

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4146**

BY DELEGATES ELLINGTON, SUMMERS, BATES,  
FAIRCLOTH, HOUSEHOLDER, ROHRBACH, SOBONYA,  
STANSBURY, ELDRIDGE, MCCUSKEY AND FRICH

[Passed on March 12, 2016; in effect ninety days from  
passage]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4m; to amend said code by adding thereto a new section, designated §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n; to amend said code by adding thereto a new section, designated §33-25-8k; and to amend said code by adding thereto a new section, designated §33-25A-8m, all relating to abuse-deterrent opioid analgesic drugs; providing insurance cover abuse-deterrent opioid analgesic drugs; providing direct health care services cover abuse-deterrent opioid analgesic drugs; providing certain contracts cover abuse-deterrent opioid analgesic drugs; defining terms; providing an effective date; providing for cost sharing; providing for cost tier location; and allowing cost containment measures.

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

1           That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 section, designated §33-15-4m; that said code be amended by adding thereto a new section,  
3 designated §33-16-3y; that said code be amended by adding thereto a new section, designated  
4 §33-24-7n; that said code be amended by adding thereto a new section, designated §33-25-8k;  
5 and that said code be amended by adding thereto a new section, designated §33-25A-8m, all to  
6 read as follows:

## **CHAPTER 33. INSURANCE.**

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

**§33-15-4m. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.**

1           (a) As used in this section:

2           (1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid  
3 analgesic drug product approved by the United States Food and Drug Administration with abuse-

4 deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its  
5 abuse;

6 (2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other  
7 out-of-pocket expense requirements;

8 (3) "Opioid analgesic drug product" means a drug product that contains an opioid agonist  
9 and is indicated by the United States Food and Drug Administration for the treatment of pain,  
10 regardless of whether the drug product:

11 (A) Is in immediate release or extended release form; or

12 (B) Contains other drug substances.

13 (b) Notwithstanding any provision of any accident and sickness insurance policy issued  
14 by an insurer, on or after January 1, 2017:

15 (1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug  
16 product for each active opioid analgesic ingredient;

17 (2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not  
18 exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription  
19 drug coverage;

20 (3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered  
21 pursuant to this section shall not exceed the lowest cost-sharing level applied to generic  
22 prescription drugs covered under the applicable health plan or policy; and

23 (4) An entity subject to this section may not require an insured or enrollee to first use an  
24 opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an  
25 abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription  
26 drug coverage.

27 (c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this  
28 section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid  
29 analgesic drug product covered by the entity, if the same utilization review requirements are

30 applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug  
31 release, immediate or extended.

32 (d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-  
33 sharing level shall not mean the cost-sharing tier applicable to preventive care services which are  
34 required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

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

**§33-16-3y. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic  
drugs.**

1 (a) As used in this section:

2 (1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid  
3 analgesic drug product approved by the United States Food and Drug Administration with abuse-  
4 deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its  
5 abuse;

6 (2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other  
7 out-of-pocket expense requirements;

8 (3) "Opioid analgesic drug product" means a drug product that contains an opioid agonist  
9 and is indicated by the United States Food and Drug Administration for the treatment of pain,  
10 regardless of whether the drug product:

11 (A) Is in immediate release or extended release form; or

12 (B) Contains other drug substances.

13 (b) Notwithstanding any provision of any group accident and sickness insurance policy  
14 issued by an insurer pursuant to this article, on or after January 1, 2017:

15 (1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug  
16 product for each active opioid analgesic ingredient;

17 (2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not  
18 exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription  
19 drug coverage;

20 (3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered  
21 pursuant to this section shall not exceed the lowest cost-sharing level applied to generic  
22 prescription drugs covered under the applicable health plan or policy; and

23 (4) An entity subject to this section may not require an insured or enrollee to first use an  
24 opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an  
25 abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription  
26 drug coverage.

27 (c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this  
28 section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid  
29 analgesic drug product covered by the entity, if the same utilization review requirements are  
30 applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug  
31 release, immediate or extended.

32 (d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-  
33 sharing level shall not mean the cost-sharing tier applicable to preventive care services which are  
34 required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

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

**§33-24-7n. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic  
drugs.**

1 (a) As used in this section:

2 (1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid  
3 analgesic drug product approved by the United States Food and Drug Administration with abuse-  
4 deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its  
5 abuse;

6 (2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other  
7 out-of-pocket expense requirements;

8 (3) "Opioid analgesic drug product" means a drug product that contains an opioid agonist  
9 and is indicated by the United States Food and Drug Administration for the treatment of pain,  
10 regardless of whether the drug product:

11 (A) Is in immediate release or extended release form; or

12 (B) Contains other drug substances.

13 (b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
14 which this article applies, on or after January 1, 2017:

15 (1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug  
16 product for each active opioid analgesic ingredient;

17 (2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not  
18 exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription  
19 drug coverage;

20 (3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered  
21 pursuant to this section shall not exceed the lowest cost-sharing level applied to generic  
22 prescription drugs covered under the applicable health plan or policy; and

23 (4) An entity subject to this section may not require an insured or enrollee to first use an  
24 opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an  
25 abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription  
26 drug coverage.

27 (c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this  
28 section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid  
29 analgesic drug product covered by the entity, if the same utilization review requirements are  
30 applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug  
31 release, immediate or extended.

32 (d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-  
33 sharing level shall not mean the cost-sharing tier applicable to preventive care services which are  
34 required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**§33-25-8k. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic  
drugs.**

1 (a) As used in this section:

2 (1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid  
3 analgesic drug product approved by the United States Food and Drug Administration with abuse-  
4 deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its  
5 abuse;

6 (2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other  
7 out-of-pocket expense requirements;

8 (3) "Opioid analgesic drug product" means a drug product that contains an opioid agonist  
9 and is indicated by the United States Food and Drug Administration for the treatment of pain,  
10 regardless of whether the drug product:

11 (A) Is in immediate release or extended release form; or

12 (B) Contains other drug substances.

13 (b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
14 which this article applies, on or after January 1, 2017:

15 (1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug  
16 product for each active opioid analgesic ingredient;

17 (2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not  
18 exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription  
19 drug coverage;

20 (3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered  
21 pursuant to this section shall not exceed the lowest cost-sharing level applied to generic  
22 prescription drugs covered under the applicable health plan or policy; and

23 (4) An entity subject to this section may not require an insured or enrollee to first use an  
24 opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an  
25 abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription  
26 drug coverage.

27 (c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this  
28 section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid  
29 analgesic drug product covered by the entity, if the same utilization review requirements are  
30 applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug  
31 release, immediate or extended.

32 (d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-  
33 sharing level shall not mean the cost-sharing tier applicable to preventive care services which are  
34 required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.

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

**§33-25A-8m. Deductibles, copayments and coinsurance for abuse-deterrent opioid analgesic drugs.**

1 (a) As used in this section:

2 (1) "Abuse-deterrent opioid analgesic drug product" means a brand name or generic opioid  
3 analgesic drug product approved by the United States Food and Drug Administration with abuse-



4 deterrent labeling that indicates its abuse-deterrent properties are expected to deter or reduce its  
5 abuse;

6 (2) "Cost-sharing" means any coverage limit, copayment, coinsurance, deductible or other  
7 out-of-pocket expense requirements;

8 (3) "Opioid analgesic drug product" means a drug product that contains an opioid agonist  
9 and is indicated by the United States Food and Drug Administration for the treatment of pain,  
10 regardless of whether the drug product:

11 (A) Is in immediate release or extended release form; or

12 (B) Contains other drug substances.

13 (b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
14 which this article applies, on or after January 1, 2017:

15 (1) Coverage shall be provided for at least one abuse-deterrent opioid analgesic drug  
16 product for each active opioid analgesic ingredient;

17 (2) Cost-sharing for brand name abuse-deterrent opioid analgesic drug products shall not  
18 exceed the lowest tier for brand name prescription drugs on the entity's formulary for prescription  
19 drug coverage;

20 (3) Cost-sharing for generic abuse-deterrent opioid analgesic drug products covered  
21 pursuant to this section shall not exceed the lowest cost-sharing level applied to generic  
22 prescription drugs covered under the applicable health plan or policy; and

23 (4) An entity subject to this section may not require an insured or enrollee to first use an  
24 opioid analgesic drug product without abuse-deterrent labeling before providing coverage for an  
25 abuse-deterrent opioid analgesic drug product covered on the entity's formulary for prescription  
26 drug coverage.

27 (c) Notwithstanding subdivision (3), subsection (b) of this section, an entity subject to this  
28 section may undertake utilization review, including preauthorization, for an abuse-deterrent opioid  
29 analgesic drug product covered by the entity, if the same utilization review requirements are

30 applied to nonabuse-deterrent opioid analgesic drug products and with the same type of drug  
31 release, immediate or extended.

32 (d) For purposes of subsection (b) of this section, the lowest tier and the lowest cost-  
33 sharing level shall not mean the cost-sharing tier applicable to preventive care services which are  
34 required to be provided at no cost-sharing under the Patient Protection and Affordable Care Act.