

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5244**

By Delegate Young

[Introduced January 26, 2024; Referred to the  
Committee on Banking and Insurance then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §5-16E-1, §5-16E-2, §5-16E-3, §5-16E-4, §5-16E-5, §5-16E-6, §5-16E-7, §5-  
 3 16E-8, §5-16E-9, §5-16E-10, §5-16E-11, §5-16E-12, §5-16E-13, §5-16E-14, §5-16E-15,  
 4 and §5-16E-16, all relating to establishing a state-sponsored portable insurance benefit  
 5 plan, providing definitions, and provides for administration and assignment of benefits.

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

**ARTICLE 16E. WEST VIRGINIA PORTABLE INSURANCE BENEFIT PLAN.**

**§5-16E-1. Short title; legislative intent.**

1 The short title by which this article may be referred to is "West Virginia Portable Insurance  
 2 Benefit Plan" and it is the express intent of the Legislature to encourage and promote a uniform  
 3 partnership relation between all hiring parties and independent contractors participating in the  
 4 insurance plan or plans formulated under the provisions of this article and constituting the  
 5 insurance program, and to hereby declare such insurance program to be for a public purpose.

**§5-16E-2. Definitions.**

1 As used in this chapter:

2 (a) "Director" means the Director of the West Virginia Portable Insurance Benefit Plan  
 3 created by this article.

4 (b) "Hiring party" means a person who hires or enters into a contract with an independent  
 5 contractor.

6 (c) "Independent contractor" means the same as that term is defined in §21-51-4.

7 (d) "Portable benefit plan" means:

8 (1) An insurance product regulated by the Insurance Commissioner of West Virginia under  
 9 §33-1-1, et seq.; and

10 (2) Is assigned to an individual beneficiary and is not associated with a specific hiring party  
 11 or hiring party.

**§5-16E-3. Administration -- Assignment of benefits -- Portability.**

1 (a) The State of West Virginia, through the West Virginia Portable Insurance Benefit Plan,  
2 shall offer portable insurance benefit plans for residents of this state.

3 (b) Contributions by a hiring party to a portable benefit plan:

4 (1) Shall be voluntary; and

5 (2) May not be used as a criterion for determining a person's employment classification.

6 (c) If an Internet or application-based company contributes to a portable benefit plan for the  
7 benefit of an individual beneficiary:

8 (1) The contribution is not evidence of hiring party liability; and

9 (2) A court may not construe the contribution as an element of an employment relationship  
10 for purposes of Workers' Compensation under §23-1-1, et seq.

**§5-16E-3. Composition of West Virginia Portable Insurance Benefit Plan.**

1 (a) The West Virginia Portable Insurance Benefit Plan consists of the director, the finance  
2 board, the advisory board, and any employees who may be authorized by law. The director shall  
3 be appointed by the Governor, with the advice and consent of the Senate, and serve at the will and  
4 pleasure of the Governor. The director shall have at least three years' experience in health or  
5 governmental health benefit administration as his or her primary employment duty prior to  
6 appointment as director. The director shall receive actual expenses incurred in the performance of  
7 official business. The director shall employ any administrative, technical, and clerical employees  
8 required for the proper administration of the program provided in this article. The director shall  
9 perform the duties that are required of him or her under the provisions of this article and is the  
10 Chief Administrative Officer of the West Virginia Portable Insurance Benefit Plan. The director may  
11 employ a deputy director.

12 (b) Except for the director, his or her personal secretary, the deputy director, and the chief  
13 financial officer, all positions in the agency shall be included in the classified service of the civil  
14 service system pursuant to §29-6-1 et seq. of this code.

15 (c) The director is responsible for the administration and management of the West Virginia

16 Portable Insurance Benefit Plan as provided in this article and in connection with his or her  
17 responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in  
18 this code limits the director's ability to manage on a day-to-day basis the portable insurance plans  
19 required or authorized by this article, including, but not limited to, administrative contracting,  
20 studies, analyses and audits, eligibility determinations, utilization management provisions and  
21 incentives, provider negotiations, provider contracting and payment, designation of covered and  
22 noncovered services, offering of additional coverage options or cost containment incentives,  
23 pursuit of coordination of benefits, and subrogation, or any other actions which would serve to  
24 implement the plan or plans designed by the finance board. The director is to function as a benefits  
25 management professional and should avoid political involvement in managing the affairs of the  
26 West Virginia Portable Insurance Benefit Plan.

27 (d) The director should make every effort to evaluate and administer programs to improve  
28 quality, improve health status of members, develop innovative payment methodologies, manage  
29 health care delivery costs, evaluate effective benefit designs, evaluate cost sharing and benefit-  
30 based programs, and adopt effective industry programs that can manage the long-term  
31 effectiveness and costs for the programs at the West Virginia Portable Insurance Benefit Plan to  
32 include, but not be limited to:

33 (1) Increasing generic fill rates;

34 (2) Managing specialty pharmacy costs;

35 (3) Implementing and evaluating medical home models and health care delivery;

36 (4) Coordinating with providers, private insurance carriers, and, to the extent possible,  
37 Medicare to encourage the establishment of cost-effective accountable care organizations;

38 (5) Exploring and developing advanced payment methodologies for care delivery such as  
39 case rates, capitation, and other potential risk-sharing models and partial risk-sharing models for  
40 accountable care organizations and medical homes;

41 (6) Adopting measures identified by the Centers for Medicare and Medicaid Services to

42 reduce cost and enhance quality;

43 (7) Evaluating the expenditures to reduce excessive use of emergency room visits,  
44 imaging services, and other drivers of the agency's medical rate of inflation;

45 (8) Recommending cutting-edge benefit designs to the finance board to drive behavior and  
46 control costs for the plans;

47 (9) Implementing programs to encourage the use of the most efficient and high-quality  
48 providers by insured members and retired insured members;

49 (10) Identifying those insured members and retired insured members who have multiple  
50 chronic illnesses and initiating programs to coordinate the care of these patients;

51 (11) Initiating steps to adjust payment by the agency for the treatment of hospital-acquired  
52 infections and related events consistent with the payment policies, operational guidelines, and  
53 implementation timetable established by the Centers of Medicare and Medicaid Services. The  
54 agency shall protect independent contractors and retired independent contractors from any  
55 adjustment in payment for hospital acquired infections; and

56 (12) Initiating steps to reduce the number of insured members and retired insured  
57 members who experience avoidable readmissions to a hospital for the same diagnosis-related  
58 group illness within 30 days of being discharged by a hospital in this state or another state  
59 consistent with the payment policies, operational guidelines, and implementation timetable  
60 established by the Centers of Medicare and Medicaid Services.

**§5-16E-4. West Virginia Portable Insurance Benefit Plan Finance Board.**

1 (a) The West Virginia Portable Insurance Benefit Plan Finance Board is established and  
2 consists of the Secretary of the Department of Administration or his or her designee, as a voting  
3 member, and 10 members appointed by the Governor, with the advice and consent of the Senate,  
4 for terms of four years and each may serve until his or her successor is appointed and qualified.  
5 Members may be reappointed for successive terms. No more than six members, including the  
6 Secretary of the Department of Administration, may be of the same political party. Members of the

7 board shall satisfy the qualification requirements provided for by subsection (b) of this section. The  
8 Governor shall make appointments necessary to satisfy the requirements of subsection (b) of this  
9 section to staggered terms as determined by the Governor.

10 (b) (1) Of the 10 members appointed by the Governor with advice and consent of the  
11 Senate:

12 (A) Four members shall represent the interests of independent contractors. The members  
13 shall be independent contractors who full- or part-time service for wages, salary, or remuneration  
14 for a hiring party for a period of at least three years prior to his or her appointment.

15 (B) One member shall represent the interests of hospitals. The member shall have been  
16 employed by a hospital for a period of at least three years prior to his or her appointment and shall  
17 remain an employee of a hospital for the duration of his or her appointment to remain eligible to  
18 serve on the board.

19 (C) One member shall represent the interests of non-hospital health care providers. The  
20 member shall have owned his or her non-hospital health care provider business for a period of at  
21 least three years prior to his or her appointment and shall maintain ownership of his or her non-  
22 hospital health care provider business for the duration of his or her appointment to remain eligible  
23 to serve on the board.

24 (D) Four members shall be selected from the public at large, meeting the following  
25 requirements:

26 (i) One member selected from the public at large shall generally have knowledge and  
27 expertise relating to the financing, development, or management of independent contractor  
28 benefit programs;

29 (ii) One member selected from the public at large shall have at least three years of  
30 experience in the insurance benefits business;

31 (iii) One member selected from the public at large shall be a certified public accountant with  
32 at least three years of experience with financial management and independent contractor benefits

33 program experience; and

34 (iv) One member selected from the public at large shall be a health care actuary or certified  
35 public accountant with at least three years of financial experience with the health care  
36 marketplace.

37 (2) No member of the board may be a registered lobbyist.

38 (3) All appointments shall be selected to represent the different geographical areas within  
39 the state and all members shall be residents of West Virginia. No member may be removed from  
40 office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of  
41 fiduciary duty, or other specific responsibility imposed by this article or gross immorality.

42 (4) All members of the board shall have a fiduciary responsibility to protect plan assets for  
43 the benefit of plan participants.

44 (5) Beginning July 1, 2025, and every year thereafter, all board members shall complete  
45 fiduciary training and timely complete any conflict-of-interest forms required to serve as a fiduciary.

46 (c) The Secretary of the Department of Administration shall serve as chair of the finance  
47 board, which shall meet at times and places specified by the call of the chair or upon the written  
48 request to the chair by at least two members. The Director of the West Virginia Portable Insurance  
49 Benefit Plan shall serve as staff to the board. Notice of each meeting shall be given in writing to  
50 each member by the director at least three days in advance of the meeting. Six members shall  
51 constitute a quorum. The board shall pay each member the same compensation and expense  
52 reimbursement that is paid to members of the Legislature for their interim duties for each day or  
53 portion of a day engaged in the discharge of official duties.

54 (d) Upon termination of the board and notwithstanding any provisions of this article to the  
55 contrary, the director is authorized to assess monthly independent contractor premium  
56 contributions and to change the types and levels of costs to independent contractors only in  
57 accordance with this subsection. Any assessments or changes in costs imposed pursuant to this  
58 subsection shall be implemented by legislative rule proposed by the director for promulgation

59 pursuant to §29A-3-1 et seq. of this code. Any independent contractor assessments or costs  
60 previously authorized by the finance board shall then remain in effect until amended by rule of the  
61 director promulgated pursuant to this subsection.

**§5-16E-5. Powers and duties of the finance board.**

1 (a) The purpose of the finance board is to bring fiscal stability to the West Virginia Portable  
2 Insurance Benefit Plan through development of annual financial plans and long-range plans  
3 designed to meet the agency's estimated total financial requirements, taking into account all  
4 revenues projected to be made available to the agency and apportioning necessary costs  
5 equitably among participating hiring parties, independent contractors, and retired independent  
6 contractors and providers of health care services.

7 (b) The finance board shall retain the services of an impartial, professional actuary, with  
8 demonstrated experience in analysis of large group health insurance plans, to estimate the total  
9 financial requirements of the West Virginia Portable Insurance Benefit Plan for each fiscal year  
10 and to review and render written professional opinions as to financial plans proposed by the  
11 finance board. The actuary shall also assist in the development of alternative financing options  
12 and perform any other services requested by the finance board or the director. All reasonable fees  
13 and expenses for actuarial services shall be paid by the West Virginia Portable Insurance Benefit  
14 Plan. Any financial plan or modifications to a financial plan approved or proposed by the finance  
15 board shall be submitted to and reviewed by the actuary and may not be finally approved and  
16 submitted to the Governor and to the Legislature without the actuary's written professional opinion  
17 that the plan may be reasonably expected to generate sufficient revenues to meet all estimated  
18 program and administrative costs of the agency, including incurred but unreported claims, for the  
19 fiscal year for which the plan is proposed.

20 (c) All financial plans shall establish:

21 (1) The minimum level of reimbursement at 110 percent of the Medicare amount for all  
22 providers: *Provided*, That the plan shall reimburse a West Virginia hospital that provides inpatient



23 medical care to a beneficiary, covered by the state and non-state plans, at a minimum rate of 110  
24 percent of the Medicare diagnosis-related group rate for the admission, or the Medicare per diem,  
25 per day rate applicable to a critical access hospital, as appropriate: *Provided, however,* That the  
26 rates established pursuant to this subdivision do not apply to any Medicare primary retiree health  
27 plan.

28 (2) Any necessary cost-containment measures for implementation by the director;

29 (3) The levels of premium costs to participating hiring parties; and

30 (4) The types and levels of cost to participating independent contractors and retired  
31 independent contractors.

32 The financial plans may provide for different levels of costs based on the insureds' ability to  
33 pay. The finance board may establish different levels of costs to retired independent contractors  
34 based upon length of employment with a participating hiring party, ability to pay, or other relevant  
35 factors. The financial plans may also include optional alternative benefit plans with alternative  
36 types and levels of cost. The finance board may develop policies which encourage the use of West  
37 Virginia health care providers.

38 In addition, the finance board may allocate a portion of the premium costs charged to  
39 participating hiring parties to subsidize the cost of coverage for participating retired independent  
40 contractors, on such terms as the finance board determines are equitable and financially  
41 responsible.

42 (d)(1) The finance board shall prepare an annual financial plan for each fiscal year. The  
43 finance board chairman shall request the actuary to estimate the total financial requirements of the  
44 West Virginia Portable Insurance Benefit Plan for the fiscal year.

45 (2) The finance board shall prepare a proposed financial plan designed to generate  
46 revenues sufficient to meet all estimated program and administrative costs of the West Virginia  
47 Portable Insurance Benefit Plan for the fiscal year. The proposed financial plan shall allow for no  
48 more than 30 days of accounts payable to be carried over into the next fiscal year. Before final

49 adoption of the proposed financial plan, the finance board shall request the actuary to review the  
50 plan and to render a written professional opinion stating whether the plan will generate sufficient  
51 revenues to meet all estimated program and administrative costs of the West Virginia Portable  
52 Insurance Benefit Plan for the fiscal year. The actuary's report shall explain the basis of its opinion.  
53 If the actuary concludes that the proposed financial plan will not generate sufficient revenues to  
54 meet all anticipated costs, then the finance board shall make necessary modifications to the  
55 proposed plan to ensure that all actuarially determined financial requirements of the agency will be  
56 met.

57 (3) Upon obtaining the actuary's opinion, the finance board shall conduct at least two public  
58 hearings in each congressional district to receive public comment on the proposed financial plan,  
59 shall review the comments, and shall finalize and approve the financial plan.

60 (e) The provisions of §29A-1-1 et seq. of this code shall not apply to the preparation,  
61 approval and implementation of the financial plans required by this section.

62 (f) By January 1 of each year, the finance board shall submit to the Governor and the  
63 Legislature a prospective financial plan for a period not to exceed five years for the programs  
64 provided in this article. Factors the board shall consider include, but are not limited to, the trends  
65 for the program and the industry; the medical rate of inflation; utilization patterns; cost of services;  
66 and specific information such as average age of independent contractor population, active to  
67 retiree ratios, the service delivery system, and health status of the population.

68 (g) The prospective financial plans shall be based on the estimated revenues submitted in  
69 accordance §5-16E-5 of this code and shall include an average of the premiums and an average  
70 of the projected deductibles and copays for the various programs. After the submission of the  
71 initial prospective plan, the board may not increase costs to the participating hiring parties or  
72 change the average of the premiums, deductibles, and copays for independent contractors,  
73 except in the event of a true emergency. If the board invokes the emergency provisions, the cost  
74 shall be borne between the contributing hiring parties and independent contractors in proportion to

75 the cost-sharing ratio applicable to those hiring parties that do contribute for that plan year. For  
 76 purposes of this section, "emergency" means that the most recent projections demonstrate that  
 77 plan expenses will exceed plan revenues by more than one percent in any plan year. In the event  
 78 of an emergency, the cost of the premiums may be offset by a legislative appropriation for that  
 79 purpose.

80 (h) The finance board shall meet on at least a quarterly basis to review implementation of  
 81 its current financial plan in light of the actual experience of the West Virginia Portable Insurance  
 82 Benefit Plan. The board shall review actual costs incurred, any revised cost estimates provided by  
 83 the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may  
 84 make any additional modifications to the plan necessary to ensure that the total financial  
 85 requirements of the agency for the current fiscal year are met. The finance board may not increase  
 86 the types and levels of cost to independent contractors during its quarterly review except in the  
 87 event of a true emergency.

**§5-16E-7. Authorization to establish plans; requirement that these plans match Public**  
**Employee's Insurance Agency plans.**

1 The West Virginia Portable Insurance Benefit Plan shall establish plans for those  
 2 independent contractors herein made eligible and establish and promulgate rules for the  
 3 administration of these plans subject to the limitations contained in this article. These plans shall  
 4 include every plan available via Public Employees' Insurance Agency as listed in §5-16-7, §5-16-  
 5 7a, §5-16-7b, §5-16-7b, §5-16-7c, 5-16-7d, §5-16-7e, §5-16-7f, §5-16-7g, §5-16-10, and any  
 6 future mandated or other benefits that are offered or required of Public Employees' Insurance  
 7 Agency.

**§5-16E-8. Authorization to execute contracts.**

1 (a) The director is given exclusive authorization to execute such contract or contracts as  
 2 are necessary to carry out the provisions of this article.

3 (b) The provisions of §5A-3-1 et seq. of this code, relating to the Division of Purchasing of

4 the Department of Finance and Administration, shall not apply to any contracts for any insurance  
5 coverage or professional services authorized to be executed under the provisions of this article.  
6 Before entering into any contract for any insurance coverage, as authorized in this article, the  
7 director shall invite competent bids from all qualified and licensed insurance companies or carriers  
8 that may wish to offer plans for the insurance coverage desired. The director shall negotiate and  
9 contract directly with health care providers and other entities, organizations, and vendors in order  
10 to secure competitive premiums, prices, and other financial advantages. The director shall deal  
11 directly with insurers or health care providers and other entities, organizations, and vendors in  
12 presenting specifications and receiving quotations for bid purposes. No commission or finder's  
13 fee, or any combination thereof, shall be paid to any individual or agent: *Provided*, That this shall  
14 not preclude an underwriting insurance company or companies, at their own expense, from  
15 appointing a licensed resident agent within this state to service the companies' contracts awarded  
16 under the provisions of this article. Commissions reasonably related to actual service rendered for  
17 the agent or agents may be paid by the underwriting company or companies. In no event shall  
18 payment be made to any agent or agents when no actual services are rendered or performed. The  
19 director shall award the contract or contracts on a competitive basis. In awarding the contract or  
20 contracts the director shall take into account the experience of the offering agency, corporation,  
21 insurance company, or service organization in the group hospital and surgical insurance field,  
22 group major medical insurance field, group prescription drug field, and group life and accidental  
23 death insurance field, and its facilities for the handling of claims. In evaluating these factors, the  
24 director may employ the services of impartial, professional insurance analysts or actuaries, or  
25 both. Any contract executed by the director with a selected carrier shall be a contract to govern all  
26 eligible independent contractors subject to the provisions of this article. Nothing contained in this  
27 article shall prohibit any insurance carrier from soliciting independent contractors covered  
28 hereunder to purchase additional hospital and surgical, major medical, or life and accidental death  
29 insurance coverage.

30 (c) The director may authorize the carrier with whom a primary contract is executed to  
31 reinsure portions of the contract with other carriers which elect to be a reinsurer and who are  
32 legally qualified to enter into a reinsurance agreement under the laws of this state.

33 (d) Each independent contractor who is covered under any contract or contracts shall  
34 receive a statement of benefits to which the independent contractor, his or her spouse, and his or  
35 her dependents are entitled under the contract, setting forth the information as to whom the  
36 benefits are payable, to whom claims shall be submitted, and a summary of the provisions of the  
37 contract or contracts as they affect the independent contractor, his or her spouse, and his or her  
38 dependents.

39 (e) The director may at the end of any contract period discontinue any contract or contracts  
40 it has executed with any carrier and replace the same with a contract or contracts with any other  
41 carrier or carriers meeting the requirements of this article.

42 (f) The director shall include language in all contracts for pharmacy benefits management,  
43 as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report quarterly to  
44 the agency the following:

45 (1) The overall total amount charged to the agency for all claims processed by the  
46 pharmacy benefit manager during the quarter;

47 (2) The overall total amount of reimbursements paid to pharmacy providers during the  
48 quarter;

49 (3) The overall total number of claims in which the pharmacy benefits manager reimbursed  
50 a pharmacy provider for less than the amount charged to the agency for all claims processed by  
51 the pharmacy benefit manager during the quarter; and

52 (4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim,  
53 including, but not limited to, the following:

54 (A) The cost of drug reimbursement;

55 (B) Dispensing fees;

56 (C) Copayments; and

57 (D) The amount charged to the agency for each claim by the pharmacy benefit manager.

58 In the event there is a difference between the amount for any pharmacy claim paid to the  
59 pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall  
60 report an itemization of all administrative fees, rebates, or processing charges associated with the  
61 claim. All data and information provided by the pharmacy benefit manager shall be kept secure,  
62 and notwithstanding any other provision of this code to the contrary, the agency shall maintain the  
63 confidentiality of the proprietary information and not share or disclose the proprietary information  
64 contained in the report or data collected with persons outside the agency. All data and information  
65 provided by the pharmacy benefit manager shall be considered proprietary and confidential and  
66 exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-  
67 4(a)(1) of this code. Only those agency independent contractors involved in collecting, securing,  
68 and analyzing the data for the purpose of preparing the report provided for herein shall have  
69 access to the proprietary data. The director shall provide a quarterly report to the Joint Committee  
70 on Health detailing the information required by this section, including any difference or spread  
71 between the overall amount paid by pharmacy benefit managers to the pharmacy providers and  
72 the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the  
73 extent necessary, the director shall use aggregated, nonproprietary data only: *Provided*, That the  
74 director must provide a clear and concise summary of the total amounts charged to the agency  
75 and reimbursed to pharmacy providers on a quarterly basis.

76 (g) If the information required herein is not provided, the agency may terminate the contract  
77 with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline  
78 the pharmacy benefit manager as provided in §33-51-8(e) of this code.

79 (h) The West Virginia Portable Insurance Benefit Plan shall contract with networks to  
80 provide care to its members out of state.

1 (i) For any fiscal year in which legislative appropriations differ from the Governor's estimate

2 of general and special revenues available to the agency, the finance board shall, within 30 days  
3 after passage of the budget bill, make any modifications to the plan necessary to ensure that the  
4 total financial requirements of the agency for the current fiscal year are met.

5 (j) In the event the revenues in a given year exceed the expenses, the amount of revenues  
6 in excess of the expenses shall be retained by the West Virginia Portable Insurance Benefit Plan to  
7 offset future premium increases.

**§5-16E-9. Contract provisions for group hospital and surgical, group major medical, group  
prescription drug and group life, and accidental death insurance for retired  
independent contractors, their spouses, and dependents.**

1 A plan may provide benefits for retired independent contractors and their spouses and  
2 dependents as defined by rules and regulations of the West Virginia Portable Insurance Benefit  
3 Plan, and on such terms as the director may deem appropriate.

4 In the event the West Virginia Portable Insurance Benefit Plan provides the above benefits  
5 for retired insured members, their spouses, and dependents, the West Virginia Portable Insurance  
6 Benefit Plan shall adopt rules and regulations prescribing the conditions under which retired  
7 independent contractors may elect to participate in or withdraw from the plan or plans. Any plan  
8 provided for shall be secondary to any insurance plan administered by the United States  
9 Department of Health and Human Services to which the retired insured member, spouse, or  
10 dependent may be eligible under any law or regulation of the United States. If an independent  
11 contractor eligible to participate in the West Virginia Portable Insurance Benefit Plan plans is also  
12 eligible to participate in the state Medicaid program, and chooses to do so, then the West Virginia  
13 Portable Insurance Benefit Plan may transfer to the Medicaid program funds to pay the required  
14 state share of such independent contractor's participation in Medicaid except that the amount  
15 transferred may not exceed the amount that would be allocated by the agency to subsidize the  
16 cost of coverage for the retired insured member if he or she were enrolled in the West Virginia  
17 Portable Insurance Benefit Plan plans.

**§5-16E-10. To whom benefits paid.**

1 Any benefits payable under a plan may be paid either directly to the medical provider,  
2 hospital, medical group, or other person, firm, association, or corporation furnishing the service  
3 upon which the claim is based, or to the insured upon presentation of valid bills for such service,  
4 subject to such provisions designed to facilitate payments as may be made by the director.

**§5-16E-11. Misrepresentation by hiring party, independent contractor or provider; penalty.**

1 (a) It shall be a violation of this article for any person to:

2 (1) Knowingly secure or attempt to secure benefits payable under this article to which they  
3 are not entitled;

4 (2) Knowingly secure or attempt to secure greater benefits than those to which the person  
5 is entitled;

6 (3) Willfully misrepresent the presence or extent of benefits to which the person is entitled  
7 under a collateral insurance source;

8 (4) Willfully misrepresent any material fact relating to any other information requested by  
9 the director;

10 (5) Willfully overcharge for services provided; or

11 (6) Willfully misrepresent a diagnosis or nature of the service provided.

12 Any person who has violated any of the foregoing provisions shall be civilly liable for the  
13 amount of benefits, overpayment or other sums improperly received in addition to any other relief  
14 available in a court of competent jurisdiction.

15 (b) If, after notice and an administrative proceeding, it is determined the person has  
16 violated the article, the person is liable for any overpayment received. The director shall withhold  
17 and set off any payment of any benefits or other payment due to that person until any overpayment  
18 is recovered.

19 (c) In addition to any civil liability for a violation pursuant to subsection (a) of this section,  
20 any person who knowingly secures or attempts to secure benefits payable under this article, or



21 knowingly attempts to secure greater benefits than those to which the person is entitled, by willfully  
 22 misrepresenting or aiding in the misrepresentation of any material fact relating to employment,  
 23 diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not  
 24 more than \$1,000, imprisoned for not less than one nor more than five years, or both. Errors in  
 25 coding for billing purposes shall not be considered a violation of this subsection absent other  
 26 evidence of willful wrongdoing.

27 (d) Any person who violates any provision of this article which results in a loss to, or  
 28 overpayment from, the plan, or to the State of West Virginia of less than \$1,000, and for which no  
 29 other penalty is specifically provided, is guilty of a misdemeanor and, upon conviction thereof, is  
 30 subject to a fine of not less than \$100 but not more than \$500, or imprisonment for a period of not  
 31 less than twenty-four hours but not more than fifteen days, or both. Any person who violates any  
 32 provision of this article which results in a loss to, or overpayment from, the plan or the State of  
 33 West Virginia of \$1,000 or more, and for which no other penalty is specifically provided, is guilty of  
 34 a felony and, upon conviction thereof, is subject to a fine of not less than \$1,000 but not more than  
 35 \$5,000, or imprisonment for a period of not less than one nor more than five years, or both.

**§5-16E-11a. Inspections; violations and penalties.**

1 (a) Hiring parties and independent contractors participating in any of the West Virginia  
 2 Portable Insurance Benefit Plan plans shall provide, to the director, upon request, all  
 3 documentation reasonably required for the director to discharge the responsibilities under this  
 4 article. This documentation includes, but is not limited to, employment or eligibility records  
 5 sufficient to verify actual full-time employment and eligibility of independent contractors who  
 6 participate in the West Virginia Portable Insurance Benefit Plan plans.

7 (b) Upon a determination of the director or his or her designated representative that there is  
 8 probable cause to believe that fraud, abuse or other illegal activities involving transactions with the  
 9 agency has occurred, the director or his or her designated representative is authorized to refer the  
 10 alleged violations to the Insurance Commissioner for investigation and, if appropriate,

11 prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this  
12 section, "transactions with the agency" includes, but is not limited to, application by any insured or  
13 dependent, any hiring party or any type of health care provider for payment to be made to that  
14 person or any third party by the agency.

15 (c) The West Virginia Portable Insurance Benefit Plan is authorized through administrative  
16 proceeding to recover any benefits or claims paid to or for any independent contractor, or their  
17 dependents, who obtained or received benefits through fraud. The West Virginia Portable  
18 Insurance Benefit Plan is also authorized through administrative proceeding to recover any funds  
19 due from an hiring party that knowingly allowed or provided benefits or claims to be fraudulently  
20 paid to an independent contractor or dependents.

21 (d) For the purpose of any investigation or proceeding under this article, the director or any  
22 officer designated by him or her may administer oaths and affirmations, issue administrative  
23 subpoenas, take evidence, and require the production of any books, papers, correspondences,  
24 memoranda, agreements or other documents or records which may be relevant or material to the  
25 inquiry.

26 (1) Administrative subpoenas shall be served by personal service by a person over the age  
27 of eighteen, or by registered or certified mail addressed to the entity or person to be served at his  
28 or her residence, principal office or place of business. Proof of service, when necessary, shall be  
29 made by a return completed by the person making service, or in the case of registered or certified  
30 mail, such return shall be accompanied by the post office receipt of delivery of the subpoena. A  
31 party requesting the administrative subpoena is responsible for service and payment of any fees  
32 for service. Any person who serves the administrative subpoena pursuant to this section is entitled  
33 to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

34 (2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for  
35 witnesses before the circuit courts of this state. All such fees related to any administrative  
36 subpoena issued at the request of a party to an administrative proceeding shall be paid by the

37 requesting party. All requests by parties for administrative subpoenas shall be in writing and shall  
38 contain a statement acknowledging that the requesting party agrees to pay such fees.

39 (3) In case of disobedience or neglect of any administrative subpoena served, or the  
40 refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or to  
41 produce documents subpoenaed, the circuit court of the county in which the hearing is being held,  
42 or the judge thereof in vacation, upon application by the director, may compel obedience by  
43 attachment proceedings for contempt as in the case of disobedience of the requirements of a  
44 subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.  
45 Witnesses at such hearings shall testify under oath or affirmation.

46 (e) Only authorized independent contractors or agents shall have access to confidential  
47 data or systems and applications containing confidential data within the West Virginia Portable  
48 Insurance Benefit Plan.

**§5-16E-11b. Privileges and immunity.**

1 (a) Any person who makes a report or furnishes information, written or oral, concerning  
2 suspected, anticipated or fraudulent activity to secure benefits payable under this article, or to  
3 secure greater benefits than those to which the person or provider is entitled, is entitled to those  
4 privileges and immunities existing under common or statutory law, as well as the immunity  
5 established in this section.

6 (b) In the absence of fraud, malice or bad faith, no person or agent, independent contractor  
7 or designee of that person shall be subject to civil liability of any nature arising out of that person's  
8 provision of information related to suspected, anticipated or fraudulent activity in the securing of  
9 benefits payable or securing greater benefits than those to which the person or provider is entitled.

10 (c) Nothing in this section shall be construed to limit, abrogate or modify existing statutes or  
11 case law applicable to the duties or liabilities of persons acting in a manner that is itself fraudulent,  
12 with malice or in bad faith.

**§5-16E-12. Payment of costs by hiring party and independent contractor; spouse and**

**dependent coverage; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased independent contractors; requirement of new health plan; limiting hiring party contribution.**

1 (a) Cost-sharing. — The director shall provide plans that shall be paid by the independent  
2 contractor and hiring parties may contribute to these plans.

3 (b) Spouse and dependent coverage. —(1) An independent contractor is entitled to have  
4 his or her spouse and dependents included in any plan to which the independent contractor is  
5 entitled to participate.

6 (2) The spouse and dependent coverage is limited to excess or secondary coverage for  
7 each spouse and dependent who has primary coverage from any other source. If an independent  
8 contractor's spouse has health insurance available through an employer not defined in this article,  
9 then the hiring party may not cover any portion of premiums for the independent contractor's  
10 spouse coverage, unless the independent contractor adds his or her spouse to his or her coverage  
11 by paying the cost of the actuarial value of the plan. For purposes of this subsection, "actuarial  
12 value" means the value as recommended by healthcare actuaries under §5-16E-5 of this code.

13 The director may require proof regarding spouse and dependent primary coverage and  
14 shall adopt rules governing the nature, discontinuance, and resumption of any independent  
15 contractor's coverage for his or her spouse and dependents.

16 (c) Retiree participation. —All retired independent contractors are eligible to obtain health  
17 insurance coverage. The retired independent contractor's premium contribution for the coverage  
18 shall be established by the finance board.

19 (d) Surviving spouse and dependent participation. — A surviving spouse and dependents  
20 of a deceased independent contractor, who was either an active or retired independent contractor  
21 participating in the plan just prior to his or her death, are entitled to be included in any  
22 comprehensive group health insurance coverage provided under this article to which the  
23 deceased independent contractor was entitled, and the spouse and dependents shall bear the

24 premium cost of the insurance coverage. The finance board shall establish the premium cost of  
25 the coverage.

**§5-16E-13. Program qualifying for favorable federal income tax treatment.**

1 The director shall develop deductible and independent contractor premium programs  
2 which qualify for favorable federal income tax treatment under section 125 of the Internal Revenue  
3 Code.

**§5-16E-14. Optional dental, optical, disability, and prepaid retirement plan, and audiology**  
**and hearing-aid service plan.**

1 (a) The director shall make available to participants in the West Virginia Portable Insurance  
2 Benefit Plan insurance system:

- 3 (1) A dental insurance plan;
- 4 (2) An optical insurance plan;
- 5 (3) A disability insurance plan;
- 6 (4) A prepaid retirement insurance plan; and
- 7 (5) An audiology and hearing-aid services insurance plan.

8 (b) West Virginia Portable Insurance Benefit Plan participants may elect to participate in  
9 any one of these plans separately or in combination. All actuarial and administrative costs of each  
10 plan shall be totally borne by the premium payments of the participants or local governing bodies  
11 electing to participate in that plan. The director is authorized to employ such administrative  
12 practices and procedures with respect to these optional plans as are authorized for the  
13 administration of other plans under this article. The director shall establish separate funds for each  
14 of the above listed plans. The funds shall not be supplemented by nor be used to supplement any  
15 other funds.

**§5-16E-15. Preferred provider plan.**

1 The director shall establish a preferred provider system for the delivery of health care to  
2 plan participants by all health care providers, which may include, but not be limited to, medical

3 doctors, chiropractors, physicians, osteopathic physicians, surgeons, hospitals, clinics, nursing  
4 homes, pharmacies, and pharmaceutical companies.

5 The director shall establish the terms of the preferred provider system and the incentives  
6 therefor. The terms and incentives may include multiyear renewal options as are not prohibited by  
7 the Constitution of this state and capitated primary care arrangements which are not subject to the  
8 provisions of §33-25A-1 et seq. of this code.

**§5-16E-16. Director to establish schedule of insurance.**

1 The director shall establish and cause to be published and made available online the  
2 schedule of insurance, with all plans and what the independent contractor's payments will be.  
3 These payments will be offset by any contributions made by the hiring party.

NOTE: The purpose of this bill is to provide for voluntary portable insurance plans.

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