

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4146**

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

[Originating in the House Committee on Health and  
Human Resources on February 9, 2016.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §33-15-4m; to amend said code by adding thereto a new section, designated  
3 §33-16-3y; to amend said code by adding thereto a new section, designated §33-24-7n;  
4 to amend said code by adding thereto a new section, designated §33-25-8k; and to amend  
5 said code by adding thereto a new section, designated §33-25A-8m, all relating to abuse-  
6 deterrent opioid analgesic drugs; providing insurance cover abuse-deterrent opioid  
7 analgesic drugs; providing direct health care services cover abuse-deterrent opioid  
8 analgesic drugs; providing certain contracts cover abuse-deterrent opioid analgesic drugs;  
9 defining terms; providing an effective date; providing for cost sharing; providing for cost  
10 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  
6 relating to deductibles, copayments and coinsurance for abuse deterrent opioid analgesic drugs.

## 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, it shall provide coverage for:

15           (1) At least one abuse-deterrent opioid analgesic drug product for each active opioid  
16 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;

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

**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, it shall provide coverage  
15 for:

16           (1) At least one abuse-deterrent opioid analgesic drug product for each active opioid  
17 analgesic ingredient;

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

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

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

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

**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 and is indicated by the United  
10 States Food and Drug Administration for the treatment of pain, regardless of whether the drug  
11 product;

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

13 (B) Contains other drug substances.

14 (b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
15 which this article applies, on or after January 1, 2017, it shall provide coverage for:

16 (1) At least one abuse-deterrent opioid analgesic drug product for each active opioid  
17 analgesic ingredient;

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

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

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

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

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

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

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

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

5 (B) Contains other drug substances.

6 (b) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
7 which this article applies, on or after January 1, 2017, it shall provide coverage for:

8 (1) At least one abuse-deterrent opioid analgesic drug product for each active opioid  
9 analgesic ingredient;

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

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

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

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

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

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

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, it shall provide coverage for:

15           (1) At least one abuse-deterrent opioid analgesic drug product for each active opioid  
16 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;

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

NOTE: The purpose of this bill is to provide insurance coverage for abuse-deterrent opioid analgesic drugs. It provides that direct health care services cover abuse-deterrent opioid analgesic drugs while also providing certain contracts cover abuse-deterrent opioid analgesic drugs. It, additionally define applicable terms while providing an effective date. It further provides for cost sharing while providing for cost tier location and allowing cost containment measures.

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

This bill was recommended for passage during the 2016 Regular Session of the Legislature by the Joint Committee on Health.