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WEST VIRGINIA LEGISLATURE
Regular Session, 2003

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Committee Substitute for
SENATE BILL NO. 338

(By Senator Plymale, et al)

PASSED March 8, 2003

In Effect 90 days from Passage

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FOR

Senate Bill No. 338

(SENATORS PLYMALE, BAILEY, PREZIOSO, UNGER,
BOLEY, HUNTER, ROWE, JENKINS, CALDWELL
AND KESSLER, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article, designated article four-b, related to the creation of a medicaid buy-in program for working individuals with disabilities; establishing legislative intent; defining terms; establishing criteria for participation in the program; creating exceptions; establishing fees and premiums; providing for periodic review; and requiring the secretary of the department of health and human services to fulfill certain reporting requirements, form an advisory counsel and propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-b, to read as follows:

ARTICLE 4B. MEDICAID BUY IN PROGRAM.

§9-4B-1. Legislative findings.

1 (a) The Legislature finds that there are many individuals
2 in this state who have disabilities that qualify them for
3 state or federal assistance and who are nonetheless willing
4 and able to enter the workforce, but do not do so out of
5 fear of losing essential medical care. As a result, the state
6 realizes increased costs in fully supporting these disabled
7 individuals who, in turn, suffer under an additional
8 disability of being deprived of the additional income,
9 dignity and self-sufficiency derived by being engaged in
10 competitive employment.

11 (b) The Legislature finds that establishing a medicaid
12 buy-in program for certain individuals with disabilities
13 will assist them in becoming independent of public
14 assistance by enabling them to enter the workforce
15 without fear of losing essential medical care.

§9-4B-2. Definitions.

As used in this article:

1 (1) "Approved accounts" means any retirement account
2 that the secretary has determined is not to be included as
3 an asset in determining the eligibility of an individual for
4 participation in the buy-in program. Approved accounts
5 may include, but not be limited to, private retirement
6 accounts such as individual retirement accounts; other
7 individual accounts; and employer-sponsored retirement
8 plans such as 401(k) plans, Keogh plans and employer
9 pension plans.

10 (2) "Basic coverage group" means an optional coverage
11 group as defined by the Ticket to Work and Work Incen-
12 tives Improvement Act of 1999.

13 (3) "Copayment" is a fixed fee to be paid by the patient
14 at the time of each office visit, outpatient service or filling
15 of prescriptions.

16 (4) "Cost-sharing" means the eligible participant will
17 participate in the cost of the program by paying the
18 enrollment fee, monthly premiums and copayments if
19 established by the department.

20 (5) "Countable income" means income that does not
21 exceed two hundred fifty percent of the federal poverty
22 level: *Provided*, That for purposes of this article, countable
23 income does not include:

24 (A) The income of the individual's spouse, parent or
25 guardian with whom he or she resides; and

26 (B) Income disregarded under the state medicaid plan's
27 financial methodology, including income disregarded
28 under the federal supplemental security income program
29 (42 U. S. C. §1382) as impairment-related work expenses.

30 (6) "Countable resources" includes earned and unearned
31 income: *Provided*, That countable resources do not in-
32 clude:

33 (A) Liquid assets of up to five thousand dollars for an
34 individual;

35 (B) Liquid assets of up to ten thousand dollars for a
36 family;

37 (C) Retirement accounts; and

38 (D) Independence accounts;

39 (7) "Department" means the department of health and
40 human resources.

41 (8) "Disability" means a medically determinable physi-
42 cal or mental condition that:

43 (A) Can be expected to result in death or has lasted, or
44 can be expected to last, for a continuous period of not less
45 than twelve months; and

46 (B) Renders a person unable to engage in substantial
47 gainful activity; and

48 (C) Is a disability defined by social security administra-
49 tion criteria and has been determined by either the social
50 security administration or the West Virginia department
51 of health and human services.

52 (9) "Eligible buy-in participant" means an individual
53 who:

54 (A) Is a resident of the state of West Virginia;

55 (B) Has a disability as defined herein;

56 (C) Is at least sixteen years of age and less than sixty-five
57 years of age;

58 (D) Is engaged in competitive employment, including
59 self-employment or nontraditional work that results in
60 remuneration at or above minimum wage in an integrated
61 setting;

62 (E) Has countable resources that do not exceed the
63 resource limits as defined in this article; and

64 (F) Has countable income that does not the income limits
65 as defined in this article.

66 (10) "Enrollment fee" means a one-time fee to partici-
67 pate in the medicaid buy-in program.

68 (11) "Federal benefit rate" is the amount of monthly
69 federal or state benefits paid to persons with limited
70 income and resources who are age sixty-five or older, blind
71 or disabled;

72 (12) "Federal poverty level" means the level of personal
73 or family income below which one is classified as poor

74 according to federal governmental standards, commonly
75 referred to as the federal poverty guidelines which are
76 issued and printed each year in the federal register.

77 (13) "Income" means money earned from employment
78 wages or self-employment earnings and unearned money
79 received from any other source.

80 (14) "Independence accounts" are department-approved
81 accounts established with the department solely by funds
82 paid from the earned income of an eligible buy-in partici-
83 pant to cover expenses necessary to enhance or maintain
84 his or her independence or increase employment opportu-
85 nities. Approved expenditures from the funds may
86 include: Educational expenses; work-related expenses;
87 home purchase or modification; transportation; medical
88 expenses; assistive technology and related services; or for
89 short-term living expenses in times of qualified emergen-
90 cies as determined by the department.

91 (15) "Liquid assets" are cash or assets payable in cash on
92 demand, including financial instruments that can be
93 converted to cash within twenty working days. For
94 purposes of this article, national, state and local holidays
95 are not working days.

96 (16) "Premium" is a monthly fee paid by an eligible buy-
97 in participant to continue participation in the program.

98 (17) "Resources" are possessions that the eligible buy-in
99 participant owns that could be changed to cash and used
100 for food, clothing or shelter and that qualify as resources
101 under the applicable social security administration
102 guidelines.

103 (18) "Retirement accounts" are moneys invested in
104 approved retirement funds and accounts that are disre-
105 garded as an asset by the department in determining the
106 eligibility of an individual for participation in the buy-in
107 program.

§9-4B-3. Medicaid buy-in program; funding.

1 (a) The medicaid buy-in program for working individu-
2 als with disabilities is hereby established to provide
3 medicaid benefits to individuals who are disabled and
4 employed, as authorized under Section 201 of the federal
5 Ticket to Work and Work Incentives Improvement Act of
6 1999 (P.L. 106-170, 42 U. S. C. 1396, *et seq.*). The medicaid
7 buy-in program shall become effective as of the first day
8 of July, two thousand three.

9 (b) Funding for the buy-in program shall be from funds
10 appropriated by the Legislature, premiums paid, enroll-
11 ment fees and any federal matching funding available to
12 the program.

§9-4B-4. Eligibility guidelines.

1 (a) To be eligible to participate in the buy-in program
2 beginning the first day of July, two thousand three, an
3 individual shall:

4 (1) Be a resident of the state of West Virginia;

5 (2) Have a disability that is defined and determined by
6 the social security administration or the department;

7 (3) Be at least sixteen years of age but not more than
8 sixty-four years of age;

9 (4) Be engaged in competitive employment, including
10 self-employment or nontraditional work that results in
11 remuneration at or above minimum wage in an integrated
12 setting;

13 (5) Have countable resources that do not exceed the
14 resource limit for the supplemental security income
15 program;

16 (6) Have countable income that does not exceed two
17 hundred fifty percent of the federal poverty level;

18 (7) Have total countable unearned income, using the
19 social security income program methodology, that does not
20 exceed the federal benefit rate plus the general income
21 exclusion; and

22 (8) Except as provided in section five of this article, not
23 have countable resources that exceed the resource limits
24 for the federal supplemental security income program.

25 (b) The secretary shall establish a method of providing
26 notice of the availability of participation in the medicaid
27 buy-in program. The secretary shall develop all forms and
28 notices necessary to implement the provisions of this
29 article, including forms for application to the program,
30 determination of eligibility and continued participation
31 and notices that advise all eligible buy-in participants of
32 the rights, benefits, obligations and participation require-
33 ments of the program, including, but not limited to, notice
34 of fees, premiums, premium adjustments, periodic review,
35 length of time for which benefits may be paid and disqual-
36 ifying factors.

§9-4B-5. Exceptions to qualifying factors.

1 (a) An individual who is enrolled in the buy-in program
2 and who no longer meets the eligibility requirements of the
3 basic coverage group due to an improvement in the individ-
4 ual's medical condition may continue to be eligible for
5 medicaid coverage under the buy-in program if the
6 individual meets the following requirements:

7 (1) The individual continues to have a severe medically
8 determinable impairment as determined by the depart-
9 ment and as defined and recognized by federal law;

10 (2) The individual is employed and earning a monthly
11 wage that is not less than the federal minimum hourly
12 wage times forty;

13 (3) The individual does not have income or countable
14 resources in excess of the limits established for the basic
15 coverage group;

16 (4) The individual is at least sixteen years of age and less
17 than sixty-five years of age;

18 (5) The individual pays any premiums or other cost
19 sharing required under this chapter; and

20 (6) The individual meets all other eligibility require-
21 ments under this section.

22 (b) An individual who is enrolled in the buy-in program
23 and who is unable to maintain employment for involun-
24 tary reasons, including temporary leave due to a health
25 problem or involuntary termination, may continue to be
26 eligible for Medicaid coverage under the buy-in program
27 if the individual meets the following requirements:

28 (1) Within thirty days after the date on which the
29 individual becomes unemployed, the individual, or an
30 authorized representative of the individual, submits a
31 written request to the office that the individual's medicaid
32 coverage be continued;

33 (2) The individual maintains a connection to the
34 workforce during the individual's continued eligibility
35 period by participating in at least one of the following
36 activities:

37 (A) Enrollment in a state or federal vocational rehabili-
38 tation program;

39 (B) Enrollment or registration with the office of
40 workforce development;

41 (C) Participation in a transition from school-to-work
42 program;

43 (D) Participation with an approved provider of employ-
44 ment services;

45 (E) Provision of documentation from the individual's
46 employer that the individual is on temporary involuntary
47 leave;

48 (F) The individual does not have income or countable
49 resources in excess of the limits established under this
50 section;

51 (G) The individual is at least sixteen years of age and less
52 than sixty-five years of age;

53 (H) The individual pays any premiums or other cost
54 sharing required under this section; and

55 (I) The individual meets all other eligibility requirements
56 under this section.

57 (c) The department shall continue medicaid coverage
58 under the buy-in program for an individual described in
59 subsection (b) of this section for up to six months from the
60 date of the individual's involuntary loss of employment.

61 (d) If an individual is ineligible for continued coverage
62 under the buy-in program because he or she fails to meet
63 the requirements of subsection (b) of this section or has
64 already fulfilled twelve months of continuing eligibility,
65 the individual shall be required to meet the eligibility
66 requirements of another available medicaid program in
67 order to continue to be eligible for medicaid benefits.

§9-4B-6. Fees, premiums and periodic reviews.

1 (a) The department shall charge a fifty-dollar enrollment
2 fee to all participants in the medicaid buy-in program.
3 Upon payment of the enrollment fee, the first month's
4 premium payment is waived. Medicaid coverage begins on
5 the first day of the month following payment of the
6 enrollment fee.

7 (b) The department shall develop a sliding scale of
8 premiums for individuals participating in the buy-in
9 program. The sliding scale shall:

10 (1) Be based on the annual gross income of the individ-
11 ual; and

12 (2) Provide for a minimum premium of fifteen dollars
13 and a maximum monthly premium not to exceed three and
14 one-half percent of the individual's gross monthly income.

15 (c) Subject to the minimum and maximum amounts
16 described in this section, the department may annually
17 adjust the scale of premiums charged for participation in
18 the medicaid buy-in program.

19 (d) The department shall biannually review the amount
20 of the premium that an individual is required to pay under
21 this section.

22 (e) The department may increase the premium required
23 only after conducting a review.

24 (f) The department shall decrease the premium that an
25 eligible buy-in participant is required to pay if:

26 (1) The individual notifies the office of a change in
27 income or family size; and

28 (2) The sliding scale adopted by the department applied
29 to the individual's changed circumstances prescribes a
30 premium for the individual that is lower than the premium
31 the individual is paying.

32 (g) The department shall establish administrative
33 procedures regarding premiums for the buy-in program,
34 including:

35 (1) The effect of nonpayment of a premium; and

36 (2) The collection of premiums.

37 (h) The department shall establish criteria to base the
38 biannual redetermination of disability required for an
39 individual participating in the buy-in program on the
40 individual's medical evidence, including evidence of
41 physical or mental impairment.

42 (i) In conducting the biannual redetermination described
43 in this section, the department may not determine that an

44 individual participating in the buy-in program is no longer
45 disabled solely on the individual's:

- 46 (1) Participation in employment;
- 47 (2) Earned income; or
- 48 (3) Income from self-employment.

§9-4B-7. Benefits of the medicaid buy-in program.

1 (a) Except as otherwise provided in this article, an
2 eligible buy-in participant shall receive the same benefits
3 that he or she would otherwise receive as a recipient of
4 medicaid benefits, including home health care services.

5 (b) Except as otherwise provided in this article, an
6 eligible buy-in participant is subject to the same obliga-
7 tions and requirements, including cost sharing, that he or
8 she would otherwise be subject to as recipient of medicaid
9 benefits.

§9-4B-8. Analytical criteria and reporting requirements.

1 (a) The secretary shall establish criteria to determine the
2 effectiveness of the medicaid buy-in program and contin-
3 ued medicaid coverage through section 1619 of the federal
4 Social Security Act (42 U. S. C. §1382h). The criteria shall
5 include an analysis of the following:

6 (1) The number of individuals with disabilities who are:

7 (A) Enrolled in the buy-in program; or

8 (B) Receiving medicaid through Section 1619 of the
9 federal Social Security Act (42 U. S. C. §1382h);

10 (2) The amount of state revenues resulting from premi-
11 ums paid by participants in the buy-in program; and

12 (3) The amount of state costs incurred as a result of
13 implementing the buy-in program, including administra-
14 tive costs and costs of providing services.

15 (b) In addition to the criteria required under subsection
16 (b) of this section, the secretary may establish criteria to
17 determine the following:

18 (1) Comparative costs of medicaid funded services for
19 participants in the buy-in program and work incentives
20 created through Section 1619 of the federal Social Secu-
21 rity Act (42 U. S. C. §1382h) before and after employment;

22 (2) The number of supplemental security income and
23 social security disability insurance recipients in West
24 Virginia who are no longer dependent on, or who have
25 reduced dependence on, public assistance or health care
26 entitlement services, other than medicaid or the children's
27 health insurance program, due to participation in the buy-
28 in program or work incentives created through Section
29 1619 of the federal Social Security Act (42 U. S. C.
30 §1382h);

31 (3) The number of individuals with severe disabilities
32 who are no longer dependent on, or who have reduced
33 dependence on, public benefits or services, other than
34 medicaid or the children's health insurance program, due
35 to income or support services received through participa-
36 tion in the buy-in program or work incentives created
37 through Section 1619 of the federal Social Security Act (42
38 U. S. C. §1382h); and

39 (4) The change in the number of buy-in program partici-
40 pants or participants in work incentives created through
41 Section 1619 of the federal Social Security Act (42 U. S. C.
42 §1382h) who have health care needs and related services
43 covered through employer based benefit programs.

44 (c) In evaluating the effectiveness of the state's work
45 incentives initiatives for individuals with disabilities, the
46 secretary:

47 (1) Shall collaborate with other state agencies on data
48 collection; and

49 (2) May consult with an independent contractor to
50 collect data on the criteria required by this section.

51 (d) The department secretary shall provide an annual
52 report of its evaluation of the medicaid buy-in program
53 performed pursuant to the requirements of this section to
54 the Legislature no later than the last day of December of
55 each year, beginning in two thousand four.

§9-4B-9. Advisory council; rules.

1 (a) The secretary of the department of health and human
2 resources shall establish a medicaid buy-in program
3 advisory council, consisting of representatives from the
4 state medicaid agency, the state rehabilitation agency, the
5 state office of family support, the West Virginia statewide
6 independent living council, the West Virginia state reha-
7 bilitation council, the West Virginia developmental
8 disabilities council, the West Virginia mental health
9 planning council and the center for excellence in disabili-
10 ties at West Virginia university.

11 (b) The secretary shall submit proposed rules for review
12 and input to the advisory council prior to release for
13 public comment and shall consider any recommendations
14 of the advisory council before adopting final rules.

15 (c) The secretary shall propose emergency rules in
16 accordance with the provisions of section fifteen, article
17 three, chapter twenty-nine-a of this code to implement the
18 provisions of this article. Thereafter, the secretary shall
19 propose additional rules for legislative approval in accor-
20 dance with the provisions of said article three, chapter
21 twenty-nine-a of this code as may be needed to administer
22 and maintain the medicaid buy-in program.

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

Carly M...
.....
Chairman Senate Committee

Shawn L...
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell G...
.....
Clerk of the Senate

Bryce D. S...
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Frank B...
.....
Speaker House of Delegates

The within *is approved* this the *15th*
Day of *April*, 2003.
Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am