

# **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]

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

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

11 (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.**

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

4 (b) An insurer seeking to obtain the written approval described in subsection (a) of this  
5 section shall request approval in the manner required by the Insurance Commissioner, and shall

6 pay any and all fees associated with the application as may be required by the Insurance  
7 Commissioner.

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

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

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

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

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

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

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

32 from insureds under the insurance policies issued by the insurer in this state; and

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

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

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

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

5 (2) Has met the requirements for market conduct applicable to insurers domiciled in West  
 6 Virginia authorized to issue accident and health insurance policies in the state set forth in Chapter  
 7 33 of this code; and

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

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

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

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

8 (c) The commissioner may, as a condition to providing an insurer with the written approval

9 described in this article, impose on the insurer any additional requirement that the commissioner  
10 considers necessary.

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

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

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

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

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

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

3 the beginning of the document:

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

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

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

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

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

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

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

1 The Insurance Commissioner shall propose rules for legislative approval in accordance  
2 with §29A-3-1 et seq. of this code necessary for the administration and implementation of the

- 3 Health Care Choice Act, which rules shall specify how the requirements set forth in this article
- 4 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.