



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

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3 of the Code of West Virginia, 1931, as amended, be repealed; and  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

7 **ARTICLE 16I. REVIEW OF ADVERSE DETERMINATIONS.**

8 **§33-16I-1. Definitions.**

9       As used in this article:

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

12       (A) Rescind coverage;

13       (B) Declare an individual not eligible to participate in the  
14 health benefit plan; or

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

18       (i) The benefit is not covered; or

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

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

1           (3) "Final adverse determination" means an adverse  
2 determination that has been upheld by the issuer at the completion  
3 of the internal grievance procedures or an adverse determination  
4 with respect to which the internal grievance procedures have been  
5 deemed exhausted.

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

13           (5) "Health benefit plan" means a policy, contract,  
14 certificate or agreement entered into, offered or issued by an  
15 issuer to provide, deliver, arrange for, pay for, or reimburse any  
16 of the costs of health care services, including short-term and  
17 catastrophic health insurance policies and policies that pay on a  
18 cost-incurred basis. "Health benefit plan" excludes policies,  
19 contracts, certificates or agreements excluded by rules promulgated  
20 pursuant to section four of this article and it excludes excepted  
21 benefits as defined by 42 U.S.C. §300gg-91.

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

1           (7) "Utilization review" means a system for the evaluation of  
2 the necessity, appropriateness and efficiency of the use of health  
3 care services, procedure and facilities.

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

9 **§33-16I-2. Issuer requirements.**

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

14 **§33-16I-3. Binding nature of an independent review organization  
15                                    decision; judicial review; enforcement; rules.**

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

23           (b) An individual may seek judicial review of a final decision  
24 rendered by an independent review organization by filing a

1 petition, at the election of the petitioner, in either the circuit  
2 court of Kanawha County, or in the circuit court of the county in  
3 which the petitioner resides, within sixty days after he or she  
4 receives notice of the decision.

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

7 **§33-16I-4. Rule-making authority; emergency rules; applicability.**

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

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

14 (2) Establish requirements for all issuers with regard to  
15 utilization review and for internal grievance procedures and  
16 external review of adverse determinations, which rules shall be  
17 based on the corresponding model acts adopted by the National  
18 Association of Insurance Commissioners and, with respect to  
19 external review, shall meet or exceed the minimum consumer  
20 protections established by the federal Patient Protection and  
21 Affordable Care Act (Public Law 111-148), as amended by the federal  
22 Health Care and Education Reconciliation Act of 2010 (Public Law  
23 111-152); and

24 (3) Provide for judicial review pursuant to subsection (b),

1 section three of this article, which rules shall be based on the  
2 provisions of this code and rules governing judicial review of  
3 contested cases under the state Administrative Procedures Act.

4 (b) Notwithstanding the provisions of section one, article  
5 twenty-three of this chapter; section four, article twenty-four of  
6 this chapter; section six, article twenty-five of this chapter; and  
7 section twenty-four, article twenty-five-a of this chapter, this  
8 article and the rules promulgated under this article are applicable  
9 to all health benefits plans and supersede any provisions to the  
10 contrary in this chapter or in any rules promulgated under this  
11 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 reviews and internal grievance  
procedures.

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