

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 2852**

By Delegates Young and Lewis

[Introduced February 24, 2025; referred to the  
Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §5-16E-1, §5-16E-2, §5-16E-3, §5-16E-4, §5-16E-5, §5-16E-6, §5-16E-7, §5-16E-8, §5-16E-9, §5-16E-10, §5-16E-11, §5-16E-12, §5-16E-13, §5-16E-14, §5-16E-15, §5-16E-16, §5-16E-17, and §5-16E-18, relating to establishing a state-sponsored portable insurance benefit plan, providing definitions, and providing 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.**

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

**§5-16E-2. Definitions.**

As used in this chapter:

"Director" means the Director of the West Virginia Portable Insurance Benefit Plan created by this article.

"Hiring party" means a person who hires or enters into a contract with an independent contractor.

"Independent contractor" means the same as that term is defined in §21-5I-4.

"Portable benefit plan" means:

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

(2) Is assigned to an individual beneficiary and is not associated with a specific hiring party 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-4. 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.

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

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

(1) Increasing generic fill rates;

(2) Managing specialty pharmacy costs;

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

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

(5) Exploring and developing advanced payment methodologies for care delivery such as case rates, capitation, and other potential risk-sharing models and partial risk-sharing models for 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-5. 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

Secretary of the Department of Administration, may be of the same political party. Members of the board shall satisfy the qualification requirements provided for by subsection (b) of this section. The Governor shall make appointments necessary to satisfy the requirements of subsection (b) of this section to staggered terms as determined by the Governor.

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

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

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

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

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

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

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

(iii) One member selected from the public at large shall be a certified public accountant with

at least three years of experience with financial management and independent contractor benefits program experience; and

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

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

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

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

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

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

(d) Upon termination of the board and notwithstanding any provisions of this article to the contrary, the director may assess monthly independent contractor premium contributions and to change the types and levels of costs to independent contractors only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be

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

**§5-16E-6. 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% of the Medicare amount for all providers:



Provided, That the plan shall reimburse a West Virginia hospital that provides inpatient medical care to a beneficiary, covered by the state and non-state plans, at a minimum rate of 110% of the Medicare diagnosis-related group rate for the admission, or the Medicare per diem, per day rate applicable to a critical access hospital, as appropriate: *Provided, however, That the rates established pursuant to this subdivision do not apply to any Medicare primary retiree health plan.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The director may execute such contract or contracts as are necessary to carry out the provisions of this article.

(b) The provisions of §5A-3-1 *et seq.*, relating to the Division of Purchasing of the Department of Finance and Administration, may not apply to any contracts for any insurance

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

(c) The director may authorize the carrier with whom a primary contract is executed to

reinsure portions of the contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

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

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

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

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

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

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

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

(A) The cost of drug reimbursement;

(B) Dispensing fees;

(C) Copayments; and

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

58           If there is a difference between the amount for any pharmacy claim paid to the pharmacy  
59 provider and the amount reimbursed to the agency, the pharmacy benefit manager shall report an  
60 itemization of all administrative fees, rebates, or processing charges associated with the claim. All  
61 data and information provided by the pharmacy benefit manager shall be kept secure, and  
62 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). Only those agency independent contractors involved in collecting, securing, and  
68 analyzing the data for the purpose of preparing the report provided for herein shall have access to  
69 the proprietary data. The director shall provide a quarterly report to the Joint Committee on Health  
70 detailing the information required by this section, including any difference or spread between the  
71 overall amount paid by pharmacy benefit managers to the pharmacy providers and the overall  
72 amount charged to the agency for each claim by the pharmacy benefit manager. To the extent  
73 necessary, the director shall use aggregated, nonproprietary data only: *Provided*, That the director  
74 must provide a clear and concise summary of the total amounts charged to the agency and  
75 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).

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

after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) If the revenues in a given year exceed the expenses, the amount of revenues in excess of the expenses shall be retained by the West Virginia Portable Insurance Benefit Plan to 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.**

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

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



misrepresenting or aiding in the misrepresentation of any material fact relating to employment, diagnosis or services rendered is guilty of a felony, and upon conviction thereof, shall be fined not more than \$1,000, imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned. Errors in coding for billing purposes may not be considered a violation of this subsection absent other evidence of willful wrongdoing.

(d) Any person who violates any provision of this article which results in a loss to, or overpayment from, the plan, or to the state of West Virginia of less than \$1,000, and for which no other penalty is specifically provided, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or confined in jail for not less than 24 hours nor more than 15 days, or both fined and confined. Any person who violates any provision of this article which results in a loss to, or overpayment from, the plan or the state of West Virginia of \$1,000 or more, and for which no other penalty is specifically provided, is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or imprisoned in a state correctional facility for not less than one nor more than five years, or both imprisoned and fined.

**§5-16E-12.                   Inspections;                   violations                   and                   penalties.**

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

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

11 pursuant to §33-41-1 et seq. For purposes of this section, "transactions with the agency" includes,  
12 but is not limited to, application by any insured or dependent, any hiring party, or any type of health  
13 care provider for payment to be made to that person or any third party by the agency.

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

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

25 (1) Administrative subpoenas shall be served by personal service by a person over the age  
26 of 18, or by registered or certified mail addressed to the entity or person to be served at his or her  
27 residence, principal office or place of business. Proof of service, when necessary, shall be made  
28 by a return completed by the person making service, or in the case of registered or certified mail,  
29 the return shall be accompanied by the post office receipt of delivery of the subpoena. A party  
30 requesting the administrative subpoena is responsible for service and payment of any fees for  
31 service. Any person who serves the administrative subpoena pursuant to this section is entitled to  
32 the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

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

statement acknowledging that the requesting party agrees to pay the fees.

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

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

**§5-16E-13. Privileges and immunity.**

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

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

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

**§5-16E-14. 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 may have his or  
4 her spouse and dependents included in any plan to which the independent contractor is entitled to  
5 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.

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 may 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, may be included in any comprehensive group  
22 health insurance coverage provided under this article to which the deceased independent  
23 contractor was entitled, and the spouse and dependents shall bear the premium cost of the  
24 insurance coverage. The finance board shall establish the premium cost of the coverage.

**§5-16E-15. 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-16. 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 may employ such administrative practices and  
12       procedures with respect to these optional plans as are authorized for the administration of other  
13       plans under this article. The director shall establish separate funds for each of the above listed  
14       plans. The funds may not be supplemented by nor be used to supplement any other funds.

**§5-16E-17. 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.

**§5-16E-18. 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.