

1 **H. B. 2162**

2
3 (By Delegates Perdue and Hatfield)

4 [Introduced January 12, 2011; referred to the
5 Committee on Health and Human Resources then Finance.]

6 **FISCAL**
7 **NOTE**

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9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §33-25G-1, §33-25G-2,
12 §33-25G-3, §33-25G-4, §33-25G-5, §33-25G-6, §33-25G-7, §33-
13 25G-8, §33-25G-9, §33-25G-10, §33-25G-11, §33-25G-12, §33-25G-
14 13 and §33-25G-14, all relating to pharmacy benefit managers;
15 requiring licensure, providing requirements for license
16 application; defining terms; requiring certain disclosures;
17 establishing fees; requiring retention of records; providing
18 for annual statement; authorizing access to records;
19 establishing special revenue account; requiring certain
20 information be maintained as confidential; establishing
21 criminal and civil penalties for violations; authorizing
22 proposal of rules; requiring annual report to the Legislature
23 and Governor; and setting effective date.

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

1 That the Code of West Virginia, 1931, as amended, be amended
2 by adding thereto a new article, designated §33-25G-1, §33-25G-2,
3 §33-25G-3, §33-25G-4, §33-25G-5, §33-25G-6, §33-25G-7, §33-25G-8,
4 §33-25G-9, §33-25G-10, §33-25G-11, §33-25G-12, §33-25G-13 and §33-
5 25G-14, all to read as follows:

6 **ARTICLE 25G. PHARMACY BENEFIT MANAGER LICENSING AND REGULATION.**

7 **§33-25G-1. Short title and purpose.**

8 (a) This article may be cited as the "Pharmacy Benefit Manager
9 Licensing and Regulation Act."

10 (b) The purpose of this article is to establish standards and
11 criteria for the licensing and regulation of pharmacy benefit
12 managers. This article is designed to promote, preserve and
13 protect the public health, safety and welfare by and through
14 licensing and effective regulation of pharmacy benefit managers.

15 **§33-25G-2. Definitions.**

16 As used in this article, unless the context otherwise
17 indicates, the following terms have the following meanings:

18 (1) "Commissioner" means the Insurance Commissioner of West
19 Virginia;

20 (2) "Covered entity" means a nonprofit hospital or medical
21 service corporation, health insurer, health benefit plan or health
22 maintenance organization licensed pursuant to the provisions of
23 article twenty-five-a of this chapter; a health program
24 administered by the state in the capacity of provider of health

1 coverage; or an employer, labor union or other group of persons
2 organized in the state that provides health coverage to covered
3 individuals who are employed or reside in the state. "Covered
4 entity" does not include a self-funded plan that is exempt from
5 state regulation pursuant to the federal Employee Retirement Income
6 Security Act (ERISA), 29 U.S.C. §§1001 et seq., a health plan that
7 provides coverage only for accidental injury, specified disease,
8 hospital indemnity, Medicare supplement, disability income, long-
9 term care or other limited benefit health insurance policies and
10 contracts.

11 (3) "Covered person" means a member, participant, enrollee,
12 contract holder or policy holder or beneficiary of a covered entity
13 who is provided health coverage by the covered entity. "Covered
14 individual" includes a dependent or other person provided health
15 coverage through a policy, contract or plan for a covered
16 individual.

17 (4) "Pharmacy benefit management" means the procurement of
18 prescription drugs at a negotiated rate for dispensation within
19 this state to covered individuals, the administration or management
20 of prescription drug benefits provided by a covered entity for the
21 benefit of covered individuals or any of the following services
22 provided with regard to the administration of pharmacy benefits:

23 (A) Mail service pharmacy;

24 (B) Claims processing, retail network management and payment

1 of claims to pharmacies for prescription drugs dispensed to covered
2 individuals;

3 (C) Clinical formulary development and management services;

4 (D) Rebate contracting and administration;

5 (E) Certain patient compliance, therapeutic intervention and
6 generic substitution programs; and

7 (F) Disease management programs.

8 (5) "Pharmacy benefit manager" means an entity that performs
9 pharmacy benefit management. "Pharmacy benefit manager" includes
10 a person or entity acting for a pharmacy benefit manager in a
11 contractual or employment relationship in the performance of
12 pharmacy benefit management services, including mail service
13 pharmacy.

14 **§33-25G-3. Applicability and scope.**

15 This article applies to a pharmacy benefit manager that
16 provides claims processing services, other prescription drug or
17 device services, or both, to covered persons who are residents of
18 this state.

19 **§33-25G-4. Licensing requirement.**

20 (a) A person or organization may not act or operate as a
21 pharmacy benefit manager in this state without obtaining a
22 certificate of licensure from the commissioner. Renewal of
23 certificates of licensure are required on an annual basis.

24 (b) Each person or organization seeking licensure shall file

1 an application, furnished by the commissioner, which shall include,
2 but is not limited to, the following:

3 (1) All basic organizational documents, including the articles
4 of incorporation, articles of association, bylaws, partnership
5 agreement, trade name certification, trust agreement, shareholder
6 agreement and other applicable documents, including amendments;

7 (2) The names, addresses, official positions and professional
8 qualifications of the individuals who are responsible for the
9 conduct of the affairs of the pharmacy benefit manager, including
10 all members of the board of directors, board of trustees, executive
11 committee, other governing board or committee, the principal
12 officers in the case of a corporation, the partners or members in
13 the case of a partnership or association and any other person who
14 exercises control or influence over the affairs of the pharmacy
15 benefit manager;

16 (3) Annual audited statements for the most recent year, or
17 other information the commissioner requires in order to review the
18 current financial condition of the applicant;

19 (4) If the applicant is not currently acting as a pharmacy
20 benefit manager, a statement of the amounts and sources of funds
21 available for organization expenses and the proposed arrangements
22 for reimbursement and compensation of incorporators for other
23 principals;

24 (5) The name and address of the agent for service of process

1 in the state;

2 (6) A detailed description of the claims processing services,
3 pharmacy services, insurance services, other prescription drug or
4 device services, audit procedures for network pharmacies or other
5 administrative services to be provided;

6 (7) Any other information the commissioner requires; and

7 (8) A filing fee of \$200.

8 (c) The applicant shall make available for inspection by the
9 commissioner, copies of all contracts with insurers, pharmaceutical
10 manufacturers or other persons using the services of the pharmacy
11 benefit manager for pharmacy benefit management services.

12 (d) The commissioner may withhold or revoke a license if it is
13 determined that the pharmacy benefit manager or any principal of
14 the manager is not financially sound or has had a license revoked
15 or denied for cause in any state.

16 (e) The commissioner may require a surety bond in an amount
17 and in a form as the commissioner considers appropriate to ensure
18 the financial solvency of the pharmacy benefit manager.

19 **§33-25G-5. Disclosure of ownership or affiliation and certain**
20 **agreements.**

21 (a) Each pharmacy benefit manager shall disclose to the
22 commissioner any ownership interest or affiliation of any kind with
23 any insurance company responsible for providing benefits directly
24 or through reinsurance to any plan for which the pharmacy benefit

1 manager provides services or any parent companies, subsidiaries and
2 other entities or businesses relative to the provision of pharmacy
3 services, other prescription drug or device services or a
4 pharmaceutical manufacturer.

5 (b) A pharmacy benefit manager shall notify the commissioner
6 in writing within thirty days of any material change in its
7 ownership.

8 (c) A pharmacy benefit manager shall disclose the following
9 agreements, and any changes to the agreements, within thirty days
10 of the change:

11 (1) All incentive arrangement or programs such as rebates,
12 discounts, disbursements or any other similar financial program or
13 arrangement relating to income or consideration received or
14 negotiated, directly or indirectly, with any pharmaceutical
15 company, that relates to prescription drug or device services,
16 including at a minimum, information on the formula or other method
17 for calculation and amount of the incentive arrangements, rebates
18 or other disbursements, the identity of the associated drug or
19 device and the dates and amounts of the disbursements;

20 (2) Any agreement with a pharmaceutical manufacturer to share
21 manufacturer rebates and discounts with the pharmacy benefit
22 manager or to pay money or other economic benefits to the pharmacy
23 benefit manager;

24 (3) Any agreement or practice to bill a health plan for

1 prescription drugs at a cost higher than the pharmacy benefit
2 manager pays the pharmacy;

3 (4) Any agreement to share revenue with a mail order or
4 Internet pharmacy company; and

5 (5) Any agreement to sell prescription drug data including
6 data concerning the prescribing practices of the health care
7 providers in the state.

8 **§33-25G-6. Maintenance of records; access; confidentiality;**
9 **financial examination.**

10 (a) A pharmacy benefit manager shall maintain all books and
11 records of all transactions between the pharmacy benefit manager,
12 insurers and covered entities for three years beyond the
13 termination of the contract period, unless any other law prescribes
14 a greater time period.

15 (b) The pharmacy benefit manager shall give the commissioner
16 access to the books and records maintained by the pharmacy benefit
17 manager for the purposes of examination, audit and inspection.

18 (c) The commissioner may conduct examinations of any pharmacy
19 benefit manager in this state whenever the commissioner considers
20 it necessary to ensure an appropriate level of regulatory
21 oversight. The pharmacy benefit manager shall pay the cost of the
22 examination which shall be deposited into the special revenue fund,
23 created in section nine of this article, to provide all expenses
24 for the regulation under this article.

1 (d) In conducting examinations pursuant to this section, the
2 commissioner has the same powers set forth in subsection (h),
3 section nine, article two of this chapter.

4 **§33-25G-7. Annual statement and filing fee required.**

5 (a) Each pharmacy benefit manager with a license shall file
6 with the commissioner an annual audited statement on or before June
7 1 of each year. The statement shall be in the form and contain
8 information and material the commissioner prescribes and shall
9 include the filing fee of \$200. The statement must include the
10 total number of persons subject to management by the pharmacy
11 benefit manager during the previous year, or portion of the year,
12 and the dollar value of the claims processed.

13 (b) The statement shall disclose all incentive arrangements or
14 programs such as rebates, discounts, disbursements or any other
15 similar financial program or arrangement relating to income or
16 consideration received or negotiated, directly or indirectly, with
17 any pharmaceutical company, that relates to prescription drug or
18 device services, including at a minimum information on the formula
19 or other method for calculation and amount of the incentive
20 arrangements, rebates or other disbursements, the identity of the
21 associated drug or device and the dates and amounts of the
22 disbursements.

23 **§33-25G-8. Confidentiality of submitted information.**

24 Any information submitted in compliance with this article that

1 the pharmacy benefit manager believes is proprietary information
2 shall be clearly marked as such. The commissioner is only entitled
3 to disclose that information in accordance with state and federal
4 law.

5 **§33-25G-9. Special revenue account.**

6 There is created in the State Treasury a special revenue
7 account, designated the "Pharmacy Benefit Managers Licensure Fund",
8 which is an interest bearing account and may be invested in the
9 manner permitted by the provisions of article six, chapter twelve
10 of this code, with the interest income a proper credit to the fund.
11 The account shall contain any funds received by the commissioner
12 pursuant to this article and any funds appropriated by the
13 Legislature. The commissioner may expend funds received in the
14 Pharmacy Benefit Managers Licensure Fund only for the purposes of
15 administration of this article.

16 **§33-25G-10. Unauthorized business.**

17 The unauthorized conduct of the business of a pharmacy benefit
18 manager shall be treated as unauthorized insurance business and is
19 subject to the same criminal and civil penalties as provided in
20 article forty-four of this chapter for violation of the
21 unauthorized insurers act.

22 **§33-25G-11. Violations.**

23 The provisions of section eleven, article three of this
24 chapter apply to any violations of this article by a pharmacy

1 benefit manager.

2 **§33-25G-12. Promulgation of rules.**

3 The commissioner may propose rules for legislative approval in
4 accordance with the provisions of article three, chapter twenty-
5 nine-a of this code, including emergency rules, pursuant to the
6 provisions of article three, chapter twenty-nine-a of this code to
7 implement the provisions of this article, and the rules may include
8 the establishment of fees.

9 **§33-25G-13. Commissioner's reporting requirements.**

10 On or before January 1, 2012, and every year after that, the
11 commissioner shall submit a report to the Legislature and the
12 Governor detailing the implementation of the licensure process and
13 the information collected. All information contained in the report
14 shall be de-identified or reported as aggregate data only. The
15 report shall include, but is not limited to, the following
16 information:

17 (1) The number of pharmacy benefit managers licensed in this
18 state;

19 (2) The number of persons in this state served by the pharmacy
20 benefit manager annually;

21 (3) The number of contracts to provide services in this state;

22 (4) The aggregate amount of rebates, discounts or
23 disbursements received from pharmaceutical manufacturers;

24 (5) The aggregate amount of rebates, discounts or

1 disbursements returned to the client; and

2 (6) Any other information the commissioner considers necessary
3 to report.

4 **§33-25G-14. Effective date.**

5 Any pharmacy benefit manager doing business within this state
6 shall obtain a license as required in section four of this article
7 within one hundred twenty days from the effective date of this
8 article.

NOTE: The purpose of this bill is to require the licensure of pharmacy benefit managers and to establish related regulatory requirements.

This article is new; therefore, it has been completely underscored.