

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2436

BY DELEGATES TULLY, SUMMERS, FORSHT, HARDY,

WORRELL, JENNINGS, MALLOW, HONAKER, MILLER,

FOGGIN AND HECKERT

[Passed March 11, 2023; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-5B-20; by adding thereto a new section, designated §33-15-23; by adding
3 thereto a new section, designated §33-16-19; by adding thereto a new section, designated
4 §33-24-7x; by adding thereto a new section, designated §33-25-8u; and by adding thereto
5 a new section, designated §33-25A-8x, all relating to healthcare; defining terms; providing
6 for legislative findings; providing certain information is not subject to discovery;
7 establishing a process to develop a plan; providing for training; and prohibiting an insurer
8 from imposing a copayment, for services rendered by a licensed occupational therapist,
9 licensed occupational therapist assistant, licensed speech-language pathologist, licensed
10 speech-language pathologist assistant, licensed physical therapist or a licensed physical
11 therapist assistant, that is more than a copayment imposed for the services of a primary
12 care physician or an osteopathic physician.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-20. Patient safety and transparency.

1 (a) As used in this section:

2 "Acuity-based patient classification system" means a set of criteria based on scientific data
3 that acts as a measurement instrument which predicts registered nursing care requirements for
4 individual patients based on severity of patient illness, need for specialized equipment and
5 technology, intensity of nursing interventions required, and the complexity of clinical nursing
6 judgment needed to design, implement and evaluate the patient's nursing care plan consistent
7 with professional standards of care. The acuity system criteria shall take into consideration the
8 patient care services provided by registered nurses, licensed practical nurses and other health
9 care personnel.

10 "Competency" means those observable and measurable knowledge, skills, abilities and
11 personal attributes, as determined by the facility, that demonstrate a nurse's ability to safely
12 perform expected nursing duties of a unit.

13 "Direct-care registered nurse" means a registered nurse, who is a member of the facility's
14 staff, has no management role or responsibility, and accepts direct responsibility and
15 accountability to carry out medical regimens, nursing or other bedside care for patients.

16 "Facility" means a hospital, licensed pursuant to the provisions of this article, a licensed
17 private or state-owned and operated general acute-care hospital, an acute psychiatric hospital,
18 or any acute-care unit within a state operated facility.

19 "Nursing care" means care which falls within the scope of practice, as provided §30-7-1
20 *et seq.* of this code.

21 "Orientation" means the process that the facility develops to provide initial training and
22 information to clinical staff relative to job responsibilities and the organization's mission and goals.

23 "Unit" means those areas of the hospital organization not considered departments which
24 provide specialized patient care.

25 "Unit Nurse Staffing Committee" means a committee made up of facility employees which
26 includes a minimum of 51 percent of direct-care registered nurses who regularly provide direct
27 nursing care to patients on the unit of the facility for which the nurse staffing plan is developed.

28 (b) The Legislature finds that to better improve the quality and efficiency of health care
29 and to better facilitate planning for future states of emergency in West Virginia, a comprehensive
30 system for nurses should be established to create staffing plans to ensure facilities are adequately
31 staffed to handle the daily workload that may accompany a state of emergency. Further, the
32 Legislature finds that nurses in West Virginia fall under the definition of "critical infrastructure,"
33 and by establishing a comprehensive staffing plan, West Virginia will be better equipped to deal
34 with employment and staffing issues associated with higher acuity treatment in facilities.
35 Additionally, the Legislature finds that based upon the nature of the acuity-based patient

36 classification system it relies upon confidential patient information to generate a staffing plan
37 model and therefore both the classification system and the staffing plan are considered
38 confidential records as defined in §30-3C-3 of this code and are therefore not subject to discovery
39 in any civil action or administrative proceeding.

40 (c) A facility shall:

41 (1) Develop, by July 1, 2024, an acuity-based patient classification system to be used to
42 establish the staffing plan to be used for each unit;

43 (2) Direct each unit nurse staffing committee to annually review the facility's current acuity-
44 based patient classification system and submit recommendations to the facility for changes based
45 on current standards of practice; and

46 (3) Provide orientation, competency validation, education, and training programs in
47 accordance with a nationally recognized accrediting body recognized by the Centers for Medicare
48 and Medicaid Services or in accordance with the Office of Health Facility Licensure and
49 Certification. The orientation shall include providing for orientation of registered nursing staff to
50 assigned clinical practice areas.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-23. Copayments for certain services.

1 (a) A policy, provision, contract, plan, or agreement subject to this article may not impose
2 a copayment, coinsurance, or office visit deductible amount charged to the insured for services
3 rendered for each date of service by a licensed occupational therapist, licensed occupational
4 therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist
5 assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than
6 the copayment, coinsurance, or office visit deductible amount charged to the insured for the
7 services of a primary care physician or an osteopathic physician.

8 (b) The policy, provision, contract, plan, or agreement shall clearly state the availability of
9 occupational therapy, speech-language therapy, and physical therapy coverage and all related
10 limitations, conditions, and exclusions.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-19. Copayments for certain services.

1 (a) A group health plan, health benefit plan or network plan subject to this article may not
2 impose a copayment, coinsurance, or office visit deductible amount charged to the insured for
3 services rendered for each date of service by a licensed occupational therapist, licensed
4 occupational therapist assistant, licensed speech-language pathologist, licensed speech-
5 language pathologist assistant, licensed physical therapist, or a licensed physical therapist
6 assistant that is greater than the copayment, coinsurance, or office visit deductible amount
7 charged to the insured for the services of a primary care physician or an osteopathic physician.

8 (b) The group health plan, health benefit plan or network plan shall clearly state the
9 availability of occupational therapy, speech-language therapy, and physical therapy coverage and
10 all related limitations, conditions, and exclusions.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE
CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH
SERVICE CORPORATIONS.**

§33-24-7x. Copayments for certain services.

1 (a) A policy, provision, contract, plan, or agreement subject to this article may not impose
2 a copayment, coinsurance, or office visit deductible amount charged to a subscriber for services
3 rendered for each date of service by a licensed occupational therapist, licensed occupational
4 therapist assistant, licensed speech-language pathologist, licensed speech-language pathologist
5 assistant, licensed physical therapist, or a licensed physical therapist assistant that is greater than

6 the copayment, coinsurance, or office visit deductible amount charged to the subscriber for the
7 services of a primary care physician or an osteopathic physician.

8 (b) The policy, provision, contract, plan, or agreement shall clearly state the availability of
9 occupational therapy, speech-language therapy, and physical therapy coverage and all related
10 limitations, conditions, and exclusions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8u. Copayments for certain services.

1 (a) A policy, provision, contract, plan, or agreement subject to this article may not impose
2 a copayment, coinsurance, or office visit deductible amount charged to a subscriber or member
3 for services rendered for each date of service by a licensed occupational therapist, licensed
4 occupational therapist assistant, licensed speech-language pathologist, licensed speech-
5 language pathologist assistant, licensed physical therapist, or a licensed physical therapist
6 assistant that is greater than the copayment, coinsurance, or office visit deductible amount
7 charged to the subscriber or member for the services of a primary care physician or an osteopathic
8 physician.

9 (b) The policy, provision, contract, plan, or agreement shall clearly state the availability of
10 occupational therapy, speech-language therapy, and physical therapy coverage and all related
11 limitations, conditions, and exclusions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8x. Copayments for certain services.

1 (a) A health maintenance organization issuing coverage in this state pursuant to the
2 provisions of this article may not impose a copayment, coinsurance, or office visit deductible
3 amount charged to a subscriber or member for services rendered for each date of service by a
4 licensed occupational therapist, licensed occupational therapist assistant, licensed speech-
5 language pathologist, licensed speech-pathologist assistant, licensed physical therapist, or a

6 licensed physical therapist assistant that is greater than the copayment, coinsurance, or office
7 visit deductible amount charged to the subscriber or member for the services of a primary care
8 physician or an osteopathic physician.

9 (b) The policy, provision, contract, plan, or agreement subject to this article shall clearly
10 state the availability of occupational therapy, speech-language therapy, and physical therapy
11 coverage and all related limitations, conditions, and exclusions.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor