

**H. B. 2216**

(By Delegates Ellington, Householder, Arvon, Cooper, Faircloth, Hill,  
Kurcaba, Overington, Sobonya, Summers and Waxman)

[Introduced January 22, 2015; referred to the

Committee on Health and Human Resources then the Judiciary.]

A BILL to repeal §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7,  
§33-16G-8 and §33-16G-9, of the Code of West Virginia, 1931, as amended; and to amend  
and reenact §33-16G-1, of said code, relating to a state-based health benefit exchange.

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

That §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8,  
and §33-16G-9 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-16G-1  
of said code be amended and reenacted to read as follows:

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

**§33-16G-1. Required legislative action to create a state-based health benefit exchange .**

(a) The following terms mean:

(1) "State-based health benefit exchange" means a governmental agency or nonprofit entity  
established by the State of West Virginia and not the federal government that meets the applicable  
requirements of section 1311 of the federal act and makes qualified health care plans available to  
qualified individuals and qualified employers. It includes regional or other interstate exchanges and

1 subsidiary exchanges as described in section 1311(f)(1) and (2) of the federal act.

2 (2) "Federally-facilitated health benefit exchange" means a health benefit exchange  
3 established and operated by the Secretary of Health and Human Services under section 1321(c)(1)  
4 of the federal act, either directly or through agreement with a not-for-profit entity.

5 (3) "Federal Act" means the Federal Patient Protection and Affordable Care Act (Public Law  
6 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public  
7 Law 111-152), and any amendments thereto, or regulations or guidance issued thereunder.

8 (b) A state-based health benefit exchange may not be established, created, or operated within  
9 this state in order to implement section 1311 of the federal health care act, 42 U.S.C. section 18031,  
10 or any other provision of the federal health care act that relates to the creation and operation of a  
11 state-based health benefit exchange, unless the authority to create or operate such an exchange is  
12 enacted into law through a bill by the West Virginia Legislature.

13 (c) The Governor may not establish, administer, or operate a state-based health benefit  
14 exchange based upon an executive order.

15 (d) A department, agency, instrumentality or political subdivision of the state may not  
16 establish any program, promulgate any rule, policy, guideline or plan or change any program, rule,  
17 policy or guideline to implement, establish, create, administer or otherwise operate a state-based  
18 health benefit exchange described in the federal health care act unless such department, agency,  
19 instrumentality or political subdivision has received statutory authority to do so in a manner  
20 consistent with this section.

21 (e) A department, agency, instrumentality or political subdivision of the State of West  
22 Virginia may not act as an eligible entity as described in section 1311(f)(3)(B) of the federal health

1 care act to perform one or more of the responsibilities of a state-based health benefit exchange unless  
2 authorized by statute or a regulation validly promulgated pursuant to such statute.

3 (f) A department, agency, instrumentality, or political subdivision of this state may not apply  
4 for, accept or expend federal moneys related to the creation, implementation or operation of a state-  
5 based health benefit exchange or a federally-facilitated health benefit exchange unless such  
6 acceptance or expenditure is authorized by statute or an appropriations bill.

7 (g) A department, agency, instrumentality, political subdivision, public officer or employee  
8 of this state may not enter into any agreement or any obligation to establish, administer, or operate  
9 a federally-facilitated health benefit exchange described in section 1321(c)(1) unless such  
10 department, agency, instrumentality, political subdivision, public officer or employee of this state  
11 has received statutory authority to enter into such agreements or obligations.

12 (h) A department, agency, instrumentality, political subdivision, public officer or employee  
13 of this state may not provide assistance or resources of any kind to any department, agency, public  
14 official, employee or agent of the federal government related to the creation or operation of a  
15 federally-facilitated health benefit exchange unless such assistance or resources are authorized by  
16 state statute or such assistance or resources are specifically required by federal law.

NOTE: The purpose of this bill is to authorize only the Legislature to create state based health exchange.

§33-16G-1 has been completely rewritten; therefore, it has been completely underscored.