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**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 552**

*(By Senators Minard and Kessler)*

[Passed April 11, 2009; in effect from passage.]

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AN ACT to repeal §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-16-3t; to amend and reenact §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code; and to amend said code by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all relating to health insurance; providing a special enrollment period for continued employee group accident and sickness insurance coverage for certain involuntarily terminated employees and their dependents; providing legislative findings; defining terms; mandating notice to individuals eligible for coverage; providing for a disregard of certain periods for purposes of calculating creditable coverage; establishing a program to provide affordable health care insurance coverage; requiring the Insurance Commissioner to invite

carriers and other entities to submit proposals for affordable health insurance plans; defining terms; specifying that plans do not create an entitlement; establishing eligibility and standards for such plans; providing for evaluation of the plans and reports to the Legislature; providing for continuation of existing limited benefit plans; and authorizing emergency and legislative rules.

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

That §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-16-3t; that §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-16F-9 and §33-16F-10, all to read as follows:

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

**§33-16-3t. Special enrollment period under the American Recovery and Reinvestment Act of 2009.**

1 (a) The Legislature finds that recent attempts to assist  
2 unemployed persons during the economic downturn  
3 beginning at the end of 2008 included a federal initiative  
4 to provide subsidies to certain persons who have lost their  
5 employer-sponsored health insurance coverage. As part of  
6 the American Recovery and Reinvestment Act of 2009,  
7 certain involuntarily terminated employees and their  
8 dependents were given a second opportunity to elect  
9 subsidized COBRA coverage. This federal initiative also  
10 included relief to certain persons not covered by the  
11 federal COBRA laws, but access to such relief was made  
12 dependent on the states acting to require that such persons  
13 be given notice of their right to elect such coverage.  
14 Therefore, the Legislature intends that this section be

15 interpreted in such a manner as to maximize the opportu-  
16 nity of West Virginians to obtain these much needed  
17 subsidies.

18 (b) *Definitions.* – As used in this section:

19 (1) “Assistance eligible individual” means any qualified  
20 beneficiary who was eligible for continuation coverage  
21 between September 1, 2008, and February 17, 2009, due to  
22 a covered employee’s termination from employment  
23 during this period and who elected such coverage.

24 (2) “Continuation coverage” means accident and  
25 sickness insurance coverage offered to persons pursuant to  
26 policy provisions required by subsection (e), section three  
27 of this article.

28 (3) “Covered employee” means a person who was  
29 involuntarily terminated by a small employer between  
30 September 1, 2008, and February 16, 2009, and at the time  
31 of his or her termination either: (i) Was eligible for but did  
32 not elect to enroll in continuation coverage; or (ii) enrolled  
33 but subsequently discontinued enrollment in continuation  
34 coverage.

35 (4) “Qualified beneficiary” has the same meaning as  
36 that term is defined in §607(3) of the Employee Retirement  
37 Income Security Act of 1974, 29 U. S. C. §1167(3).

38 (5) “Small employer” means any employer that had  
39 fewer than twenty (20) employees during fifty percent  
40 (50%) or more of its typical business days in the previous  
41 calendar year.

42 (c) An individual who does not have an election of  
43 continuation coverage in effect on February 17, 2009, but  
44 who would be an assistance eligible individual if such  
45 election were in effect, may elect continuation coverage  
46 pursuant to this section. Such election shall be made no  
47 later than sixty days after the date the administrator of

48 the group health plan (or other entity involved) provides  
49 the notice required by Section 3001(a)(7) of the American  
50 Recovery and Reinvestment Act of 2009. The administra-  
51 tor of the group health plan (or other entity involved) shall  
52 provide such individuals with additional notice of the  
53 right to elect coverage pursuant to this subsection prior to  
54 April 18, 2009.

55 (d) Continuation coverage elected pursuant to subsec-  
56 tion (c) of this section shall commence with the first period  
57 of coverage beginning on or after February 17, 2009:  
58 *Provided*, That continuation coverage elected pursuant to  
59 this subsection shall not extend beyond the maximum  
60 eighteen-month period provided for by subsection (e),  
61 section three of this article.

62 (e) With respect to an individual who elects continua-  
63 tion coverage pursuant to subsection (b) of this section, the  
64 period beginning on the date of the involuntary termina-  
65 tion and ending on the date of the first period of coverage  
66 on or after February 17, 2009, shall be disregarded for  
67 purposes of determining the sixty-three day period  
68 referred to in subsection (b), section three-m of this article.

**ARTICLE 16F. WEST VIRGINIA AFFORDABLE HEALTH CARE PLAN.**

**§33-16F-1. Legislative intent.**

1 The Legislature finds that the inability of a significant  
2 number of state residents to obtain affordable health  
3 insurance coverage adversely affects everyone in our state.  
4 Therefore, it is the intent of the Legislature to expand the  
5 availability of health care options for uninsured residents  
6 by developing affordable health care products that  
7 emphasize coverage for basic and preventive health care  
8 services, provide inpatient hospital and emergency care  
9 services and offer optional catastrophic coverage.

**§33-16F-2. Definitions.**

1 As used in this article:

2 “West Virginia affordable health care plan” means a  
3 health insurance plan approved under this article.

4 “West Virginia affordable health care plan entity” or  
5 “plan entity” means an entity licensed under this chapter  
6 that develops and proposes a West Virginia affordable  
7 health care plan and, if the plan is approved, is responsible  
8 for administering the plan and paying claims of plan  
9 enrollees.

10 “Enrollee” means an individual who has been deter-  
11 mined to be eligible for and is receiving health insurance  
12 coverage under a West Virginia affordable health care  
13 plan.

**§33-16F-3. Plan proposals; approval of plans.**

1 (a) The commissioner shall announce, no later than July  
2 1, 2009, an invitation to prospective West Virginia afford-  
3 able health care plan entities to submit West Virginia  
4 affordable health care plan proposals. The invitation shall  
5 include guidelines for the review of West Virginia afford-  
6 able health care plan applications, policies and associated  
7 rates.

8 (b) In reviewing proposals under this article, the  
9 commissioner shall consider the proposed plans’ effective-  
10 ness in improving the health status of individuals, their  
11 impact on maintaining and improving health and their  
12 potential to reduce the unnecessary consumption of health  
13 care services.

**§33-16F-4. Required plan provisions; grounds for disapproval;  
alternative plans.**

1 (a) To be approved, plan entities must assure that each  
2 proposed plan will provide cost containment through the

3 use of plan design features such as limits on the number of  
4 services, caps on benefit payments or copayments for  
5 services.

6 (b) To provide consumer choice, plan entities must  
7 develop and submit two alternative benefit option plans  
8 having different cost and benefit levels, including at least  
9 one plan that provides catastrophic coverage. Plans  
10 providing catastrophic coverage must, at a minimum,  
11 provide coverage for preventive health services and  
12 inpatient hospital stays and may also include coverage of  
13 one or more of the following: Hospital emergency care  
14 services and outpatient facility services; outpatient  
15 surgery; or outpatient diagnostic services.

16 (c) All plans must offer prescription drug benefit  
17 coverage.

18 (d) Plan enrollment materials must provide information  
19 in plain language on policy benefit coverage, benefit  
20 limits, cost-sharing requirements, exclusions and a clear  
21 representation of what is not covered in the plan. The  
22 enrollment materials must include a standard disclosure  
23 form developed by the commissioner that must be re-  
24 viewed and executed by all consumers purchasing West  
25 Virginia affordable health care plan coverage.

26 (e) The commissioner shall disapprove any plan that:

27 (1) Contains any ambiguous, inconsistent or misleading  
28 provisions or any exceptions or conditions that deceptively  
29 affect or limit the benefits purported to be assumed in the  
30 general coverage provided by the plan;

31 (2) Provides benefits that are unreasonable in relation  
32 to the premium charged; or

33 (3) Contains provisions that are unfair or inequitable,  
34 contrary to the public policy of this state, encourage  
35 misrepresentation or result in unfair discrimination in  
36 sales practices.

**§33-16F-5. Eligibility of individuals and groups.**

1 (a) *Individuals.* – Eligibility to enroll in an individual  
2 West Virginia affordable health care plan is limited to any  
3 resident of this state who:

4 (1) Is not covered by a private insurance policy and is  
5 not eligible for coverage under an employer-sponsored  
6 group plan or through a public health insurance program,  
7 such as Medicare, Medicaid or the state Children’s Health  
8 Insurance Program; and

9 (2) Has not been covered by any health insurance  
10 program at any time during the past six months, unless  
11 coverage under a health insurance program was termi-  
12 nated within the previous six months due to loss of a job  
13 that provided an employer-sponsored health benefit plan  
14 or death of, or divorce from, a spouse who was provided an  
15 employer-sponsored health benefit plan or, with respect to  
16 a public health insurance program, eligibility for such  
17 program was lost due to an inability to meet income or  
18 categorical requirements: *Provided,* That an individual  
19 may not be excluded from enrollment in a West Virginia  
20 affordable health care plan on the ground that he or she is  
21 eligible for or is enrolled in a COBRA plan.

22 (b) *Group.* – An otherwise eligible group may not  
23 obtain coverage under a West Virginia affordable health  
24 care plan unless the group has not had coverage under any  
25 health insurance plan at any time during the previous six  
26 months.

**§33-16F-6. Regulation and marketing of plans.**

1 (a) The commissioner shall issue guidelines to ensure  
2 that West Virginia affordable health care plans meet  
3 minimum standards for quality of and access to care.

4 (b) Initial filings and changes in West Virginia afford-  
5 able health care plan benefits, premiums and policy forms  
6 are subject to regulatory oversight by the commissioner.



7 (c) The commissioner shall develop a public awareness  
8 program to be implemented throughout the state for the  
9 promotion of the plans approved under this article, which  
10 may include assistance from state health insurance  
11 benefits advisors.

12 (d) Each West Virginia affordable health care plan must  
13 maintain enrollment data and provide network data and  
14 reasonable records to enable the commissioner to assess  
15 the plans.

**§33-16F-7. Applicability of certain provisions; commissioner's  
authority to forbear from applying certain  
provisions.**

1 (a) *Individual plans.* – Only the following provisions of  
2 article fifteen of this chapter apply to West Virginia  
3 entities offering individual plans pursuant to this article:  
4 Sections two-a, two-d, two-e, three, four, four-c, four-e,  
5 four-f, four-g, five, six, seven, eight, nine, thirteen, four-  
6 teen, sixteen, seventeen, eighteen, nineteen and twenty.  
7 Notwithstanding any other provision of this code, the  
8 provisions of article twenty-eight of this chapter and  
9 legislative rules regulating individual accident and  
10 sickness policies, including the rule contained in series 12,  
11 title 114 of the West Virginia Code of State Rules, do not  
12 apply to individual plans issued pursuant to this article  
13 unless and to the extent specifically incorporated in rules  
14 promulgated pursuant to the authority conferred by  
15 section eleven of this article.

16 (b) *Group plans.* – Only the following provisions of  
17 article sixteen of this chapter apply to insurers offering  
18 group plans pursuant to this article: Sections one-a, three,  
19 three-g, three-j, three-k, three-l, three-m, three-n, three-o,  
20 three-p, four, five, six, seven, nine, ten, eleven, twelve,  
21 thirteen, fourteen and fifteen; all other provisions of  
22 article sixteen do not apply to group plans approved  
23 pursuant to this article unless and to the extent the

24 provisions are specifically incorporated in rules promul-  
25 gated by the commissioner. Notwithstanding any other  
26 provision of this code or of the code of state rules, the  
27 provisions of article sixteen-e of this chapter and of  
28 legislative rules regulating group accident and sickness  
29 policies, including the rule set forth in series 39, title 114  
30 of the West Virginia Code of State Rules, do not apply to  
31 group plans approved pursuant to this article unless and  
32 to the extent specifically incorporated in rules promul-  
33 gated by the commissioner pursuant to the authority  
34 conferred by section eleven of this article.

35 (c) *Small group plans.* – With respect to any group plan  
36 approved under this article and offered to any “small  
37 employer”, as that term is defined in section two, article  
38 sixteen-d of this chapter, the following provisions of  
39 article sixteen-d apply: Sections two, four, seven, eight,  
40 twelve, thirteen and fourteen: *Provided*, That only the  
41 sentence preceding the proviso in section thirteen, article  
42 sixteen-d of this chapter applies to small employer plans  
43 approved pursuant to this article. Notwithstanding any  
44 other provision of this code, all other provisions of article  
45 sixteen-d of this chapter do not apply to small employer  
46 plans approved pursuant to this article unless and to the  
47 extent such provisions are specifically incorporated in  
48 rules promulgated by the commissioner.

49 (d) *Forbearance by the commissioner.* – The commis-  
50 sioner may forbear from applying any other statutory or  
51 regulatory requirements to an insurer offering an individ-  
52 ual or group plan approved pursuant to this article,  
53 including any requirements in articles twenty-four and  
54 twenty-five-a of this chapter, if he or she determines that  
55 such forbearance serves the principles set forth in section  
56 one of this article.

57 (e) *Existing limited benefit plans.* – Plans approved  
58 pursuant to the provisions of article fifteen-d of this  
59 chapter, as that article existed prior to its repeal during

60 the 2009 regular legislative session, and this article, as that  
61 it existed prior to its amendment and reenactment during  
62 the 2009 regular legislative session, remain in effect and  
63 are subject to those provisions.

**§33-16F-8. Assessment of the West Virginia program.**

1 The commissioner shall:

2 (1) Provide an assessment of the West Virginia afford-  
3 able health care plans and their potential applicability in  
4 other settings;

5 (2) Use West Virginia affordable health care plans to  
6 gather more information to evaluate low-income,  
7 consumer-driven benefit packages; and

8 (3) Submit by March 1, 2011, and annually thereafter,  
9 a report to the Governor, the President of the Senate and  
10 the Speaker of the House of Delegates that provides the  
11 information specified in this section and recommendations  
12 relating to the successful implementation and administra-  
13 tion of the program.

**§33-16F-9. Nonentitlement.**

1 Coverage under a West Virginia affordable health care  
2 plan is not an entitlement and a cause of action does not  
3 arise against the state, a local government entity, any  
4 other political subdivision of the state or any agency for  
5 failure to make coverage available to eligible persons  
6 under this article.

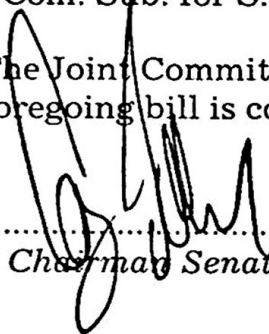
**§33-16F-10. Emergency and legislative rules authorized.**

1 The commissioner may promulgate emergency and  
2 legislative rules under the provisions of article three,  
3 chapter twenty-nine-a of this code, to prescribe require-  
4 ments regarding rate making, which may include rules  
5 establishing loss ratio standards for the plans; to place  
6 limitations on eligibility for coverage under the

7 approved plans; to establish standards to determine  
8 whether a plan qualifies as creditable coverage; to deter-  
9 mine what medical treatments, procedures and related  
10 health services benefits must be included in the plans; and  
11 to provide for any other matters deemed necessary to  
12 further the intent of this article.

Enr. Com. Sub. for S. B. No. 552] 12

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

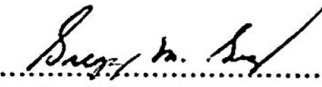
  
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Chairman Senate Committee

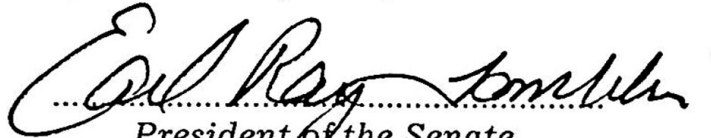
  
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Chairman House Committee

Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 16<sup>th</sup>  
Day of April....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 15 2009

Time 11:50 am