WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 354

BY SENATOR SWOPE

[Introduced February 18, 2021; referred

to the Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §9-11-1, §9-11-2, and §9-11-3, all relating to providing reforms to the state's
3 Medicaid procedures by tightening hospital presumptive eligibility; mitigating the damage
4 from federal Maintenance-of-Effort handcuffs; and enhancing Medicaid program integrity.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. MEDICAID REFORM ACT.

§9-11-1. Tighten hospital presumptive eligibility (HPE).

1 Notwithstanding any other provision of this code, the following shall apply:
2 (a) *Limitation of presumptive eligibility*. – The Division Of Human Services shall request
3 federal approval from the centers for Medicare and Medicaid services of the United States
4 Department of Health and Human Services for a section 1115 demonstration waiver to enable
5 the division to eliminate mandatory hospital presumptive eligibility and restrict presumptive
6 eligibility determinations to children and pregnant women eligibility groups. If federal approval for
7 such a waiver is denied, the division shall resubmit a request for approval within six months of
8 each denial.
9 (b) Unless required under federal law, the division may not designate itself as a qualified
10 health entity for purpose of making presumptive eligibility determinations or for any purpose not
11 expressly authorized by state law.
12 (c) *Responsibilities of hospitals.* – In making presumptive eligibility determinations, it is the
13 responsibility of the hospital to:
14 (1) Notify the division of each presumptive eligibility determination within five working days
15 from the date the determination was made;
16 (2) Assist individuals determined to be presumptively eligible with completing and
17 submitting a full Medicaid application form;
18 (3) Notify the applicant in writing and on all relevant forms with plain language and large
19 print that if the applicant does not file a full Medicaid application with the division before the last

20 day of the following month, presumptive eligibility coverage will end on that last day; and

21 (4) Notify the applicant that if the applicant files a full Medicaid application with the division

22 before the last day of the following month, presumptive eligibility coverage will continue until an

23 eligibility determination is made on the application that was filed.

24 (d) The division shall use the following standards to establish and ensure accurate

25 presumptive eligibility determinations made by each qualified hospital:

26 (1) Was the Medicaid Presumptive Eligibility Card (HPE-Card) received by the division

27 within five working days from the determination date;

28 (2) Was a full Medicaid application received by the division before the expiration of the

29 presumptive eligibility period;

30 (3) If a full application was received, was the individual found to be eligible for full Medicaid

31 coverage.

32 (e) *Corrective Action.* –

33 (1) The first time a qualified hospital fails to meet any of the standards established for any

34 presumptive eligibility determination that the hospital made, the division shall notify the hospital

35 in writing within five days from when the standard was not met. The notice shall include:

36 (A) A description of the standard that was not met and an explanation of why it was not

37 met; and

38 (B) Confirmation that a second finding will require that all applicable hospital staff

39 participate in mandatory training on hospital presumptive eligibility rules and regulations to be

40 conducted by the division.

41 (2) The second time a qualified hospital fails to meet any of the standards established for

42 any presumptive eligibility determination that the hospital made, the division shall notify the

43 hospital in writing within five days from when the standard was not met. The written notice shall

44 include:

45 (A) A description of the standard that was not met and an explanation of why it was not

46 met;

47 (B) Confirmation that all applicable hospital staff will be required to participate in a

48 mandatory training on hospital presumptive eligibility rules and regulations to be conducted by

49 the division, including the date, time and location of the training as determined by the division;

50 (C) A description of available appellate procedures by which a qualified hospital may

51 dispute the finding of failure and remove the finding by providing clear and convincing evidence

52 that the standard was met; and

53 (D) Confirmation that if the hospital again fails to meet the standards for presumptive

54 eligibility for any determination, the hospital will no longer be qualified to make presumptive

55 eligibility determinations.

56 (3) The third time a qualified hospital fails to meet any of the standards established for any

57 presumptive eligibility determination that the hospital made, the division shall notify the hospital

58 in writing within five days from when the standard was not met. The written notice shall include:

59 (A) A description of the standard that was not met and an explanation of why it was not

60 met;

61 (B) A description of available appellate procedures by which a qualified hospital may

62 dispute the finding of failure and remove the finding by providing clear and convincing evidence

63 that the standard was met; and

64 (C) Confirmation that, effective immediately, the hospital is no longer qualified to make

65 presumptive eligibility determinations of any kind.

§9-11-2. Mitigate the damage from federal Maintenance-of-Effort (MOE) handcuffs.

1 When the division receives funding for Medicaid contingent on temporary maintenance of

2 effort restrictions, or for any reason is limited in its ability to disenroll individuals, such as

3 restrictions imposed by Section 6008 of the Families First Coronavirus Response Act (Public Law

4 116-127), the division shall:

5 (a) Continue to conduct redeterminations as in the normal course of business and act on

6 such redeterminations to the fullest extent permissible under the law; and

7 (b) Within 60 days of the expiration of such restrictions, complete a full audit in which the

8 division shall:

9 (1) Complete and act on eligibility redeterminations for all cases that have not had a

10 redetermination within the last 12 months;

11 (2) Request federal approval from the centers for Medicare and Medicaid services of the

12 United States Department of Health and Human Services for the authority to conduct and act on

13 eligibility redeterminations for each individual enrolled during the period of restrictions enrolled for

14 three or more total months and shall, within 60 days of approval, conduct and act on such

15 redeterminations;

16 (3) Carry out an additional check of all verification measures established under section

17 441.9 to verify eligibility and act on such information checked; and

18 (4) Submit a summary report of the audit to the Speaker of the House of Delegates and

19 President of the Senate.

§9-11-3. Enhanced Medicaid program integrity.

1 Unless required under federal law, the division may not:

2 (1) Designate itself as a qualified health entity for purpose of making presumptive eligibility

3 determinations or for any purpose not expressly authorized by state law;

4 (2) Accept self-attestation of income, residency, age, household composition,

5 caretaker/relative status, or receipt of other coverage without verification prior to enrollment;

6 (3) Request authority to waive or decline to periodically check any available income-

7 related data sources to verify eligibility; or

8 (4) Request authority to waive or decline to comply with public notice requirements

9 applicable to proposed changes to the state plan pursuant to 42 C.F.R. §447.205, 42 C.F.R.

10 §447.57, and 42 C.F.R. §440.386.

NOTE: The purpose of this bill is to provide reforms to the state's Medicaid procedures by tightening hospital presumptive eligibility; mitigating the damage from federal Maintenance-of-Effort (MOE) handcuffs; and enhancing Medicaid program integrity.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.