases under the state administrative procedures act.

(b) Notwithstanding the provisions of section one, article twenty-three of this chapter; section four, article twenty-four of this chapter; section six, article twenty-five of this chapter; and section twenty-four, article twenty-five-a of this chapter, this article and the rules promulgated under this article are applicable to all health benefits plans and supersede any provisions to the contrary in this chapter or in any rules promulgated under this chapter.

NOTE: The purpose of this bill is to authorize the Insurance Commissioner to propose legislative rules and to adopt emergency rules to provide for review of adverse determinations by insurance companies and for utilization review and internal appeals of the determinations.

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