

SB 143 S

FILED

2004 APR 24 10:59

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

Committee Substitute for Committee Substitute for
SENATE BILL NO. 143

(By Senator TAMBLIN, MR. PRESIDENT, AND SPARKS)
By Request of the Executive)

PASSED MARCH 13, 2004

In Effect 90 days from Passage

FILED

2004 APR -2 P 5:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 143

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to repeal §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6, §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10 and §5-16A-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-16D-16, relating to small employer accident and sickness policies and small employer group health benefit plans for uninsured groups.

Be it enacted by the Legislature of West Virginia:

That §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6, §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10 and §5-16A-11 of the code of West Virginia, 1931, as amended, be repealed; and

that said code be amended by adding thereto a new section, designated §33-16D-16, to read as follows:

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-16. Authorization of uninsured small group health benefit plans.

1 (a) Upon filing with and approval by the commissioner,
2 any carrier licensed pursuant to this chapter which
3 accesses a health care provider network to deliver services
4 may offer a health benefit plan and rates associated with
5 the plan to a small employer subject to the conditions of
6 this section and subject to the provisions of this article.
7 The health benefit plan shall be subject to the following
8 conditions:

9 (1) The health benefit plan may be offered by the carrier
10 only to small employers which have not had a health
11 benefit plan covering their employees for at least six
12 consecutive months before the effective date of this
13 section. After the passage of six months from the effective
14 date of this section, the health benefit plan under this
15 section may be offered by carriers only to small employers
16 which have not had a health benefit plan covering their
17 employees for twelve consecutive months;

18 (2) If a small employer covered by a health benefit plan
19 offered pursuant to this section no longer meets the
20 definition of a small employer as a result of an increase in
21 eligible employees, that employer shall remain covered by
22 the health benefit plan until the next annual renewal date;

23 (3) The small employer shall pay at least fifty percent of
24 its employees' premium amount for individual employee
25 coverage;

26 (4) The commissioner shall promulgate emergency rules
27 under the provisions of article three, chapter twenty-nine-
28 a of this code on or before the first day of September, two

29 thousand four, to place additional restrictions upon the
30 eligibility requirements for health benefit plans authorized
31 by this section in order to prevent manipulation of eligibil-
32 ity criteria by small employers and otherwise implement
33 the provisions of this section;

34 (5) Carriers must offer the health benefit plans issued
35 pursuant to this section through one of their existing
36 networks of health care providers;

37 (A) The director of the public employees insurance
38 agency shall, on or before the first day of May, two
39 thousand four, and each year thereafter, by regular mail,
40 provide a written notice to all known in-state health care
41 providers that:

42 (i) Informs the health care provider regarding the
43 provisions of this section; and

44 (ii) Notifies the health care provider that if the health
45 care provider does not give written refusal to the director
46 of the public employees insurance agency within thirty
47 days from receipt of the notice or the health care provider
48 has not previously filed a written notice of refusal to
49 participate, the health care provider must participate with
50 and accept the products and provider reimbursements
51 authorized pursuant to this section;

52 (B) The carrier's network of health care providers, as
53 well as any health care provider which provides health
54 care goods or services to beneficiaries of any departments
55 or divisions of the state, as identified in article twenty-
56 nine-d, chapter sixteen of this code, shall accept the health
57 care provider reimbursement rates set pursuant to this
58 section unless the health care provider gives written
59 refusal to the director of the public employees insurance
60 agency between the first day of May and the first day of
61 June that the provider will not participate in this program
62 for the next calendar year. Notwithstanding any provision
63 of this code to the contrary, health care providers may not
64 be mandated to participate in this program except under

65 the opt-out provisions of subdivision five, subsection (a) of
66 this section and therefore the health care provider shall
67 annually have the ability to file with the director of the
68 public employees insurance agency written notice that the
69 health care provider will not participate with products
70 issued pursuant to this section. Once a health care pro-
71 vider has filed a notice of refusal with the director, the
72 notice shall remain effective until rescinded by the pro-
73 vider and the provider shall not be required to renew the
74 notice each year;

75 (C) The public employees insurance agency is responsible
76 for receiving the responses, if any, from the health care
77 providers that have elected not to participate and for
78 providing a list to the commissioner of those health care
79 providers that have elected not to participate;

80 (D) Those health care providers that do not file a notice
81 of refusal shall be considered to have accepted participa-
82 tion in this program and to accept public employees
83 insurance agency health care provider reimbursement
84 rates for their services as set by this section;

85 (E) Health care provider reimbursement rates used by
86 the carrier for a health benefit plan offered pursuant to
87 this section shall have no effect on provider rates for other
88 products offered by the carrier and most-favored-nation
89 clauses do not apply to the rates;

90 (6) With respect to the health benefit plans authorized by
91 this section, the carrier shall reimburse network health
92 care providers at the same health care provider reimburse-
93 ment rates in effect for the managed care and health
94 maintenance organization plans offered by the West
95 Virginia public employees insurance agency. Beginning in
96 the year two thousand four, and in each year thereafter,
97 the health care provider reimbursement rates set under
98 this section shall not be lowered from the level of the rates
99 in effect on the first day of July of that year for the
100 managed care and health maintenance plans offered by the

101 public employees insurance agency. While it is the intent
102 of this paragraph to govern rates for plans offered pursu-
103 ant to this section for annual periods, this paragraph in no
104 way prevents the public employees insurance agency from
105 making provider reimbursement rate adjustments to
106 public employees insurance agency plans during the course
107 of each year. If there is a dispute regarding the determina-
108 tion of appropriate rates pursuant to this section, the
109 director of the public employees insurance agency shall, in
110 his or her sole discretion, specify the appropriate rate to be
111 applied;

112 (A) The health care provider reimbursement rates as
113 authorized by this section shall be accepted by the health
114 care provider as payment in full for services or products
115 provided to a person covered by a product authorized by
116 this section;

117 (B) Except for the health care provider rates authorized
118 under this section, a carrier's payment methodology,
119 including copayments and deductibles and other condi-
120 tions of coverage, remains unaffected by this section;

121 (C) The provisions of this section do not require the
122 public employees insurance agency to give carriers access
123 to the purchasing networks of the public employees
124 insurance agency. The public employees insurance agency
125 may enter into agreements with carriers offering health
126 benefit plans under this section to permit the carrier, at its
127 election, to participate in drug purchasing arrangements
128 pursuant to article sixteen-c, chapter five of this code,
129 including the multistate drug purchasing program. This
130 paragraph provides authorization of the agreements
131 pursuant to section four, article sixteen-c, chapter five of
132 this code;

133 (7) Carriers may not underwrite products authorized by
134 this section more strictly than other small group policies
135 governed by this article;

136 (8) With respect to health benefit plans authorized by
137 this section, a carrier shall have a minimum anticipated
138 loss ratio of seventy-seven percent to be eligible to make
139 a rate increase request after the first year of providing a
140 health benefit plan under this section;

141 (9) Products authorized under this section are exempt
142 from the premium taxes assessed under sections fourteen
143 and fourteen-a, article three of this chapter;

144 (10) A carrier may elect to nonrenew any health benefit
145 plan to an eligible employer if, at any time, the carrier
146 determines, by applying the same network criteria which
147 it applies to other small employer health benefit plans,
148 that it no longer has an adequate network of health care
149 providers accessible for that eligible small employer. If
150 the carrier makes a determination that an adequate
151 network does not exist, the carrier has no obligation to
152 obtain additional health care providers to establish an
153 adequate network;

154 (11) Upon thirty days' advance notice to the commis-
155 sioner, a carrier may, at any time, elect to nonrenew all
156 health benefit plans issued pursuant to this section. If a
157 carrier nonrenews all its business issued pursuant to this
158 section for any reason other than the adequacy of the
159 provider network, the carrier may not offer this health
160 benefit plan to any eligible small employer for a period of
161 at least two years after the last eligible small employer is
162 nonrenewed; and

163 (12) The insurance commissioner may not approve any
164 health benefit plan issued pursuant to this section until it
165 has obtained any necessary federal governmental authori-
166 zations or waivers. The insurance commissioner shall
167 apply for and obtain all necessary federal authorizations
168 or waivers.

169 (b) Health benefit plans authorized by this section are
170 not intended to violate the prohibition set out in subsec-
171 tion (a), section four of this article.

172 (c) If no carrier has offered a health benefit plan under
173 this section by the first day of July, two thousand five,
174 except for failure to obtain a federal authorization or
175 waiver pursuant to subdivision (12), subsection (a) of this
176 section, the director of the public employees insurance
177 agency and the insurance commissioner may, if they agree,
178 jointly develop a proposed program for consideration by
179 the Legislature for the public employees insurance agency
180 to offer small group health plans to uninsured small
181 employer groups. The proposed program shall not be
182 acted upon by the public employees insurance agency until
183 the Legislature approves the program.

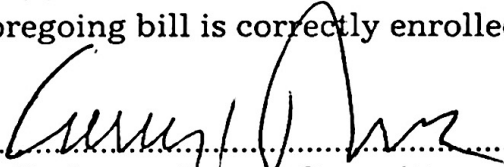
184 (d) If no carrier or the public employees insurance
185 agency has offered a health benefit plan pursuant to this
186 section within three years from the effective date of this
187 section, the provisions of this section expire and become
188 null and void.

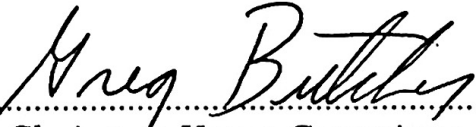
189 (e) The commissioner shall appoint a policy advisory
190 committee to provide advice to the commissioner regard-
191 ing providing health insurance to uninsureds and to
192 monitor the effectiveness of this section. The committee
193 shall contain members the commissioner considers appro-
194 priate, but shall have members representing at least the
195 following interest groups: Labor, hospital providers,
196 physician providers, private business, local government,
197 insurance carriers and the uninsured.

198 (f) Carriers offering health benefit plans pursuant to this
199 section shall annually or before the first day of December
200 of each year report in a form acceptable to the commis-
201 sioner the number of health benefit plans written by the
202 carrier and the number of individuals covered under the
203 health benefit plans.

204 (g) To the extent that provisions of this section differ
205 from those contained elsewhere in this chapter, the
206 provisions of this section control.

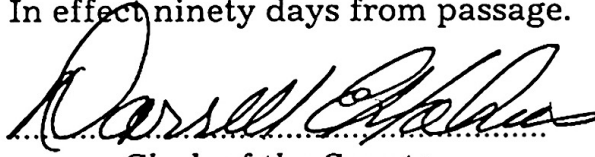
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

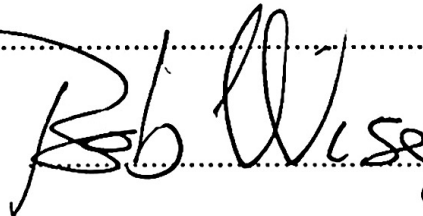

.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is appended this the 2nd
Day of April, 2004.


.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3/25/04

TIME 10:10am