

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

House Bill No. 4666

(By Delegates Warner, Leach, Boggs, Campbell,
Proudfoot and Fletcher)



Passed March 7, 2002

In Effect from Passage

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H. B. 4666

(BY DELEGATES WARNER, LEACH, BOGGS, CAMPBELL,
PROUDFOOT AND FLETCHER)

[Passed March 7, 2002; in effect from passage.]

AN ACT to amend and reenact section fifteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing a process for the secretary of health and human services to enter into negotiations with pharmaceutical companies for rebates that cannot be accessed through Freedom of Information Act requests or through open meetings.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-15. Medicaid program; preferred drug list and drug utilization review.

1 The Legislature finds that it is a public necessity that trade
2 secrets, rebate amounts, percentage of rebate, manufacturer's
3 pricing and supplemental rebates that are contained in records,
4 as well as any meetings at which this information is negotiated
5 or discussed need confidentiality to insure the most significant
6 rebates available for the state. Information pertaining to similar
7 agreements with the federal government and negotiated by
8 pharmaceutical manufacturers is confidential pursuant to 42
9 U.S.C 1396r-8. A rebate as a percentage of average manufac-
10 ture price is confidential under federal law and the federal
11 rebate could be made known if not protected by state law.
12 Because of the protection afforded by federal law, if this
13 information is not protected by state law, manufacturers will
14 not be willing to offer a rebate in West Virginia. Further, the
15 Legislature finds that the number and value of supplemental
16 rebates obtained by the department will increase, to the benefit
17 of Medicaid recipients, if information related to the supplemen-
18 tal rebates is protected in the records of the department and in
19 meetings in which this information is disclosed because
20 manufactures will be assured they will not to be placed at a
21 competitive disadvantage by exposure of this information.

22 The secretary of the department of health and human
23 resources has the authority to develop a preferred drug list, in
24 accordance with federal law, which shall consist of federally
25 approved drugs. The department, through administration of the
26 medicaid program, may reimburse, where applicable and in
27 accordance with federal law, entities providing and dispensing
28 prescription drugs from the preferred drug list.

29 The secretary of the department is hereby authorized to
30 negotiate and enter into agreements with pharmaceutical
31 manufacturers for supplemental rebates for medicaid reimburs-
32 able drugs.

33 The provisions of article three, chapter five-a of this code
34 shall not apply to any contract or contracts entered into under
35 this section.

36 Trade secrets, rebate amounts, percentage of rebate,
37 manufacturer's pricing and supplemental rebates which are
38 contained in the department's records and those of its agents
39 with respect to supplemental rebate negotiations and which are
40 prepared pursuant to a supplemental rebate agreement are
41 confidential and exempt from all of article one, chapter twenty-
42 nine-b of this code.

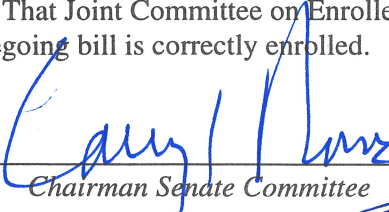
43 Those portions of any meetings of the committee at which
44 trade secrets, rebate amounts, percentage of rebate, manufac-
45 turer's pricing and supplemental rebates are disclosed for
46 discussion or negotiation of a supplemental rebate agreement
47 are exempt from all of article nine-a, chapter six of this code.

48 The secretary of the department will monitor and evaluate
49 the effects of this provision on medicaid recipients, the
50 medicaid program, physicians and pharmacies.

51 The commissioner shall implement a drug utilization
52 review program to assure that prescribing and dispensing of
53 drug products result in the most rational cost-effective medica-
54 tion therapy for medicaid patients.

55 Any moneys received in supplemental rebates will be
56 deposited in the medical services fund established in section
57 two, article four, chapter nine of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee




Chairman House Committee

Originating in the House.

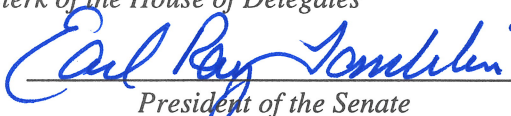
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 18th
day of March, 2002.



Governor

PRESENTED TO

GOVERNOR

Date 3/12/02

Time 3:20 pm