WEST virginia legislature

2021 regular session

Introduced

Senate Bill 249

By Senator Maynard

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

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, and §33-15D-6, all relating to creating the Health Care Choice Act; stating legislative findings and purpose; and authorizing insurers from other states to engage in the business of health insurance in West Virginia only with the written approval of the Insurance Commissioner and subject to qualifications and other requirements determined by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15D. HEALTH CARE CHOICE ACT.

§33-15D-1. Legislative findings and purpose.

(a) The Legislature recognizes the need for purchasers of health insurance coverage in this state to have the opportunity to choose health insurance plans that are more affordable and flexible than existing market policies offering accident and health coverage. Therefore, the Legislature seeks to increase the availability of health insurance coverage by allowing insurers authorized to engage in the business of insurance in other states, but not authorized in West Virginia, to issue accident and health policies in West Virginia by granting a limited exemption to provisions of this chapter. Insurers authorized to engage in the business of insurance in other states, but not authorized in West Virginia, shall be subject to the requirements set out in this article in order to be able to obtain an exemption to provisions of this chapter and to issue accident and health policies in West Virginia through agents licensed in the state.

(b) This article shall be known as and may be cited as the “Health Care Choice Act”.

§33-15D-2. Out-of-state insurer required to have approval of Insurance Commissioner.

(a) No insurer authorized to engage in the business of insurance in other states that is not licensed in West Virginia may issue an accident or a health policy pursuant to this section unless it is approved to do so, in writing, by the Insurance Commissioner.

(b) An insurer seeking to obtain the written approval described in subsection (a) of this section shall request approval in the manner required by the Insurance Commissioner, and shall pay any and all fees associated with the application as may be required by the Insurance Commissioner.

(c) In order to first be considered for the written approval from the Insurance Commissioner, an insurer shall be domiciled in a state which has a legislatively approved compact with the State of West Virginia.

(d) Pursuant to the provisions of this article, all approved insurers domiciled in a compacting state selling health and accident insurance policies in West Virginia shall:

(1) Offer accident and health insurance policies that contain all mandated health benefits that are required by West Virginia law to be included in accident or health insurance policies and Health Maintenance Organization (HMO) policies issued in the state and shall comply with all other applicable laws pertaining to coverage and coverage decisions;

(2) Keep a full and true record of each insurance policy issued to an insured in this state by or on behalf of the insurer, containing such information as may be required by the Insurance Commissioner, which record may be examined at any time within three years after issuance by the commissioner;

(3) File with the Insurance Commissioner, on or before April 1 of each year, a verified statement of all insurance transacted by the insurer during the preceding calendar year in West Virginia. The statement shall be on a form prescribed and furnished by the commissioner and contain such information as required by the commissioner;

(4) Issue an insurance policy in this state pursuant to this section through an insurance agent or other person or entity that is licensed in this state, as well as in a state in which the insurer is licensed, to engage in the sale, solicitation or negotiation of accident and/or health insurance in this state, and that is appointed by the insurer for that purpose;

(5) Appoint one or more third-party administrators that are licensed in this state, and that have licensed adjusters in this state, that shall be responsible for administering claims under the insurance policies issued by the insurer in this state and be available to answer any questions from insureds under the insurance policies issued by the insurer in this state; and

(6) Submit to the jurisdiction of this state and be subject to service of legal process within this state in any action or proceeding against the insurer arising out of any insurance policy issued to an insured policyholder in this state and the Insurance Commissioner is appointed as its exclusive agent to receive service of legal process.

§33-15D-3. Procedure and requirements for issuance of accident and health insurance policies.

The Insurance Commissioner may only grant the written approval described in §33-15D-2 of this code to an insurer that:

(1) Is properly licensed and has met the requirements for solvency in its domiciliary state to issue accident and health insurance policies;

(2) Has met the requirements for market conduct applicable to insurers domiciled in West Virginia authorized to issue accident and health insurance policies in the state set forth in Chapter 33 of this code; and

(3) Has submitted the policy form that it will issue to insureds in this state for a determination by the Insurance Commissioner that the policy form is in compliance with all laws, rules and regulations in this state applicable to health insurance policies.

§33-15D-4. Authority and duties of Insurance Commissioner and domiciliary state.

(a) The Insurance Commissioner shall obtain verification in writing by the regulating authority of the domiciliary state, certifying that the insurer has met the financial solvency requirements of the insurer’s domiciliary state. No insurer domiciled in a compacting state may be approved to sell health and accident insurance policies in West Virginia without this verification.

(b) The commissioner may require an insurer to reapply for the written approval required by this article on an annual basis, or as often as the commissioner considers prudent. Reapplication shall be in the form and manner required by the commissioner.

(c) The commissioner may, as a condition to providing an insurer with the written approval described in this article, impose on the insurer any additional requirement that the commissioner considers necessary.

(d) The commissioner may negotiate one or more compacts with other states to allow insurers domiciled in such compacting state that obtain the written approval from the commissioner to sell policies of accident and health insurance in this state. These compacts shall provide for appropriate protection of West Virginia consumers by requiring the commissioner to regulate the compliance to West Virginia laws, rules and regulations, and market conduct of the insurers pursuant to compact provisions. The terms of any such compact shall be presumed a valid exercise of the discretionary authority of the commissioner. The compact shall be required to be approved by the Legislature and shall be limited to such provisions as may be necessary for approval of a compact.

(e) The commissioner may require every approved insurer to submit to a market conduct examination. Any examination by the commissioner of the regulatory compliance or market conduct of any insurer domiciled in a compacting state seeking to offer health benefit plans in this state, or who has been given approval to offer health benefit plans in this state, shall be conducted in the same manner and under the same terms and conditions as examinations of companies located in this state.

(f) An insurer domiciled in a compacting state shall provide West Virginia state-mandated health benefits and to comply with all other applicable laws that apply to West Virginia accident and health insurers including coverage of services and coverage decisions.

(g) All approved insurers domiciled in a compacting state selling health and accident insurance policies in West Virginia shall comply all of the laws, rules and statutes of West Virginia relating to health and accident insurance policies.

§33-15D-5. Policy requirement issued by compacting state.

(a) Each written application for purchase of a policy offered by an insurer domiciled in a compacting state pursuant to this article shall contain the following language in boldface type at the beginning of the document:

(1) This policy may be subject, in part, to the laws of (insert state where the master policy is filed); in particular, all of the premium rating laws applicable to policies filed in West Virginia do not apply to this policy. This may result in increases in your premium at renewal that would not be permissible in a policy that was issued by a West Virginia domestic insurer. For information concerning health insurance coverage under a policy issued by a West Virginia insurer, please consult your insurance agent or the Insurance Commissioner of West Virginia.

(2) Each policy issued pursuant to this article by an insurer domiciled in a compacting state shall contain the following language in boldface type at the beginning of the document:

The benefits provided under this policy may be affected, in part, by the laws of a state other than West Virginia; however, they must include the West Virginia state-mandated benefits, including coverage of services, and coverage decisions, and must comply with all other applicable West Virginia and federal laws. Please consult with your insurance agent to determine which health benefits are included or excluded under this policy.

(b) Approved insurers domiciled in a compacting state selling health and accident insurance policies in West Virginia are subject to payment of any applicable premium taxes pursuant to this code.

(c) Approved insurers domiciled in a compacting state selling health and accident insurance policies in West Virginia shall participate on a nondiscriminatory basis.

(d) Approved insurers domiciled in a compacting state selling health and accident insurance policies in West Virginia shall participate on a nondiscriminatory basis and in the same manner as admitted participating insurers in any existing or future Health Insurance High Risk Pool created by or for the State of West Virginia.

§33-15D-6. Insurance Commissioner to propose rules.

The Insurance Commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code necessary for the administration and implementation of the Health Care Choice Act, which rules shall specify how the requirements set forth in this article shall be implemented.

NOTE: The purpose of this bill is to create the Health Care Choice Act authorizing insurers from other states to engage in the business of health insurance in West Virginia with the written approval of the Insurance Commissioner and subject to qualifications and other requirements determined by the Insurance Commissioner.

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