ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2960

(By Delegates Guthrie, Hartman and Manchin)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to repeal §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all relating to requiring health plan issuers to develop processes for utilization review, to develop internal grievance procedures, and to make external review available with respect to all adverse determinations; mandating utilization review and internal grievance procedures; providing for external review of adverse determinations; defining terms; providing for judicial review of certain decisions; providing for venue of judicial review; providing for continued benefits pending judicial review; providing for an award of attorneys fees; providing no new causes of action; preserving existing causes of action; repealing similar provisions applicable to only health maintenance organizations; and directing proposal of legislative rules.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §33-25C-5, §33-25C-6, §33-25C-7, §33-25C-9 and §33-25C-11
3 of the Code of West Virginia, 1931, as amended, be repealed; and
4 that said code be amended by adding thereto a new article,
5 designated §33-16H-1, §33-16H-2, §33-16H-3 and §33-16H-4, all to
6 read as follows:

7 **ARTICLE 16H. REVIEW OF ADVERSE DETERMINATIONS.**

8 **§33-16H-1. Definitions.**

9 As used in this article:

10 (1) "Adverse determination" means a determination by a health
11 carrier or its designee utilization review organization that an
12 admission, availability of care, continued stay or other healthcare
13 service that is a covered benefit has been reviewed and, based upon
14 the information provided, does not meet the health carrier's
15 requirements for medical necessity, appropriateness, health care
16 setting, level of care or effectiveness, and the requested service
17 or payment for the service is therefore denied, reduced or
18 terminated.

19 (2) "External review" means a review of a final adverse
20 determination by an independent review organization.

21 (3) "Final adverse determination" means an adverse
22 determination that has been upheld by the issuer at the completion
23 of the internal grievance procedures or an adverse determination
24 with respect to which the internal grievance procedures have been
25 deemed exhausted.

1 (4) "Health benefit plan" means a policy, contract,
2 certificate or agreement entered into, offered or issued by an
3 issuer to provide, deliver, arrange for, pay for, or reimburse any
4 of the costs of health care services, including short-term and
5 catastrophic health insurance policies and policies that pay on a
6 cost-incurred basis, but excludes the excepted benefits defined in
7 42 U. S. C. §300gg-91 and policies, contracts, certificates or
8 agreements excluded by rules promulgated pursuant to section four
9 of this article.
10 (5) "Health plan issuer" or "issuer" means an entity required
11 to be licensed under this chapter that contracts, or offers to
12 contract to provide, deliver, arrange for, pay for, or reimburse
13 any of the costs of health care services under a health benefit
14 plan, including an accident and sickness insurance company, a
15 health maintenance corporation, a health care corporation, a health
16 or hospital service corporation, and a fraternal benefit society.
17 (6) "Independent review organization" means an entity approved
18 by the commissioner to conduct external reviews of final adverse
19 determinations.
20 (7) "Utilization review" means a system for the evaluation of
21 the necessity, appropriateness and efficiency of the use of health
22 care services, procedure and facilities.
23 **§33-16H-2. Issuer requirements.**
24 An issuer shall, in accordance with rules promulgated pursuant
25 to section four of this article, develop processes for utilization
26 review and internal grievance procedures and shall make external

1 review available with respect to all adverse determinations.

2 **§33-16H-3. Judicial review; enforcement.**

3 (a) An individual or issuer may seek judicial review of a
4 final decision rendered by an independent review organization by
5 filing a petition in the circuit court within sixty days after
6 receipt of notice of such decision.

7 (1) Venue for a petition filed pursuant to this section is the
8 county in which the individual resides or, if the individual is a
9 non-resident, the county in which he or she works or, if he or she
10 does not work in this state, the county in which his or her
11 employer is located, or if none of these counties are applicable,
12 in Kanawha County.

13 (2) The issuer shall provide benefits pursuant to the final
14 external review decision, including by making payment on a disputed
15 claim, unless or until there is a judicial decision otherwise.

16 (3) If the issuer files a petition pursuant to this section
17 and the individual substantially prevails, the issuer shall be
18 responsible for the reasonable attorney's fees of the individual.

19 (b) A decision issued by an independent review organization
20 pursuant to this article may be enforced in the same manner as an
21 order of the commissioner.

22 (c) This article does not create any new cause of action or
23 eliminate any presently existing cause of action.

24 **§33-16H-4. Rule-making authority; applicability.**

25 (a) The commissioner shall propose legislative rules for
26 approval by the Legislature in accordance with the provisions of

1 article three, chapter twenty-nine-a of this code to implement the
2 provisions of this article, including but not limited to rules to:
3 (1) Define the scope of the applicability of this article;
4 (2) Establish requirements for all issuers with regard to
5 utilization review and for internal grievance procedures and
6 external review of adverse determinations, which rules shall be
7 based on the corresponding model acts adopted by the National
8 Association of Insurance Commissioners and, with respect to
9 external review, shall meet or exceed the minimum consumer
10 protections established by the federal Patient Protection and
11 Affordable Care Act (Public Law 111-148), as amended by the federal
12 Health Care and Education Reconciliation Act of 2010 (Public Law
13 111-152); and
14 (3) Provide for judicial review pursuant to subsection (a),
15 section three of this article, which rules shall be based on the
16 provisions of this code and rules governing judicial review of
17 contested cases under the State Administrative Procedures Act.
18 (b) Notwithstanding the provisions of section one, article
19 twenty-three of this chapter; section four, article twenty-four of
20 this chapter; section six, article twenty-five of this chapter; and
21 section twenty-four, article twenty-five-a of this chapter, this
22 article and the rules promulgated under this article are applicable
23 to all health benefits plans and supersede any provisions to the
24 contrary in this chapter or in any rules promulgated under this
25 chapter.