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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2091

(By Delegate 5 Douglas, Hutchins, Fleischauer,
Manuel and Caputo)



Passed _____ April 12, _____ 1997

In Effect _____ Ninety Days From _____ Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2091

(BY DELEGATES DOUGLAS, HUTCHINS, FLEISCHAUER,
MANUEL AND CAPUTO)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to prohibiting insurers from denying life or accident and sickness insurance coverage to an individual who has been or is the victim of abuse.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

1 (a) For purposes of this section, the following
2 definitions shall apply:

3 (1) "Abuse," as used in this section, means the
4 occurrence of one or more of the following acts between
5 family or household members:

6 (A) Attempting to cause or intentionally, knowingly or
7 recklessly causing physical harm to another with or
8 without dangerous or deadly weapons;

9 (B) Placing another in reasonable apprehension of
10 physical harm;

11 (C) Creating fear of physical harm by harassment,
12 psychological abuse or threatening acts;

13 (D) Committing either sexual assault or sexual abuse
14 as those terms are defined in articles eight-b and eight-d,
15 chapter sixty-one of this code;

16 (E) Holding, confining, detaining or abducting
17 another person against that person's will;

18 (F) Intentionally or recklessly damaging, destroying
19 or taking the tangible property of another individual;

20 (G) Insulting, taunting or challenging another
21 individual or engaging in a course of alarming or
22 distressing conduct in a manner which is likely to provoke
23 a violent or disorderly response or which is likely to cause
24 humiliation, degradation or fear in another individual;

25 (H) Trespassing on or in the property of another
26 individual, or on or in property from which the trespasser
27 has been excluded by court order;

28 (I) Child abuse or neglect, as defined in section three,
29 article one, chapter forty-nine of this code;

30 (J) Kidnapping, concealment or removal of a minor
31 child from his or her custodian or from a person entitled
32 to visitation, as set forth in sections fourteen through
33 fourteen-e, article two, chapter sixty-one of this code.

34 (2) "Family or household member" means current or
35 former spouses, persons living as spouses, persons who

36 formerly resided as spouses, parents, children and
37 stepchildren, current or former sexual or intimate partners,
38 other persons related by blood or marriage, persons who
39 are presently or in the past have resided or cohabited
40 together or a person with whom the victim has a child in
41 common.

42 (3) "Victim of abuse," as used in this section, means
43 an individual who has been or is subject to abuse,
44 including but not limited to an individual who seeks, has
45 sought or should have sought medical or psychological
46 treatment for abuse, protection from abuse or shelter from
47 abuse.

48 (b) For all policies issued or renewed after the
49 effective date of this section, no person or entity engaged
50 in the business of providing life or health insurance, or
51 both, in this state may:

52 (1) Deny, refuse to issue, refuse to renew, refuse to
53 reissue, cancel or otherwise terminate an insurance policy
54 or restrict coverage on any individual because that
55 individual is, has been or may be the victim of abuse;

56 (2) Add any surcharge or rating factor to a premium
57 of an insurance policy because an individual has been or
58 may be the victim of abuse;

59 (3) Exclude or limit coverage for losses or deny a
60 claim incurred because an individual has been or may be
61 the victim of abuse; or

62 (4) Require as part of the application process any
63 information regarding whether that individual has been or
64 may be the victim of abuse.

65 (c) Nothing in this section may be construed to
66 prohibit a person from declining to issue an insurance
67 policy insuring the life of an individual who is or has been
68 the victim of abuse if the perpetrator of abuse is the
69 applicant or would be the owner of the insurance policy.

70 (d) Nothing in this section may be construed to
71 prohibit a person from underwriting or rating a risk on the

72 basis of a preexisting physical or mental condition, even if
73 the condition had been caused by abuse: *Provided*, That:

74 (1) The person routinely underwrites or rates the
75 condition in the same manner with respect to an insured or
76 an applicant who is not a victim of abuse;

77 (2) The fact that an individual is, has been, or may be
78 the victim of abuse may not be considered a physical or
79 mental condition; and

80 (3) The underwriting or rating is not used to evade the
81 intent of this law or any other provision of law. A person
82 may not be held civilly or criminally liable for any cause
83 of action which may be brought because of compliance
84 with this section.

§33-25A-24. Statutory construction and relationship to other laws.

1 (a) Except as otherwise provided in this article,
2 provisions of the insurance laws and provisions of hospital
3 or medical service corporation laws are not applicable to
4 any health maintenance organization granted a certificate
5 of authority under this article. The provisions of this
6 article shall not apply to an insurer or hospital or medical
7 service corporation licensed and regulated pursuant to the
8 insurance laws or the hospital or medical service
9 corporation laws of this state except with respect to its
10 health maintenance corporation activities authorized and
11 regulated pursuant to this article. The provisions of this
12 article shall not apply to an entity properly licensed by a
13 reciprocal state to provide health care services to employer
14 groups, where residents of West Virginia are members of
15 an employer group, and the employer group contract is
16 entered into in the reciprocal state. For purposes of this
17 subsection, a "reciprocal state" means a state which
18 physically borders West Virginia and which has subscriber
19 or enrollee hold harmless requirements substantially
20 similar to those set out in section seven-a of this article.

21 (b) Factually accurate advertising or solicitation
22 regarding the range of services provided, the premiums
23 and copayments charged, the sites of services and hours of

24 operation, and any other quantifiable, nonprofessional
25 aspects of its operation by a health maintenance
26 organization granted a certificate of authority, or its
27 representative shall not be construed to violate any
28 provision of law relating to solicitation or advertising by
29 health professions: *Provided*, That nothing contained in
30 this subsection shall be construed as authorizing any
31 solicitation or advertising which identifies or refers to any
32 individual provider or makes any qualitative judgment
33 concerning any provider.

34 (c) Any health maintenance organization authorized
35 under this article shall not be considered to be practicing
36 medicine and is exempt from the provisions of chapter
37 thirty of this code, relating to the practice of medicine.

38 (d) The provisions of sections fifteen and twenty,
39 article four (general provisions); section seventeen, article
40 six (noncomplying forms); article six-c (guaranteed loss
41 ratio); article seven (assets and liabilities); article eight
42 (investments); article nine (administration of deposits);
43 article twelve (agents, brokers, solicitors and excess line);
44 section fourteen, article fifteen (individual accident and
45 sickness insurance); section sixteen, article fifteen
46 (coverage of children); section eighteen, article fifteen
47 (equal treatment of state agency); section nineteen, article
48 fifteen (coordination of benefits with medicaid); article
49 fifteen-b (uniform health care administration act); section
50 three, article sixteen (required policy provisions); section
51 three-f, article sixteen (treatment of temporomandibular
52 disorder and craniomandibular disorder); section eleven,
53 article sixteen (coverage of children); section thirteen,
54 article sixteen (equal treatment of state agency); section
55 fourteen, article sixteen (coordination of benefits with
56 medicaid); article sixteen-a (group health insurance
57 conversion); article sixteen-c (small employer group
58 policies); article sixteen-d (marketing and rate practices
59 for small employers); article twenty-seven (insurance
60 holding company systems); article thirty-four-a (standards
61 and commissioner's authority for companies deemed to
62 be in hazardous financial condition); article thirty-five
63 (criminal sanctions for failure to report impairment);
64 article thirty-seven (managing general agents); article

65 thirty-nine (disclosure of material transactions); and article
66 forty-one (privileges and immunity) shall be applicable to
67 any health maintenance organization granted a certificate
68 of authority under this article. In circumstances where the
69 code provisions made applicable to health maintenance
70 organizations by this section refer to the "insurer", the
71 "corporation" or words of similar import, the language
72 shall be construed to include health maintenance
73 organizations.

74 (e) Any long-term care insurance policy delivered or
75 issued for delivery in this state by a health maintenance
76 organization shall comply with the provisions of article
77 fifteen-a of this chapter.

78 (f) A health maintenance organization granted a
79 certificate of authority under this article shall be exempt
80 from paying municipal business and occupation taxes on
81 gross income it receives from its enrollees, or from their
82 employers or others on their behalf, for health care items
83 or services provided directly or indirectly by the health
84 maintenance organization. This exemption applies to all
85 taxable years through the thirty-first day of December,
86 one thousand nine hundred ninety-six. The commissioner
87 and the tax department shall conduct a study of the
88 appropriations of imposition of the municipal business
89 and occupation tax or other tax on health maintenance
90 organizations, and shall report to the regular session of the
91 Legislature, one thousand nine hundred ninety-seven, on
92 their findings, conclusions and recommendations, together
93 with drafts of any legislation necessary to effectuate their
94 recommendations.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schwerner

Chairman Senate Committee

Mike Fantasio

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll E. Adams

Clerk of the Senate

Gregory M. Gray

Clerk of the House of Delegates

Carl Ray Tomblin

President of the Senate

R. K.

Speaker of the House of Delegates

The within is approved this the 25th
day of April, 1997.

Lee R. Anderson

Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/97

Time 11:35 AM