

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4438

(By Delegates Perdue, Perry, Hamilton,
Hartman, Poore, D. Campbell, M. Poling,
Hatfield, Ellington, Hunt and Williams)



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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H. B. 4438

(BY DELEGATES PERDUE, PERRY, HAMILTON,
HARTMAN, POORE, D. CAMPBELL, M. POLING,
HATFIELD, ELLINGTON, HUNT AND WILLIAMS)

[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7; and to amend said code by adding thereto a new article, designated §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4 and §33-25G-5, all relating to provider sponsored networks; stating the purpose; making legislative findings; defining terms; authorizing the Secretary of the Department of Health and Human Resources to contract with provider sponsored networks to provide services to Medicaid beneficiaries; assigning certain medicaid beneficiaries to provider sponsored networks; guaranteeing Medicaid beneficiaries' freedom to choose a managed care plan; providing an exemption from anti-trust laws; requiring reports to the Legislature; providing for shared savings with the state; authorizing the Insurance Commissioner to license provider sponsored networks; subjecting provider sponsored networks generally to the laws governing HMOs; providing for participation of health care

providers in a provider sponsored network; permitting lower or different minimum capital and surplus amounts; and providing rule-making authority, including emergency rules.

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 §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7; and that said code be amended by adding thereto a new article, designated §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4 and §33-25G-5, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 2L. PROVIDER SPONSORED NETWORKS.

§16-2L-1. Legislative purpose.

1 The Legislature finds that it inures to the benefit of the
2 state and its Medicaid populations to foster the development
3 of care systems and Medicaid options that allow for the
4 functional integration and participation of privately practicing
5 physicians with provider sponsored networks who have
6 patient-centered medical home resources and who are willing
7 to share access and use of those resources; that privately
8 practicing physicians provide indispensable and important
9 health care services to Medicaid enrollees in West Virginia
10 but many do not have the resources to develop
11 patient-centered medical homes in their respective practices;
12 that federally qualified health centers are deeply engaged
13 with integrating behavioral health providers and other
14 community services in their care of Medicaid beneficiaries
15 and that such centers lead in the development and
16 implementation of recognized medical homes in West
17 Virginia; and that better health outcomes can be achieved and

18 inappropriate utilization avoided through the integration and
19 coordination of physical health care with mental health care.
20 Therefore, in order to develop innovative means of meeting
21 the health care needs of the state's citizens and to address the
22 impact on the state's budget arising from the growing cost of
23 Medicaid, and in recognition of the important role that
24 federally qualified health centers play in providing health
25 care services to Medicaid beneficiaries, the Legislature
26 authorizes the secretary to enter into contracts with provider
27 sponsored networks.

§16-2L-2. Definitions.

1 As used in this article, unless the context requires
2 otherwise:

3 (1) "Continuity-of-care" means the clinical practice of a
4 medical professional who provides care to patients in which:

5 (A) In addition to episodic or urgent care provided from
6 time to time as needed, preventive care and counseling is
7 provided and a patient's overall health status is monitored
8 even when illness is not present or not in crisis; and

9 (B) Without being limited to discrete episodes of care,
10 medical records and care processes are used that track and
11 manage health status over time and allow the medical
12 professional to refer care to, and receive reports from, other
13 medical professionals and other care team members
14 responsible for a patient's care.

15 (2) "Federally Qualified Health Center" means an entity
16 as defined in 42 U.S.C. §1396d(1)(2)(B).

17 (3) "Medicaid beneficiary" means any person
18 participating, through either a state plan amendment or

19 waiver demonstration, in any Medicaid program administered
20 by the West Virginia Department of Health and Human
21 Resources or its Bureau for Medical Services.

22 (4) “Medical home” means a team-based model of care in
23 a patient-centered medical home.

24 (5) “Participating provider” means a licensed health care
25 provider who has entered into a contract with a provider
26 sponsored network to provide services to Medicaid enrollees.

27 (6) “Participating primary care provider” is a primary
28 care provider who is also a participating provider.

29 (7) “Patient-centered medical home” means a health care
30 setting as described in section nine, article twenty-nine-h of
31 this chapter.

32 (8) “Primary care provider” means a licensed behavioral
33 health professional or a person licensed as an allopathic or
34 osteopathic physician primarily practicing internal medicine,
35 family or general practice, obstetrics and gynecology, or
36 pediatrics who provides continuity-of-care services to the
37 majority of his or her patients.

38 (9) “Provider sponsored network” means an entity
39 licensed by the West Virginia insurance commissioner in
40 accordance with article twenty-five-g, chapter thirty-three of
41 this code.

42 (10) “Secretary” means the Secretary of the West
43 Virginia Department of Health and Human Resources.

§16-2L-3. Contracts with provider sponsored networks.

1 (a) The secretary is authorized to enter into contracts with
2 any provider sponsored network licensed by the insurance
3 commissioner in accordance with the provisions of article
4 twenty-five-g, chapter thirty-three of this code, to arrange for
5 the provision of health care, services and supplies for
6 Medicaid beneficiaries. Such contract:

7 (1) Shall be subject to the same criteria and standards
8 applied to other managed care organizations; and

9 (2) May provide that the provider sponsored network will
10 share with the department up to 25% of any net profits
11 realized during the period of the contract.

12 (b) The service, administrative and performance criteria
13 to be met by provider sponsored networks shall be the same
14 as required of other managed care organizations providing
15 services to Medicaid beneficiaries in the state.

16 (c) A licensed provider sponsored network shall be
17 deemed an HMO for the purposes of federal regulations
18 governing the Medicaid program to the extent permitted by
19 such regulations.

§16-2L-4. Options for Medicaid beneficiaries; assignment of enrollees.

1 (a) Notwithstanding the prior availability or utilization of
2 other options, every licensed provider sponsored network
3 available in a county shall be offered by the secretary as an
4 enrollment option to that county's Medicaid beneficiaries. A
5 provider sponsored network is deemed to be "available in a
6 county" if the secretary has entered into a contract with it to
7 provide services to Medicaid beneficiaries in that county.

8 (b) The secretary shall require that each eligible Medicaid
9 beneficiary be given the option to choose any available
10 managed care plan, including a provider sponsored network,
11 to arrange for and provide his or her medical services under
12 the Medicaid program, and nothing in this article shall be
13 construed to remove or diminish the right of Medicaid
14 beneficiaries to choose among such available options.

15 (c) The secretary shall seek approval from the Centers for
16 Medicare and Medicaid Services to permit the assignment to
17 an available provider sponsored network of any Medicaid
18 beneficiary who does not exercise the option to choose a
19 managed care plan or provider sponsored network offered to
20 him or her. The secretary shall promulgate emergency rules
21 and shall propose for legislative approval legislative rules as
22 may be necessary to implement such assignment process.

23 (d) A Medicaid beneficiary assigned to a provider
24 sponsored network or another managed care organization
25 may change enrollment to any other available provider
26 sponsored network or managed care organization as such
27 options may be available, and nothing in this article requires
28 that a Medicaid beneficiary who is a patient of a participating
29 provider must remain an enrollee in the provider sponsored
30 network with which such participating provider has a
31 contract.

§16-2L-5. Anti-trust exemption.

1 Because agreement and coordination among health care
2 providers, who may be potential competitors with each other,
3 is required to establish and operate provider sponsored
4 networks, an exemption from anti-trust laws for these
5 activities will further the purposes of this article. Therefore,
6 the West Virginia Anti-Trust Act, article eighteen, chapter
7 forty-seven of this code, is inapplicable to the development

8 of provider sponsored networks, activities necessary to
9 operate provider sponsored networks or any arrangements or
10 agreements between or among provider sponsored networks
11 and participating providers that are performed or entered into
12 consistent with and pursuant to the provisions of this article
13 and the provisions of article twenty-five-g, chapter thirty-
14 three of this code. It is the intent of the Legislature that the
15 federal anti-trust statutes be interpreted in this manner as
16 well.

16-2L-6. Rulemaking authority.

1 The secretary may promulgate emergency rules and shall
2 propose for legislative approval legislative rules, in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, as are necessary to provide for
5 implementation and enforcement of the provisions of this
6 article.

16-2L-7. Reports to the Legislature.

1 The secretary shall include in his or her annual report to
2 the Legislature the status of the provider sponsored network
3 programs operating during the previous fiscal year.

CHAPTER 33. INSURANCE

ARTICLE 25G. PROVIDER SPONSORED NETWORKS.

§33-25G-1. Legislative findings.

1 The Legislature finds that, in light of the need to provide
2 health care to a Medicaid population that is expected to rise
3 dramatically in the near future, new models of managed care
4 should be explored in order to enhance the state's ability to
5 improve health outcomes and to manage the financial risk

6 associated with the provision of such care. This article
7 provides a licensing and regulatory scheme for provider
8 sponsored networks, an alternative managed care model
9 recognized in federal law, that recognizes the unique features
10 of such entities.

§33-25G-2. Definitions.

1 (a) “Federally Qualified Health Center” means an entity
2 as defined in 42 U.S.C. §1396d(1)(2)(B).

3 (b) “Medicaid beneficiary” means any person
4 participating, through either a state plan amendment or
5 waiver demonstration, in any Medicaid program administered
6 by the West Virginia Department of Health and Human
7 Resources or its Bureau for Medical Services.

8 (c) “Participating provider” means a licensed health care
9 provider who has entered into a contract with a provider
10 sponsored network to provide services to Medicaid enrollees.

11 (d) “Provider sponsored network” means an entity that
12 satisfies the definition of a “Medicaid managed care
13 organization” set forth in 42 U.S.C. §1396b(m)(1)(A), is
14 controlled by one or more Federally Qualified Health
15 Centers, as set forth in 42 U.S.C. §1396b(m)(1)(C)(ii)(IV),
16 and provides or otherwise makes available health care
17 services solely to Medicaid beneficiaries or beneficiaries of
18 medicaid or medicare pursuant to contract with the secretary
19 executed in accordance with article two-l, chapter sixteen of
20 this code.

21 (e) “Secretary” means the Secretary of the West Virginia
22 Department of Health and Human Resources.

§33-25G-3. Licensing of provider sponsored networks.

1 (a) Except to the extent provided otherwise in this article,
2 a provider sponsored network is subject to the provisions of
3 article twenty-five-a of this chapter to the same extent as an
4 HMO.

5 (b) Notwithstanding the provisions of section four, article
6 twenty-five-a of this chapter, in determining whether a
7 provider sponsored network has demonstrated in its
8 application for a certificate of authority or at a later time that
9 it is financially responsible and may reasonably be expected
10 to meet its obligations to Medicaid beneficiaries, the
11 commissioner may, in his or her sole discretion and after
12 consultation with the secretary, impose lower or different
13 solvency requirements, including lower surplus and capital.
14 In deciding whether to permit lower or different solvency
15 standards, the commissioner shall consider actuarial
16 evaluations and other qualified technical standards and may
17 also consider factors such as a lower risk of insolvency, any
18 transfer of risk to a third party, and the restriction of the
19 provider sponsored network to the provision of Medicaid-
20 related services; these same factors may also be considered in
21 reviewing and acting upon a provider sponsored network's
22 RBC report.

23 (c) A provider sponsored network may at any time seek
24 to convert its certificate of authority granted pursuant to this
25 article to a certificate of authority to operate as an HMO by
26 filing an application in accordance with the provisions of
27 article twenty-five-a of this chapter.

§33-25G-4. Provider participation.

1 (a) Any willing physician or licensed behavioral health
2 provider is entitled to participate in a provider sponsored

3 network provided that he or she is willing to participate in the
4 health care delivery approach designed by the provider
5 sponsored network and such other applicable requirements of
6 the Department of Health and Human Resources.

7 (b) As a condition of provider participation, including
8 participation by hospitals, a provider sponsored network may
9 require that its care management protocols be observed,
10 including provisions for designations of certain services that
11 may be provided only by designated providers or classes of
12 providers, requirements that providers be credentialed before
13 they may provide certain services, and requirements that
14 providers comply with utilization management programs and
15 referral systems as established by the provider sponsored
16 network. A provider sponsored network may not require a
17 participating physician provider to sell or transfer ownership
18 of his, her or its assets or practice operations to the provider
19 sponsored network or any of its participating providers as a
20 condition of participation or of being permitted access or use
21 of the provider sponsored network's medical home resources
22 and care management systems.

23 (c) A participating provider shall have the right to
24 participate in, and contract with, other networks or other
25 managed care organizations to provide services to Medicaid
26 beneficiaries.

33-25G-5. Rules.

1 The commissioner may promulgate emergency rules and
2 shall propose for legislative approval legislative rules, in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code, as are necessary to provide for
5 implementation and enforcement of the provisions of this
6 article.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor