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FOR

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FOR

Senate Bill No. 408

(Senators Minard, Foster, Jenkins, Kessler (Acting President), Chafin and Stollings, *original sponsors*)

 [Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all relating generally to the establishment of a West Virginia Health Benefit Exchange; setting forth purpose; defining terms; providing for the establishment of the West Virginia Health Benefit Exchange; establishing the governing board of directors; providing for membership on the board of directors; setting forth meeting requirements of the board of directors; allowing the board of directors to hire an executive director and appropriate staff; exempting employees from classified service; providing for an annual report by the board of directors; setting forth the functions of the board; outlining the board's duties and authority; providing for the response of the board in the event of reduction of federal funding or legislative or judicial invalidation of federal act; authorizing emergency and legislative rulemaking; establishing a special revenue account; training; purchasing exemption; and authorizing assessment of fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all to read as follows:

ARTICLE 16G. WEST VIRGINIA HEALTH BENEFIT EXCHANGE ACT.**§33-16G-1. Purpose.**

The purpose of this article is to establish a West Virginia Health Benefit Exchange to facilitate the purchase and sale of qualified health plans in the individual market in this state and a Small Business Health Options Program within the exchange to assist qualified small employers in this state in facilitating the enrollment of their employees in qualified health

plans.

§33-16G-2. Definitions.

For purposes of this article:

- (a) "Board" means the board established in section four of this article.
- (b) "Commissioner" means the West Virginia Insurance Commissioner.
- (c) "Exchange" means the West Virginia Health Benefit Exchange established pursuant to section three of this article.
- (d) "Federal Act" means the Federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments thereto, or regulations or guidance issued thereunder.
- (e) "Health carrier" or "carrier" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.
- (f) "Secretary" means the Secretary of the United States Department of Health and Human Services.
- (g) "SHOP Exchange" means the Small Business Health Options Program established under this article.
- (h) "Small employer" means an employer that employed an average of not more than fifty employees during the preceding calendar year.

§33-16G-3. Establishment of exchange.

- (a) There is established within the Offices of the Insurance Commissioner an entity known as the West Virginia Health Benefit Exchange. This is a governmental entity of the state.
- (b) The exchange shall pursue available federal funding for operation of the exchange and shall promulgate rules necessary to obtain federal recognition of the exchange as a certified exchange under the Federal Act.
- (c) The exchange may accept gifts, grants and bequests, contract with other persons, and enter into memoranda of understanding with other governmental agencies to carry out any of its functions, including agreements with other states to perform joint administrative functions. The provisions of article three, chapter five-a of this code relating to the Purchasing Division of the Department of Administration do not apply to these contracts: *Provided*, That these contracts shall be awarded on a competitive basis. The exchange may not enter into contracts with any health insurance carrier or an affiliate of a health insurance carrier.
- (d) The exchange may enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this article, provided such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations.

§33-16G-4. Duties of exchange; decrease in funding or invalidation of the Federal Act.

- (a) In carrying out the duties under this article, the exchange shall:
 - (1) Consult with stakeholders, including but not limited to consumers, carriers, producers, providers and advocates for hard to reach populations; and
 - (2) Meet the following financial integrity requirements:
 - (A) Keep an accurate accounting of all activities, receipts and expenditures and annually submit to the secretary, the Governor, the commissioner and the Legislature a report concerning such accountings;
 - (B) Fully cooperate with any investigation conducted by the secretary pursuant to the secretary's authority under the Federal Act and allow the secretary, in coordination with the Inspector General of the United States Department of Health and Humans Services, to:
 - (i) Investigate the affairs of the exchange;
 - (ii) Examine the properties and records of the exchange; and
 - (iii) Require periodic reports in relation to the activities undertaken by the exchange; and
 - (C) In carrying out its activities under this article, not use any funds intended for the administrative and operational expenses of the exchange for staff retreats, promotional giveaways, excessive executive compensation or promotion of federal or state legislative and regulatory modifications.
- (b) (1) The implementation of the provisions of this article, other than this subsection, section three of this article, and section five of this article, shall be contingent on a determination by the board that sufficient financial resources exist or will exist in the fund, which determination shall be based on, at a minimum:
 - (A) Financial projections identifying that sufficient resources exist or will exist in the fund to implement the exchange; and
 - (B) A comparison of the projected resources available to support the exchange and the projected costs of activities required

by this article.

(2) In the event any portion of the Federal Act or of any regulation or other guidance issued thereunder is legislatively or judicially invalidated and rendered of no effect in this state, the board shall immediately issue a bulletin setting forth its legal opinion as to the effect of such legislative or judicial action on the legal status of the corresponding provisions of such act, regulation or guidance as set forth in this article or in rules promulgated hereunder; the board shall also issue recommendations to the Legislature for amendments to this article necessitated by such judicial or legislative action.

§33-16G-5. Establishment of governing board of the exchange; reports; training.

(a) The exchange shall operate subject to the supervision and control of a governing board. The powers conferred upon the board by this article and the carrying out of its purposes and duties shall be considered to be essential governmental functions and for a public purpose. The Governor shall appoint a chairperson of the board from the membership set forth in subsection (b) of this section, with the advice and consent of the Senate.

(b) The board shall be composed of the following members:

(1) Four voting *ex officio* members: The Commissioner; the Commissioner of the West Virginia Bureau for Medical Services; the Director of the West Virginia Children's Health Insurance Program; and the Chair of the West Virginia Health Care Authority. *Ex officio* members may designate a representative to serve in his or her place;

(2) Four persons appointed by the Governor with advice and consent of the Senate, each to represent the interests of one of the following groups: Individual health care consumers; small employers; organized labor; and insurance producers;

(3) One person to represent the interests of payors who is selected by majority vote of an advisory group comprising representatives of the ten carriers with the highest health insurance premium volume in this state in the preceding calendar year, as certified by the commissioner. Beginning in 2014, the advisory group shall be comprised only of representatives of those carriers that are offering qualified plans in the exchange regardless of premium volume: *Provided*, That the member selected pursuant to this paragraph may not be an employee of a carrier or an affiliate of a carrier eligible to select such member; and

(4) One person to represent the interests of health care providers selected by the majority vote of an advisory group comprised of a representative of each of the following: West Virginia Association of Free Clinics, West Virginia Hospital Association, West Virginia State Medical Association, West Virginia Primary Care Association, West Virginia Nurses Association, West Virginia Society of Osteopathic Medicine, West Virginia Academy of Family Physicians, West Virginia Pharmacists Association, West Virginia Dental Association, West Virginia Behavioral Health Care Providers, West Virginia Chiropractic Society, West Virginia Optometric Association, West Virginia Podiatric Medical Association, West Virginia Physical Therapists Association, and a full-time health officer of a county or regional health department selected by all full-time health officers of all county or regional health departments.

(5) Selection of board members pursuant to paragraphs (3) and (4) of this subdivision shall be conducted in a manner and at such times designated by the chair of the board.

(6) Each member appointed pursuant to paragraph (2) of this section or selected pursuant to paragraph (3) or (4) of this subsection shall serve a term of four years and is eligible to be reappointed, except that the term of each of the four persons initially appointed pursuant to paragraph (2) of this section to represent the groups listed therein shall be as follows: Individual consumer, one year; small employers, two years; labor, three years; and producers, four years. Any appointed or selected member whose term has expired may continue to serve until either he or she has been reappointed or his or her successor has been duly appointed or selected.

(c) Board members may be removed by the Governor for cause.

(d) Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(e) Seven members of the board constitute a quorum, and the affirmative vote of six members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board.

(f) The board may employ an executive director who has overall management responsibility for the exchange and such employees as may be necessary. The executive director and employees of the exchange shall receive a salary as provided by the board. The executive director and all employees of the board are exempt from the classified service and not subject to the procedures and protections provided by article two, chapter six-c of this code and article six, chapter twenty-nine of this code;

(g) The board may establish *ad hoc* or standing advisory committees of consumers and other stakeholder groups or interested parties to study particular policy issues and to advise the board.

(h) The board shall make an annual report to the Governor and also file it with the Joint Committee on Government and

Finance. The report shall summarize the activities of the exchange in the preceding calendar year.

(i) Neither the board nor its employees are liable for any obligations of the exchange. No member of the board or employee of the exchange is liable and no cause of action of any nature may arise against them for any act or omission related to the performance of their powers and duties under this article unless the act or omission constitutes willful or wanton misconduct. The board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

(j) Members of the board shall receive governmental ethics training within the first six months of being appointed. Additional ethics training is required for board members at least every two years thereafter.

§33-16G-6. Funding; publication of costs.

(a) On and after July 1, 2011, the board is authorized to assess fees on health carriers selling qualified dental plans or health benefit plans in this state, including health benefit plans sold outside the exchange, and shall establish the amount of such fees and the manner of the remittance and collection of such fees in legislative rules. Fees shall be based on premium volume of the qualified dental plans or health benefit plans sold in this state and shall be for the purpose of operation of the exchange.

(b) The exchange shall publish the average costs of licensing, regulatory fees and any other payments required by the exchange, and the administrative costs of the exchange, on an Internet website to educate consumers on such costs. This information shall include information on moneys lost to waste, fraud and abuse.

§33-16G-7. Rules.

The board may promulgate emergency rules and propose legislative rules for adoption by the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article. Emergency or legislative rules promulgated under this section may not conflict with or prevent the application of the federal act or regulations promulgated by the secretary under such act.

§33-16G-8. Relation to other laws.

Nothing in this article, and no action taken by the exchange pursuant to this article, preempts or supersedes the authority of the commissioner to regulate the business of insurance within this state and, except as expressly provided to the contrary in this article, all health carriers offering qualified health plans in this state shall comply fully with all applicable health insurance laws of this state and orders issued by the commissioner.

§33-16G-9. Special revenue account created.

(a) There is hereby created a special revenue account in the State Treasury, designated the "West Virginia Health Benefits Exchange Fund", which shall be an interest-bearing account and may be invested in the manner permitted by article six, chapter twelve of this code, with the interest income a proper credit to the fund, unless otherwise designated in law. The fund shall be administered by the board and used to pay all proper costs incurred in implementing the provisions of this article. Moneys deposited into this account are available for expenditure as the board may direct in accordance with the provisions of this article. Expenditures shall be for the purposes set forth in this article, are authorized from collections and do not revert to the General Fund.

(b) The following shall be paid into this account:

- (1) All funds from the federal government received and dedicated to or otherwise able to be used for the purposes of this article;
- (2) All other payments, gifts, grants, bequests or income from any source;
- (3) Fees on health carriers established by the board; and
- (4) Appropriations from the Legislature.