

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 453

By Senators Tarr, Woodrum, Grady, Rucker, Stuart,
and Phillips

[Originating in the Committee on Health and Human
Resources; reported February 2, 2024]

1 A BILL to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended, relating to
2 the Public Employees Insurance Agency; prohibiting a pharmacy benefit manager from
3 reimbursing a pharmacy or pharmacist in an amount less than the national average drug
4 acquisition cost for a prescription drug or pharmacy service; requiring the pharmacy
5 benefit manager to pay a dispensing fee at least equal to the fee paid by West Virginia
6 Medicaid; providing for alternative payment calculation in the event that the national
7 average drug acquisition cost is not available; defining terms; providing effective date;
8 requiring additional pharmacy data variables be reported to the Public Employees
9 Insurance Agency; removing language requiring data provided by the pharmacy benefit
10 manager to be kept confidential; requiring the director of the Public Employees Insurance
11 Agency to report on an annual basis; requiring the Public Employees Insurance Agency to
12 require specific terms in its contract with a pharmacy benefit manager; and requiring the
13 Public Employees Insurance Agency to issue a request for proposal for pharmacy benefit
14 manager services with an effective date of July 1, 2025, and at least every three years
15 thereafter.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-9. Authorization to execute contracts.

1 (a) The director is given exclusive authorization to execute such contract or contracts as
2 are necessary to carry out the provisions of this article.

3 (b) The provisions of §5A-3-1 *et seq.* of this code, relating to the Division of Purchasing of
4 the Department of Finance and Administration, shall not apply to any contracts for any insurance
5 coverage or professional services authorized to be executed under the provisions of this article.
6 Before entering into any contract for any insurance coverage, as authorized in this article, the
7 director shall invite competent bids from all qualified and licensed insurance companies or carriers
8 that may wish to offer plans for the insurance coverage desired. The director shall negotiate and

9 contract directly with health care providers and other entities, organizations, and vendors in order
10 to secure competitive premiums, prices, and other financial advantages. The director shall deal
11 directly with insurers or health care providers and other entities, organizations, and vendors in
12 presenting specifications and receiving quotations for bid purposes. No commission or finder's
13 fee, or any combination thereof, shall be paid to any individual or agent: *Provided*, That this shall
14 not preclude an underwriting insurance company or companies, at their own expense, from
15 appointing a licensed resident agent within this state to service the companies' contracts awarded
16 under the provisions of this article. Commissions reasonably related to actual service rendered for
17 the agent or agents may be paid by the underwriting company or companies. In no event shall
18 payment be made to any agent or agents when no actual services are rendered or performed. The
19 director shall award the contract or contracts on a competitive basis. In awarding the contract or
20 contracts the director shall ~~take into account~~ consider the experience of the offering agency,
21 corporation, insurance company, or service organization in the group hospital and surgical
22 insurance field, group major medical insurance field, group prescription drug field, and group life
23 and accidental death insurance field, and its facilities for the handling of claims. In evaluating these
24 factors, the director may employ the services of impartial, professional insurance analysts or
25 actuaries, or both. Any contract executed by the director with a selected carrier shall be a contract
26 to govern all eligible employees subject to the provisions of this article. Nothing contained in this
27 article shall prohibit any insurance carrier from soliciting employees covered hereunder to
28 purchase additional hospital and surgical, major medical, or life and accidental death insurance
29 coverage.

30 (c) The director may authorize the carrier with whom a primary contract is executed to
31 reinsure portions of the contract with other carriers which elect to be a reinsurer and who are
32 legally qualified to enter into a reinsurance agreement under the laws of this state.

33 (d) Each employee who is covered under any contract or contracts shall receive a
34 statement of benefits to which the employee, his or her spouse, and his or her dependents are

35 entitled under the contract, setting forth the information as to whom the benefits are payable, to
36 whom claims shall be submitted, and a summary of the provisions of the contract or contracts as
37 they affect the employee, his or her spouse, and his or her dependents.

38 (e) The director may at the end of any contract period discontinue any contract or contracts
39 it has executed with any carrier and replace the same with a contract or contracts with any other
40 carrier or carriers meeting the requirements of this article.

41 (f) The director shall include language in all contracts for pharmacy benefits management,
42 as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report ~~quarterly~~
43 monthly to the agency the following:

44 (1) The overall total amount charged to the agency for all claims processed by the
45 pharmacy benefit manager during the ~~quarter~~ month;

46 (2) The overall total amount of reimbursements paid to pharmacy providers during the
47 ~~quarter~~ month;

48 (3) The overall total number of claims in which the pharmacy benefits manager reimbursed
49 a pharmacy provider for more or less than the amount charged to the agency for all claims
50 processed by the pharmacy benefit manager during the ~~quarter~~ month; and

51 (4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim,
52 including, but not limited to, the following:

53 (A) The cost of drug reimbursement;

54 (B) Dispensing fees;

55 (C) Copayments; ~~and~~

56 (D) The amount charged to the agency for each claim by the pharmacy benefit manager;

57 (E) Date of Service;

58 (F) NDC-11;

59 (G) Drug Name;

60 (H) Drug Strength;

- 61 (I) Quantity;
- 62 (J) Days of Therapy;
- 63 (K) Rx Count;
- 64 (L) Mail/Retail Code;
- 65 (M) Brand/Generic Indicator;
- 66 (N) Specialty Drug Indicator;
- 67 (O) Compound Indicator;
- 68 (P) Formulary Indicator;
- 69 (Q) Gross Cost;
- 70 (R) Member Cost;
- 71 (S) Plan Cost;
- 72 (T) Dispense as Written;
- 73 (U) Pharmacy NPI Number;
- 74 (V) Pharmacy Claim ID;
- 75 (W) Prescriber NPI Number;
- 76 (X) Pharmacy Name; and
- 77 (Y) Ingredient Cost.

78 In the event there is a difference between the amount for any pharmacy claim paid to the
79 pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall
80 report an itemization of all administrative fees, rebates, or processing charges associated with the
81 claim. ~~All data and information provided by the pharmacy benefit manager shall be kept secure,~~
82 ~~and notwithstanding any other provision of this code to the contrary, the agency shall maintain the~~
83 ~~confidentiality of the proprietary information and not share or disclose the proprietary information~~
84 ~~contained in the report or data collected with persons outside the agency. All data and information~~
85 ~~provided by the pharmacy benefit manager shall be considered proprietary and confidential and~~
86 ~~exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-~~

87 ~~4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing~~
88 ~~the data for the purpose of preparing the report provided for herein shall have access to the~~
89 ~~proprietary data.~~ The director shall provide ~~a quarterly~~ an annual report to the Joint Committee on
90 Health detailing the information required by this section, including any difference or spread
91 between the overall amount paid by pharmacy benefit managers to the pharmacy providers and
92 the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the
93 extent necessary, the director shall use aggregated, nonproprietary data only: *Provided*, That the
94 director must provide a clear and concise summary of the total amounts charged to the agency
95 and reimbursed to pharmacy providers on ~~a quarterly~~ an annual basis.

96 (g) If the information required herein is not provided, the agency may terminate the contract
97 with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline
98 the pharmacy benefit manager as provided in §33-51-8(e) of this code.

99 (h) The Public Employees Insurance Agency shall contract with networks to provide care
100 to its members out of state.

101 (i) The Public Employees Insurance Agency shall require each of the following in its
102 requests for proposals and contracts with a pharmacy benefit manager:

103 (1) A per member per month guarantee that is entirely based on the total pharmacy
104 program cost, with the pharmacy benefit manager contractually agreeing to an at-risk
105 administrative fee model if the total pharmacy program cost guarantee is not met.

106 (2) The pharmacy benefit manager shall disclose all information and data related to
107 contracting, reimbursement, networks, rebates, fees, and any other information and data
108 requested by the Public Employees Insurance Agency, Legislature, and vendors, for the purpose
109 of performing study and analysis.

110 (3) A pharmacy benefit manager shall not reimburse a West Virginia pharmacy or
111 pharmacist for a prescription drug or pharmacy service in an amount less than the national
112 average drug acquisition cost for a prescription drug or pharmacy service at the time the drug is

113 administered or dispensed, plus a professional dispensing fee at least equal to the professional
114 dispensing fee paid by West Virginia Medicaid for outpatient drugs. Increases to the professional
115 dispensing fee may be set by the Director in accordance with this subdivision. *Provided*, That if
116 the national average drug acquisition cost is not available at the time a drug is administered or
117 dispensed, a pharmacy benefit manager may not reimburse a West Virginia pharmacy or
118 pharmacist in an amount that is less than the wholesale acquisition cost of the drug, as defined in
119 42 U.S.C. § 1395w-3a(c)(6)(B), plus a dispensing fee as described in this subdivision. A West
120 Virginia pharmacy is a domestic business entity as registered with the West Virginia Secretary of
121 State. A foreign pharmacy is a foreign business entity as registered with the West Virginia
122 Secretary of State. The provision in this subdivision shall be effective for the Public Employees
123 Insurance Agency plan year beginning on July 1, 2024.

124 (4) 100 percent of drug manufacturer Rebates shall be passed entirely to the Public
125 Employees Insurance Agency.

126 (5) "Rebate" means any and all payments that accrue to a pharmacy benefits manager or
127 its health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not
128 limited to, discounts, administration fees, credits, incentives, or penalties associated directly or
129 indirectly in any way with claims administered on behalf of a health plan client. The term "rebate"
130 does not include any discount or payment that may be provided, or made, to any 340B entity
131 through such program.

132 (6) A pharmacy benefit manager must offer network participation to all licensed West
133 Virginia pharmacies seeking participation in the pharmacy network.

134 (7) A pharmacy benefit manager shall not utilize any manner of spread pricing, clawbacks,
135 fees, or make any formulary changes or decisions that favor brand or specialty pharmaceuticals
136 over generic pharmaceuticals.

137 (8) The Public Employees Insurance Agency shall require all Specialty drugs to be
138 dispensed or administered by a West Virginia pharmacy. *Provided*, That a non-West Virginia

139 pharmacy may be used to dispense or administer drugs to protect pharmacy network adequacy
140 and reasonable patient access to drugs. "Specialty drug" means a drug used to treat chronic and
141 complex, or rare medical conditions and requiring special handling or administration, provider care
142 coordination, or patient education that cannot be provided by a non-specialty pharmacy or
143 pharmacist.

144 (j) The Public Employees Insurance Agency shall issue a request for proposal for
145 pharmacy benefit manager services, with an effective date of July 1, 2025, and at least every three
146 years thereafter.

NOTE: The purpose of this bill is to require any pharmacy benefit manager ("PBM") who contracts with PEIA to be entirely transparent in providing its full data around pricing and payments for drugs and to pharmacies.

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