

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 560

BY SENATORS STOLLINGS AND BEACH

[Introduced February 15, 2018; Referred
to the Committee on Health and Human Resources; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §5-16-27; to amend and reenact §33-51-3 of said code; and to amend said
 3 code by adding thereto a new section, designated §33-51-9, all relating to pharmacy
 4 benefit managers; prohibiting certain contractual provisions; and providing that
 5 reimbursements to a pharmacy or pharmacists for prescription drugs may not be less than
 6 the cost to the pharmacy or pharmacists under a public employees insurance plan
 7 established under the West Virginia Public Employees Insurance Act.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-27. Group prescription drug plans.

1 Group insurance drug plans established under this article may not provide for the
 2 reimbursement to pharmacies subject to these plans in an amount less than the actual cost of the
 3 drugs or medication to the pharmacy or pharmacist.

CHAPTER 33. INSURANCE.

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

§33-51-3. Definitions.

1 For purposes of this article:
 2 “Auditing entity” means a person or company that performs a pharmacy audit, including a
 3 covered entity, pharmacy benefits manager, managed care organization or third-party
 4 administrator.

5 “Business day” means any day of the week excluding Saturday, Sunday and any legal
6 holiday as set forth in §2-2-1 et seq. of this code.

7 “Claim level information” means data submitted by a pharmacy or required by a payer or
8 claims processor to adjudicate a claim.

9 “Covered entity” means a contract holder or policy holder providing pharmacy benefits to a
10 covered individual under a health insurance policy pursuant to a contract administered by a
11 pharmacy benefits manager and includes the West Virginia Public Employees Insurance Agency
12 under §5-16-1 et seq. of this code.

13 “Covered individual” means a member, participant, enrollee or beneficiary of a covered
14 entity who is provided health coverage by a covered entity, including a dependent or other person
15 provided health coverage through the policy or contract of a covered individual.

16 “Extrapolation” means the practice of inferring a frequency of dollar amount of
17 overpayments, underpayments, nonvalid claims or other errors on any portion of claims
18 submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid
19 claims or other errors actually measured in a sample of claims.

20 “Health care provider” has the same meaning as defined in §33-41-2 of this code.

21 “Health insurance policy” means a policy, subscriber contract, certificate or plan that
22 provides prescription drug coverage. The term includes both comprehensive and limited benefit
23 health insurance policies.

24 “Insurance commissioner” or “commissioner” has the same meaning as defined in §33-1-
25 5 of this code.

26 “Network” means a pharmacy or group of pharmacies that agree to provide prescription
27 services to covered individuals on behalf of a covered entity or group of covered entities in
28 exchange for payment for its services by a pharmacy benefits manager or pharmacy services
29 administration organization. The term includes a pharmacy that generally dispenses outpatient
30 prescriptions to covered individuals or dispenses particular types of prescriptions, provides

31 pharmacy services to particular types of covered individuals or dispenses prescriptions in
32 particular health care settings, including networks of specialty, institutional or long-term care
33 facilities.

34 “Nonproprietary drug” means a drug containing any quantity of any controlled substance
35 or any drug which is required by any applicable federal or state law to be dispensed only by
36 prescription.

37 “Pharmacist” means an individual licensed by the West Virginia Board of Pharmacy to
38 engage in the practice of pharmacy.

39 “Pharmacy” means any place within this state where drugs are dispensed and pharmacist
40 care is provided.

41 “Pharmacy audit” means an audit, conducted on-site by or on behalf of an auditing entity
42 of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy
43 to a covered individual.

44 “Pharmacy benefits management” means the performance of any of the following:

45 (1) The procurement of prescription drugs at a negotiated contracted rate for dispensation
46 within the State of West Virginia to covered individuals;

47 (2) The administration or management of prescription drug benefits provided by a covered
48 entity for the benefit of covered individuals;

49 (3) The administration of pharmacy benefits, including:

50 (A) Operating a mail-service pharmacy;

51 (B) Claims processing;

52 (C) Managing a retail pharmacy network;

53 (D) Paying claims to a pharmacy for prescription drugs dispensed to covered individuals
54 via retail or mail-order pharmacy;

55 (E) Developing and managing a clinical formulary including utilization management and
56 quality assurance programs;

57 (F) Rebate contracting administration; and

58 (G) Managing a patient compliance, therapeutic intervention and generic substitution
59 program.

60 "Pharmacy benefits manager" means a person, business or other entity that performs
61 pharmacy benefits management for covered entities;

62 "Pharmacy record" means any record stored electronically or as a hard copy by a
63 pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy
64 services or other component of pharmacist care that is included in the practice of pharmacy.

65 "Pharmacy services administration organization" means any entity that contracts with a
66 pharmacy to assist with third-party payer interactions and that may provide a variety of other
67 administrative services, including contracting with pharmacy benefits managers on behalf of
68 pharmacies and managing pharmacies' claims payments from third-party payers.

§33-51-9. Regulation of Pharmacy Benefit Managers.

1 (a) The following terms are defined:

2 "Allowable claim amount" means the amount the health carrier or pharmacy benefits
3 manager has agreed to pay the pharmacy for the prescription medication: *Provided*, That the
4 allowable claim amount as it applies to claims related to employees and retirees under the
5 provisions of §5-16-1 et seq. of this code may not be less than the actual cost of the drugs or
6 medication to the pharmacy or pharmacist.

7 (b) A pharmacy benefits manager may not charge a pharmacist or pharmacy a fee related
8 to the adjudication of a claim, including:

9 (1) The receipt and processing of a pharmacy claim;

10 (2) The development or management of a claim processing or adjudication network; or

11 (3) Participation in a claim processing or claim adjudication network.

12 (c) A contract between a health care provider and a pharmacy benefit manager may not
13 contain a provision prohibiting disclosure of billed or allowed amounts, reimbursement rates or

14 out-of-pocket costs, to assist consumers and institutional purchasers in making informed
15 decisions regarding their health care and informed choices among health care providers and allow
16 comparisons between prices paid by various health carriers to health care providers.

17 (d) No health carrier or pharmacy benefits manager may require an individual to make a
18 payment at the point of sale for a covered prescription medication in an amount greater than the
19 lesser of:

20 (1) The applicable copayment for the prescription medication;

21 (2) The allowable claim amount for the prescription medication; or

22 (3) The amount an individual would pay for the prescription medication if the individual
23 purchased the prescription medication without using a health benefit plan, or any other source of
24 prescription medication benefits or discounts.

25 (e) If a contract contains a provision prohibited under this section, the provision shall be
26 void and unenforceable. The invalidity or unenforceability of any contract provision under this
27 subsection may not affect any other provision of the contract.

28 (f) A pharmacy benefit manager may not place a trademark or logo on a medical and
29 prescription drug card.

NOTE: The purpose of this bill is to prevent pharmacy benefit managers from using certain contract provisions. It also prohibits reimbursing a pharmacy or pharmacist under PEIA less than the actual cost to the pharmacy or pharmacist of drugs or medication.

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