

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2876

BY DELEGATES WESTFALL, SUMMERS AND BATES

[Introduced March 03, 2021; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §33-16-1a and §33-16-2 of the Code of West Virginia, 1931, as
 2 amended; and to further amend said code by adding thereto a new section, designated
 3 §33-16-2a, all relating to modify group accident and sickness insurance requirements

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1a. Definitions.

1 As used in this article:

2 (a) "Bona fide association" means an association; ~~which has been actively in existence for~~
 3 ~~at least five years; has been formed and maintained in good faith for purposes other than obtaining~~
 4 ~~insurance~~ established by one of the following:

5 (1) An association of employers that are in the same trade, industry, line of business or
 6 profession;

7 (2) An association of employers that do not share the same industry, lines of business or
 8 profession with a principal office within this state; or

9 (3) An association of employers that do not share the same, industry, line of business or
 10 profession with a principal office within a metropolitan area that has boundaries in this state:

11 Provided, That the association does not condition membership in the association on any health
 12 status-related factor relating to an individual; makes accident and sickness insurance offered
 13 through the association available to all members regardless of any health status-related factor
 14 relating to members or individuals eligible for coverage through a member; does not make
 15 accident and sickness insurance coverage offered through the association available other than in
 16 connection with a member of the association; and meets any additional requirements as may be
 17 set forth in this chapter or by rule.

18 (b) "Commissioner" means the commissioner of insurance.

19 (c) "Creditable coverage" means, with respect to an individual, coverage of the individual
 20 after June 30, 1996, under any of the following, other than coverage consisting solely of excepted

21 benefits:

22 (1) A group health plan;

23 (2) A health benefit plan;

24 (3) Medicare Part A or Part B, 42 U. S. C. §1395 *et seq.*; Medicaid, 42 U. S. C. §1396a *et*

25 *seq.* (other than coverage consisting solely of benefits under Section 1928 of the Social Security

26 Act); Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), 10 U. S. C.,

27 Chapter 55; and a medical care program of the Indian Health Service or of a tribal organization;

28 (4) A health benefits risk pool sponsored by any state of the United States or by the District

29 of Columbia; a health plan offered under 5 U. S. C., chapter 89; a public health plan as defined in

30 regulations promulgated by the federal secretary of health and human services; or a health benefit

31 plan as defined in the Peace Corps Act, 22 U. S. C. §2504(e).

32 (d) "Dependent" means an eligible employee's spouse or any unmarried child or stepchild

33 under the age of 25 if that child or stepchild meets the definition of a "qualifying child" or a

34 "qualifying relative" in section 152 of the Internal Revenue Code.

35 (e) "Eligible employee" means an employee, including an individual who either works or

36 resides in this state, who meets all requirements for enrollment in a health benefit plan.

37 (f) "Excepted benefits" means:

38 (1) Any policy of liability insurance or contract supplemental thereto; coverage only for

39 accident or disability income insurance or any combination thereof; automobile medical payment

40 insurance; credit-only insurance; coverage for on-site medical clinics; workers' compensation

41 insurance; or other similar insurance under which benefits for medical care are secondary or

42 incidental to other insurance benefits; or

43 (2) If offered separately, a policy providing benefits for long-term care, nursing home care,

44 home health care, community-based care or any combination thereof, dental or vision benefits or

45 other similar, limited benefits; or

46 (3) If offered as independent, noncoordinated benefits under separate policies or

47 certificates, specified disease or illness coverage, hospital indemnity or other fixed indemnity
48 insurance, or coverage, such as Medicare supplement insurance, supplemental to a group health
49 plan; or

50 (4) A policy of accident and sickness insurance covering a period of less than one year.

51 (g) "Group health plan" means an employee welfare benefit plan, including a church plan
52 or a governmental plan, all as defined in section three of the Employee Retirement Income
53 Security Act of 1974, 29 U. S. C. §1003, to the extent that the plan provides medical care.

54 (h) "Health benefit plan" means benefits consisting of medical care provided directly,
55 through insurance or reimbursement, or indirectly, including items and services paid for as
56 medical care, under any hospital or medical expense incurred policy or certificate; hospital,
57 medical or health service corporation contract; health maintenance organization contract; or plan
58 provided by a multiple-employer trust or a multiple-employer welfare arrangement. "Health benefit
59 plan" does not include excepted benefits.

60 (i) "Health insurer" means an entity licensed by the commissioner to transact accident and
61 sickness in this state and subject to this chapter. "Health insurer" does not include a group health
62 plan.

63 (j) "Health status-related factor" means an individual's health status, medical condition
64 (including both physical and mental illnesses), claims experience, receipt of health care, medical
65 history, genetic information, evidence of insurability (including conditions arising out of acts of
66 domestic violence) or disability.

67 (k) "Medical care" means amounts paid for, or paid for insurance covering, the diagnosis,
68 cure, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting
69 any structure or function of the body, including amounts paid for transportation primarily for and
70 essential to such care.

71 (l) "Mental health benefits" means benefits with respect to mental health services, as
72 defined under the terms of a group health plan or a health benefit plan offered in connection with

73 the group health plan.

74 (m) "Network plan" means a health benefit plan under which the financing and delivery of
75 medical care are provided, in whole or in part, through a defined set of providers under contract
76 with the health insurer.

77 (o) "Self-employed individual with no employees" means an individual that:

78 (1) Has an ownership right in a "trade or business," regardless of whether the "trade or
79 business" is incorporated or unincorporated;

80 (2) Earns wages or self-employment income from the "trade or business"; and

81 (3) Works at least 20 hours a week (or 80 hours per month) providing personal services
82 to the "trade or business" or earns income from the "trade or business" that at least equals the
83 self-employed individual's cost of any health coverage in which the individual enrolls. For purpose
84 of this article, a self-employed individual with no employees shall be considered an employer and
85 an employee.

§33-16-2. Eligible groups.

1 Any insurer licensed to transact accident and sickness insurance in this state may issue
2 group accident and sickness policies coming within any of the following classifications:

3 (1) A policy issued to an employer, who shall be considered the policyholder, insuring at
4 least two employees of the employer, for the benefit of persons other than the employer, and
5 conforming to the following requirements:

6 (A) If the premium is paid by the employer the group shall comprise all employees or all
7 of any class or classes thereof determined by conditions pertaining to the employment; or

8 (B) If the premium is paid by the employer and the employees jointly, or by the employees,
9 there shall be no employee participation requirement. The term "employee" as used herein is
10 considered to include the officers, managers and employees of the employer, the partners, if the
11 employer is a partnership, the officers, managers and employees of subsidiary or affiliated
12 corporations of a corporate employer, and the individual proprietors, partners and employees of

13 individuals and firms, the business of which is controlled by the insured employer through stock
14 ownership, contract or otherwise. The term “employer” as used herein may include any municipal
15 or governmental corporation, unit, agency or department and the proper officers of any
16 unincorporated municipality or department, as well as private individuals, partnerships and
17 corporations.

18 (2) A policy issued to an association or to a trust or to the trustees of a fund established,
19 created or maintained for the benefit of members of one or more associations. The association or
20 associations shall have at the issuance of the policy a minimum of ~~one hundred~~ ten persons and
21 have been organized and maintained in good faith for purposes other than that of obtaining
22 insurance; shall have been in active existence for at least one year; and shall have a Constitution
23 and bylaws that provide that: The association or associations hold regular meetings not less than
24 annually to further the purposes of the members; except for credit unions, the association or
25 associations collect dues or solicit contributions from members; and the members have voting
26 privileges and representation on the governing board and committees. The policy is subject to the
27 following requirements:

28 (A) The policy may insure members of the association or associations, employees thereof
29 or employees of members or one or more of the preceding or all of any class or classes for the
30 benefit of persons other than the employee’s employer.

31 (B) The premium for the policy shall be paid from:

32 (i) Funds contributed by the association or associations;

33 (ii) Funds contributed by covered employer members;

34 (iii) Funds contributed by both covered employer members and the association or
35 associations;

36 (iv) Funds contributed by the covered persons; or

37 (v) Funds contributed by both the covered persons and the association, associations or
38 employer members.

39 (C) Except as provided in paragraph (D) of this subdivision, a policy on which no part of
40 the premium is to be derived from funds contributed by the covered persons specifically for their
41 insurance must insure all eligible persons, except those who reject coverage in writing.

42 (D) An insurer may exclude or limit the coverage on any person as to whom evidence of
43 individual insurability is not satisfactory to the insurer.

44 (E) A small employer, as defined in §33-16D-2(r) of this code, insured under an eligible
45 group policy provided in this subdivision shall also be subject to the marketing and rate practices
46 provisions in §33-16D-1 *et seq.* of this code.

47 (3) A policy issued to a bona fide association. In cases where the bona fide association,
48 includes a total number of employees in the association (including self-employed individuals with
49 no employees) that exceeds 50, the policy shall be subject to the requirements of the large group
50 market;

51 (4) A policy issued to a college, school or other institution of learning or to the head or
52 principal thereof, insuring at least ten students, or students and employees, of the institution;

53 (5) A policy issued to or in the name of any volunteer fire department, insuring all of the
54 members of the department or all of any class or classes thereof against any one or more of the
55 hazards to which they are exposed by reason of the membership but in each case not less than
56 10 members;

57 (6) A policy issued to any person or organization to which a policy of group life insurance
58 may be issued or delivered in this state, to insure any class or classes of individuals that could be
59 insured under the group life policy; and

60 (7) A policy issued to cover any other substantially similar group which in the discretion of
61 the commissioner may be subject to the issuance of a group accident and sickness policy or
62 contract.

§33-16-2a. Self-insured multiple employer welfare arrangements

1 To the extent allowed by federal law and in good standing, a bona fide association shall

2 be allowed to sponsor and operate a self-insured multiple employer welfare arrangement in this
3 state, if it meets the following requirements:

4 The arrangement shall at all times be in compliance with federal law and regulation,
5 including but not limited to the Employee Retirement Income Security act of 1974, as amended,
6 and the regulations thereunder;

7 The arrangement's governing documents shall require the arrangement to be operated in
8 accordance with sound actuarial principles and the arrangement shall be operated in accordance
9 with those principles; and

10 The arrangement may not engage in unfair trade practices, and shall be subject to §33-
11 11-1 et seq. of this code.

NOTE: The purpose of this bill is to modify the five-year waiting period and 100-person minimum for an association health plan, and to allow new flexibility granted under federal rules.

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