

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 289**

4 (By Senators Takubo, Stollings, Carmichael, Ferns, Walters, Gaunch and Miller)

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6 [Originating in the Committee on Banking and Insurance;
7 reported February 24, 2015.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
11 designated §33-15-4l; to amend said code by adding thereto a new section, designated
12 §33-16-3x; to amend said code by adding thereto a new section, designated §33-24-7m; to
13 amend said code by adding thereto a new section, designated §33-25-8j; and to amend said
14 code by adding thereto a new section, designated §33-25A-8l, all relating to anti-cancer
15 medications; providing accident and sickness insurance cover anti-cancer medications;
16 providing direct health care services that cover anti-cancer medications; prohibiting certain
17 copayments, deductibles or coinsurance for orally administered anti-cancer medications;
18 prohibiting certain acts to comply with the requirements; defining terms; providing an
19 effective date; and allowing cost containment measures.

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

21 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
22 section, designated §33-15-4l; that said code be amended by adding thereto a new section, designated
23 §33-16-3x; that said code be amended by adding thereto a new section, designated §33-24-7m; that

1 said code be amended by adding thereto a new section, designated §33-25-8j; and that said code be
2 amended by adding thereto a new section, designated §33-25A-8l, all to read as follows:

3 **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

4 **§33-15-4l. Deductibles, copayments and coinsurance for anti-cancer medications.**

5 (a) Any accident and sickness insurance policy issued by an insurer pursuant to this article
6 that covers anti-cancer medications that are injected or intravenously administered by a health care
7 provider and patient administered anti-cancer medications, including, but not limited to, those
8 medications orally administered or self-injected, may not require a less favorable basis for a
9 copayment, deductible or coinsurance amount for patient administered anti-cancer medications than
10 it requires for injected or intravenously administered anti-cancer medications, regardless of the
11 formulation or benefit category determination by the policy or plan.

12 (b) An accident or sickness insurance policy may not comply with subsection (a) of this
13 section by:

14 (1) Increasing the copayment, deductible or coinsurance amount required for injected or
15 intravenously administered anti-cancer medications that are covered under the policy or plan; or

16 (2) Reclassifying benefits with respect to anti-cancer medications.

17 (c) As used in this section, “anti-cancer medication” means a FDA approved medication
18 prescribed by a treating physician who determines that the medication is medically necessary to kill
19 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of
20 practice.

21 (d) This section applies to all policies, contracts, plans or agreements subject to this article
22 that are delivered, executed, issued, amended, adjusted or renewed on or after January 1, 2016.

23 (e) Notwithstanding any other provision in this section to the contrary, in the event that an

1 insurer can demonstrate actuarially to the Insurance Commissioner that its total costs for compliance
2 with this section will exceed or have exceeded two percent of the total costs for all accident and
3 sickness insurance coverage issued by the insurer subject to this article in any experience period, then
4 the insurer may apply whatever cost containment measures may be necessary to maintain costs below
5 two percent of the total costs for the coverage: Provided, That the cost containment measures
6 implemented are applicable only for the plan year or experience period following approval of the
7 request to implement cost containment measures.

8 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the
9 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health
10 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection
11 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term
12 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined
13 in subsection (a) of this section shall be applicable only after the minimum annual deductible
14 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,
15 this limit shall be applicable at any point in the benefit design, including before and after any
16 applicable deductible is reached.

17 **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

18 **§33-16-3x. Deductibles, copayments and coinsurance for anti-cancer medications.**

19 (a) Any group accident and sickness insurance policy issued by an insurer pursuant to this
20 article that covers anti-cancer medications that are injected or intravenously administered by a health
21 care provider and patient administered anti-cancer medications, including, but not limited to, those
22 medications orally administered or self-injected, may not require a less favorable basis for a
23 copayment, deductible or coinsurance amount for patient administered anti-cancer medications than

1 it requires for injected or intravenously administered anti-cancer medications, regardless of the
2 formulation or benefit category determination by the policy or plan.

3 (b) A group accident and sickness insurance policy may not comply with subsection (a) of
4 this section by:

5 (1) Increasing the copayment, deductible or coinsurance amount required for injected or
6 intravenously administered anti-cancer medications that are covered under the policy or plan; or

7 (2) Reclassifying benefits with respect to anti-cancer medications.

8 (c) As used in this section, “anti-cancer medication” means a FDA approved medication
9 prescribed by a treating physician who determines that the medication is medically necessary to kill
10 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of
11 practice.

12 (d) This section applies to all policies, contracts, plans or agreements subject to this article
13 that are delivered, executed, issued, amended, adjusted or renewed on or after January 1, 2016.

14 (e) Notwithstanding any other provision in this section to the contrary, in the event that an
15 insurer can demonstrate actuarially to the Insurance Commissioner that its total anticipated costs for
16 any plan to comply with this section will exceed or have exceeded two percent of the total costs for
17 such plan in any experience period, then the insurer may apply whatever cost containment measures
18 may be necessary to maintain costs below two percent of the total costs for the plan: Provided, That
19 such cost containment measures implemented are applicable only for the plan year following
20 approval of the request to implement cost containment measures.

21 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the
22 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health
23 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection

1 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term
2 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined
3 in subsection (a) of this section shall be applicable only after the minimum annual deductible
4 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,
5 this limit shall be applicable at any point in the benefit design, including before and after any
6 applicable deductible is reached.

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

10 **§33-24-7m. Deductibles, copayments and coinsurance for anti-cancer medications.**

11 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to
12 which this article applies, any group accident and sickness insurance policy, plan, contract or
13 agreement issued by an entity regulated by this article that covers anti-cancer medications that are
14 injected or intravenously administered by a health care provider and patient administered anti-cancer
15 medications, including, but not limited to, those medications orally administered or self-injected,
16 may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient
17 administered anti-cancer medications than it requires for injected or intravenously administered
18 anti-cancer medications, regardless of the formulation or benefit category determination by the policy
19 or plan.

20 (b) An accident or sickness insurance policy, plan, contract or agreement may not comply
21 with subsection (a) of this section by:

22 (1) Increasing the copayment, deductible or coinsurance amount required for injected or
23 intravenously administered anti-cancer medications that are covered under the policy or plan; or

1 (2) Reclassifying benefits with respect to anti-cancer medications.

2 (c) As used in this section, “anti-cancer medication” means a FDA approved medication
3 prescribed by a treating physician who determines that the medication is medically necessary to kill
4 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of
5 practice.

6 (d) This section applies to all policies, contracts, plans or agreements subject to this article
7 that are delivered, executed, issued, amended, adjusted or renewed on or after January 1, 2016.

8 (e) Notwithstanding any other provision in this section to the contrary, in the event that an
9 entity subject to this article can demonstrate actuarially to the Insurance Commissioner that its total
10 anticipated costs for any policy, plan, contract or agreement to comply with this section will exceed
11 or have exceeded two percent of the total costs for such policy, plan, contract or agreement in any
12 experience period, then the entity may apply whatever cost containment measures may be necessary
13 to maintain costs below two percent of the total costs for the policy, plan, contract or agreement:
14 Provided, That such cost containment measures implemented are applicable only for the plan year
15 or experience period following approval of the request to implement cost containment measures.

16 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the
17 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health
18 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection
19 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term
20 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined
21 in subsection (a) of this section shall be applicable only after the minimum annual deductible
22 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,
23 this limit shall be applicable at any point in the benefit design, including before and after any

1 applicable deductible is reached.

2 **ARTICLE 25. HEALTH CARE CORPORATIONS.**

3 **§33-25-8j. Deductibles, copayments and coinsurance for anti-cancer medications.**

4 (a) Notwithstanding any provision of any policy, contract, plan or agreement to which this
5 article applies, a policy, contract, plan or agreement issued to a member or subscriber by an entity
6 regulated by this article that covers anti-cancer medications that are injected or intravenously
7 administered by a health care provider and patient administered anti-cancer medications, including,
8 but not limited to, those medications orally administered or self-injected, may not require a less
9 favorable basis for a copayment, deductible or coinsurance amount for patient administered
10 anti-cancer medications than it requires for injected or intravenously administered anti-cancer
11 medications, regardless of the formulation or benefit category determination by the policy or plan.

12 (b) A contract issued to a member or subscriber that is subject to this article may not comply
13 with subsection (a) of this section by:

14 (1) Increasing the copayment, deductible or coinsurance amount required for injected or
15 intravenously administered anti-cancer medications that are covered under the policy, contract, or
16 plan or agreement; or

17 (2) Reclassifying benefits with respect to anti-cancer medications.

18 (c) As used in this section, “anti-cancer medication” means a FDA approved medication
19 prescribed by a treating physician who determines that the medication is medically necessary to kill
20 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of
21 practice.

22 (d) This section applies to all policies, contracts, plans or agreements subject to this article
23 that are delivered, executed, issued, amended, adjusted or renewed on or after January 1, 2016.

1 (e) Notwithstanding any other provision in this section to the contrary, in the event that an
2 entity subject to this article can demonstrate actuarially to the Insurance Commissioner that its total
3 anticipated costs for benefits to all members or subscribers to comply with this section will exceed
4 or have exceeded two percent of the total costs for all benefits of the policy, plan, contract or
5 agreement in any experience period, then the entity may apply whatever cost containment measures
6 may be necessary to maintain costs below two percent of the total costs for the policy, plan, contract
7 or agreement: Provided, That such cost containment measures implemented are applicable only for
8 the plan year or experience period following approval of the request to implement cost containment
9 measures.

10 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the
11 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health
12 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection
13 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term
14 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined
15 in subsection (a) of this section shall be applicable only after the minimum annual deductible
16 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,
17 this limit shall be applicable at any point in the benefit design, including before and after any
18 applicable deductible is reached.

19 **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

20 **§33-25A-8I. Deductibles, copayments and coinsurance for anti-cancer medications.**

21 (a) Notwithstanding any provision of any policy, contract, plan or agreement to which this
22 article applies, any policy, contract, plan or agreement issued by a health maintenance organization
23 pursuant to this article that covers anti-cancer medications that are injected or intravenously

1 administered by a health care provider and patient administered anti-cancer medications, including,
2 but not limited to, those medications orally administered or self-injected, may not require a less
3 favorable basis for a copayment, deductible or coinsurance amount for patient administered
4 anti-cancer medications than it requires for injected or intravenously administered anti-cancer
5 medications, regardless of the formulation or benefit category determination by the policy or plan.

6 (b) A policy, contract, plan or agreement or a health maintenance organization may not
7 comply with subsection (a) of this section by:

8 (1) Increasing the copayment, deductible or coinsurance amount required for injected or
9 intravenously administered anti-cancer medications that are covered under the policy, contract, or
10 plan or agreement; or

11 (2) Reclassifying benefits with respect to anti-cancer medications.

12 (c) As used in this section, “anti-cancer medication” means a FDA approved medication
13 prescribed by a treating physician who determines that the medication is medically necessary to kill
14 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of
15 practice.

16 (d) This section applies to all policies, contracts, plans or agreements subject to this article
17 that are delivered, executed, issued, amended, adjusted or renewed on or after January 1, 2016.

18 (e) Notwithstanding any other provision in this section to the contrary, in the event that a
19 health maintenance organization subject to this article can demonstrate actuarially to the Insurance
20 Commissioner that its total anticipated costs for any health maintenance contract to comply with this
21 section will exceed or have exceeded two percent of the total costs for the policy, contract, plan or
22 agreement in any experience period, then the health maintenance organization may apply whatever
23 cost containment measures may be necessary to maintain costs below two percent of the total costs

1 for the policy, contract, plan or agreement: Provided, That such cost containment measures
2 implemented are applicable only for the plan year or experience period following approval of the
3 request to implement cost containment measures.

4 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the
5 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health
6 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection
7 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term
8 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined
9 in subsection (a) of this section shall be applicable only after the minimum annual deductible
10 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,
11 this limit shall be applicable at any point in the benefit design, including before and after any
12 applicable deductible is reached.

NOTE: The purpose of this bill is to prohibit state-regulated health insurance plans and policies that cover various anti-cancer treatments to require higher copayments, deductibles or coinsurance for oral anti-cancer treatments.

This is a new section; therefore it has been completely underscored.