

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **Senate Bill 256**

BY SENATORS BALDWIN, BEACH, CAPUTO, IHLENFELD,  
JEFFRIES, LINDSAY, PLYMALE, ROMANO, STOLLINGS,  
UNGER, AND WOELFEL

[Introduced February 12, 2021; referred  
to the Committee on Banking and Insurance; and then  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §33-15-1c; and to amend said code by adding thereto a new section,  
 3 designated §33-16-1c, all relating to accident and sickness insurance coverage and group  
 4 accident and sickness insurance coverage; requiring access to coverage of individuals  
 5 with preexisting conditions; specifying acceptable variability in insurance rates; providing  
 6 for new or changed coverage at certain enrollment times; and conditioning the applicability  
 7 of the provisions on federal law.

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

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

### **§33-15-1c. Coverage of individuals with preexisting conditions; rating.**

1 (a) Access to Coverage. — An insurer that offers accident and sickness insurance  
 2 coverage shall accept every individual in this state who applies for coverage, and every group  
 3 health benefit plan shall accept every employer in this state that applies for coverage, regardless  
 4 of whether any individual, or employee, has a preexisting condition. An insurer of accident and  
 5 sickness insurance coverage may restrict enrollment in coverage described in this section to open  
 6 or special enrollment periods pursuant to subsection (c) of this section.

7 (b) Premium Rate Variation. — (1) Accident and sickness coverage offered to the  
 8 individual may vary the premium rates for a specific policy or plan based only on the following  
 9 considerations:

10 (A) Whether the policy or plan covers an individual or a family.

11 (B) Rating area in the state, as established by the commissioner.

12 (C) Age, except that the rate may not vary by more than three to one for adults over the  
 13 age groups and the age bands shall be consistent with recommendations of the National  
 14 Association of Insurance Commissioners.

15 (D) Tobacco use, except that the rate may not vary by more than 1.5 to one.

16 (2) Accident and sickness coverage that is considered a grandfathered health plan under

17 42 U.S.C. §18011 or has transitional status granted by the federal Department of Health and  
18 Human Services and the commissioner is not required to comply with subdivision (1).

19 (c) Enrollment Periods. — (1) The commissioner shall ensure that all individual accident  
20 and sickness coverage has open enrollment during a statewide open enrollment period to allow  
21 individuals, including individuals who do not have coverage, to enroll in coverage.

22 (2) All accident and sickness coverage shall provide special enrollment periods for  
23 qualifying events under 26 U.S.C. §9801(f) and 29 U.S.C. §1163.

24 (d) Preexisting Condition Exclusion. — No claim or loss incurred or disability under  
25 accident and sickness coverage offered in the individual market may be reduced or denied on the  
26 ground that a disease or physical condition existed prior to the effective date of coverage.  
27 Individual accident and sickness coverage may not define a preexisting condition more  
28 restrictively than a condition, whether physical or mental, regardless of the cause of the condition,  
29 for which medical advice, diagnosis, care, or treatment was recommended or received.

30 (e) Applicability. — This section applies only if provisions of the federal Patient Protection  
31 and Affordable Care Act, P.L. 111-148, as amended, under 42 U.S.C. §300gg-1 to §300gg-4 are  
32 no longer enforceable or no longer preempt state law relating to individual accident and sickness  
33 coverage. If this section applies, this section supersedes any conflicting provision of this chapter  
34 or any other conflicting provision of this code.

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

### **§33-16-1c. Coverage of individuals with preexisting conditions.**

1 (a) Access to Coverage. Every insurer who offers group accident and sickness coverage  
2 shall accept every employer in this state that applies for coverage, regardless of whether any  
3 individual or employee has a preexisting condition.

4 (b) Preexisting Condition Exclusion. Group accident and sickness coverage may not  
5 impose a preexisting condition exclusion for any time on a participant or beneficiary under the  
6 coverage.

7           (c) Applicability. This section applies only if provisions of the federal Patient Protection  
8           and Affordable Care Act, P.L. 111-148, as amended, under 42 U.S.C. §300gg-1 to §300gg-4 are  
9           no longer enforceable or no longer preempt state law relating to group accident and sickness  
10           coverage. If this section applies, this section supersedes any conflicting provision of this chapter  
11           or any other conflicting provision of this code.

NOTE: The purpose of this bill is to prohibit health insurers from denying coverage for accident or sickness as a result of a preexisting condition in the requirement and prohibitions of the Affordable Care Act are no longer enforceable or no longer preempt state law.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.