

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4545

BY DELEGATE HOWELL

[Introduced February 16, 2016; Referred
to the Committee on Health and Human Resources
then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §33-46-21, relating to regulation of pharmacy benefits managers; defining
 3 terms; requiring pharmacy benefits managers to register with the commissioner;
 4 authorizing the commissioner to charge registration fees; authorizing the commissioner to
 5 take action against a pharmacy benefits manager's license or fine a pharmacy benefits
 6 manager upon violation of certain requirements; requiring pharmacy benefits managers to
 7 maintain a "Maximum Cost List," which is a list of sources used to determine maximum
 8 allowable cost pricing for products; requiring pharmacy benefits managers to update
 9 Maximum Allowable Cost Lists and to make the updates available in a reviewable format
 10 for pharmacies; establishing requirements for drugs to be placed on Maximum Allowable
 11 Cost Lists; requiring contracts between pharmacy benefits managers and pharmacies to
 12 include a process to appeal, investigate and resolve disputes regarding maximum
 13 allowable cost pricing; establishing requirements for the appeals and dispute resolution
 14 process; requiring pharmacy benefits managers to make certain disclosures to
 15 pharmacies regarding maximum cost lists; allowing a pharmacy to decline to provide a
 16 service or product to a patient if the Maximum Cost List will prevent the pharmacy from
 17 being paid the cost of providing the service; and prohibiting a patient from being required
 18 to pay an amount for pharmacist services that is greater than the amount the pharmacy
 19 may retain.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended and reenacted, by adding
 2 thereto a new section, designated §33-46-21, to read as follows:

ARTICLE 46. THIRD-PARTY ADMINISTRATOR ACT.

§33-46-21. Requirements for pharmacy benefits managers.

1 (a) Definitions.--

2 (1) "Commissioner" means the Insurance Commissioner of this state.

3 (2) “Maximum Allowable Cost List” means a listing of drugs used by a pharmacy benefits
4 manager setting the maximum allowable cost on which reimbursement to a pharmacy or
5 pharmacist may be based.

6 (3) “Pharmacy benefits manager” means an entity that contracts with pharmacies on
7 behalf of an employer, a multiple employer welfare arrangement, public employee benefit plan,
8 state agency, insurer, managed care organization, or other third-party payer to provide pharmacy
9 health benefit services or administration.

10 (4) “Pharmacist service” means products, goods, or services provided as part of the
11 practice of pharmacy in West Virginia.

12 (5) “Plan sponsor” means an employer, a multiple employer welfare arrangement, public
13 employee benefit plan, state agency, insurer, managed care organization, or other third-party
14 payer that facilitates a health benefit plan that provides a drug.

15 *(b) Registration and general requirements for pharmacy benefits managers.--*

16 (1) A pharmacy benefits manager may not operate in this state without first registering
17 with the Commissioner of Insurance and paying registration fees, in accordance with all
18 registration requirements of this article applying to third-party administrators.

19 (2) A pharmacy benefits manager must renew its registration annually to lawfully operate
20 in this state, in accordance with all registration renewal requirements of this article applying to
21 third-party administrators.

22 (3) Neither a plan sponsor nor a pharmacy shall enter into a contract with an unregistered
23 pharmacy benefits manager.

24 (4)(A) The commissioner may take any of the following actions against a pharmacy
25 benefits manager or a pharmacy benefits manager registration applicant that violates any
26 provision of this section:

27 (i) Deny registration to a pharmacy benefits manager registration applicant;

28 (ii) Revoke, suspend, or refuse to renew the registration of a pharmacy benefits manager;

29 or

30 (iii) Fine the pharmacy benefits manager.

31 (B) The commissioner shall adopt rules prescribing when fines are to be levied and in what
32 amounts.

33 (5) A pharmacy benefits manager or pharmacy benefits manager applicant may not do
34 any of the following:

35 (A) Make a material misstatement or misrepresentation in an application for registration or
36 renewal;

37 (B) Fraudulently or deceptively obtain or attempt to obtain a registration or renewal;

38 (C) Commit fraud or engage in any illegal or dishonest activity in connection with the
39 administration of pharmacy benefit management services; or

40 (D) Violate any provision of this section or any rule adopted by the commissioner to carry
41 out this section.

42 (c) Maximum Allowable Cost Lists.--

43 (1) In each contract between a pharmacy benefits manager and a pharmacy, the
44 pharmacy shall have the right to obtain from the pharmacy benefits manager, within ten days after
45 any request, a current list of the sources used to determine maximum allowable cost pricing. The
46 list required by this subdivision shall be referred to as the "Maximum Allowable Cost List."

47 (2) The pharmacy benefits manager shall update and implement the pricing information
48 on the list at least every seven days and provide a means by which contracted pharmacies may
49 promptly review pricing updates in a format that is readily available and accessible.

50 (3) A pharmacy benefits manager shall maintain a procedure to eliminate products from
51 the Maximum Allowable Cost List in a timely manner in order to remain consistent with pricing
52 changes in the marketplace.

53 (4) In order to place a prescription drug on the Maximum Allowable Cost List, a pharmacy
54 benefits manager shall ensure that all of the following conditions are met:

55 (A) The drug is listed as “A” or “AB” rated in the most recent version of the United States
56 food and drug administration's approved drug products with therapeutic equivalence evaluations,
57 or has an “NR” or “NA” rating or similar rating by a nationally recognized reference;

58 (B) The drug is generally available for purchase by pharmacies in this state from a national
59 or regional wholesaler and is not obsolete; and

60 (C) The drug has at least two therapeutically equivalent multiple source drugs available or
61 at least one generic drug available in this state from a national or regional wholesaler and is not
62 obsolete.

63 (5) Each contract between a pharmacy benefits manager and a pharmacy shall include a
64 process to appeal, investigate, and resolve disputes regarding maximum allowable cost pricing
65 that includes all of the following:

66 (A) A twenty-one-day limit on the right to appeal following the initial claim;

67 (B) A requirement that the appeal be investigated and resolved within twenty-one days
68 after the appeal;

69 (C) A telephone number at which the pharmacy may contact the pharmacy benefits
70 manager to speak to a person responsible for processing appeals;

71 (D) A requirement that a pharmacy benefits manager provide a reason for any appeal
72 denial and the identification of the national drug code of a drug that may be purchased in this
73 state by the pharmacy at a price at or below the benchmark price determined by the pharmacy
74 benefits manager; and

75 (E) A requirement that a pharmacy benefits manager make an adjustment to a date related
76 to a claim not later than one day after the date of determination of the appeal. The adjustment
77 shall be retroactive to the date the appeal was made and shall apply to all similarly situated
78 pharmacies; *Provided*, That this requirement does not prohibit a pharmacy benefits manager from

79 retroactively adjusting a claim for the appealing pharmacy or for another similarly situated
80 pharmacy.

81 (6)(A) A pharmacy benefits manager shall disclose to a plan sponsor whether or not the
82 pharmacy benefits manager uses the same maximum allowable cost list when billing a plan
83 sponsor as it does when reimbursing a pharmacy.

84 (B) If a pharmacy benefits manager uses multiple Maximum Allowable Cost Lists, the
85 pharmacy benefits manager shall disclose to a plan sponsor any difference between the amount
86 paid to a pharmacy and the amount charged to the plan sponsor.

87 (d) *Protections for patients and pharmacies.--*

88 (1) An individual may not be required to make a payment for pharmacist services in an
89 amount greater than the pharmacist or pharmacy providing the pharmacists services may retain
90 from all payment sources.

91 (2) A pharmacy or pharmacist may decline to provide pharmacist services to a patient or
92 pharmacy benefits manager if, as a result of a Maximum Allowable Cost List, a pharmacy or
93 pharmacist is to be paid less than the than the cost to the pharmacy of providing the pharmacist
94 service.

NOTE: The purpose of this bill is to regulate pharmacy benefits managers; to define terms; to require pharmacy benefits managers to register with the commissioner; to authorize the commissioner to charge registration fees; to authorize the commissioner to take action against a pharmacy benefits manager's license or fine a pharmacy benefits manager upon violation of certain requirements; to require pharmacy benefits managers to maintain a "Maximum Cost List," to require pharmacy benefits managers to update Maximum Allowable Cost Lists and to make the updates available in a reviewable format for pharmacies; to establish requirements for drugs to be placed on Maximum Allowable Cost Lists; to require contracts between pharmacy benefits managers and pharmacies to include a process to appeal, investigate and resolve disputes regarding maximum allowable cost pricing; to establish requirements for the appeals and dispute resolution process; to require pharmacy benefits managers to make certain disclosures to pharmacies regarding maximum cost lists; to allow a pharmacy to decline to provide a service or product to a patient if the Maximum Cost List will prevent the pharmacy from being paid the cost of providing the service; and to prohibit a patient from being required to pay an amount for pharmacist services that is greater than amount the pharmacy may retain.

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