

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

**Enrolled**  
**Committee Substitute**  
**for**  
**Senate Bill 689**

SENATORS MARONEY, TAKUBO, PALUMBO, ROBERTS,  
RUCKER, STOLLINGS, WELD, CLINE, PLYMALE, PREZIOSO,  
AND WOELFEL, *original sponsors*

[Passed March 5, 2020; in effect 90 days from  
passage]

OFFICE OF THE CLERK  
SECRETARY OF STATE

2020 MAR 25 PM 4: 2

FILED

SB689

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §33-53-1, §33-53-2, §33-53-3, §33-53-4, and §33-53-5, all relating to enacting  
3 the Requiring Accountable Pharmaceutical Transparency, Oversight, and Reporting Act;  
4 providing a short title; providing for definitions; outlining reporting requirements for drug  
5 manufacturers and health benefit plan issuers to the Auditor; outlining the pharmaceutical  
6 data required by the Auditor; directing the Auditor to create a searchable pharmaceutical  
7 transparency website; protecting confidentiality of patient information; providing  
8 registration requirements to drug manufacturers and health benefit plan issuers; requiring  
9 reporting to the Legislature; and outlining penalties when a health benefit plan or drug  
10 manufacturer fails to submit or submits inaccurate information to the Auditor.

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

**ARTICLE 53. REQUIRING ACCOUNTABLE PHARMACEUTICAL TRANSPARENCY,  
OVERSIGHT, AND REPORTING ACT.**

**§33-53-1. Short title.**

1 This article shall be known and cited as the Requiring Accountable Pharmaceutical  
2 Transparency, Oversight, and Reporting Act.

**§33-53-2. Definitions.**

1 For the purpose of this article:

2 “Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person  
3 appointed, designated, or approved by the State Auditor to perform the service.

4 “Brand-name drug” means a prescription drug approved under 21 USC §355(b) or 42 USC  
5 §262.

6 “Drug” or “prescription drug” refers to a brand-name, specialty, or generic prescription  
7 drug.

8           “Drug manufacturer” means any entity that holds the national drug code for a prescription  
9 drug and is engaged in the production, preparation, propagation, compounding, conversion, or  
10 processing of drug products; or is engaged in the packaging, repackaging, labeling, relabeling, or  
11 distribution of drug products, and is not a wholesale distributor of drugs or a retail pharmacy  
12 licensed under state law.

13           “Generic drug” means a prescription drug approved under 21 USC §355(j).

14           “Health benefit plan” means an individual, blanket, or group plan, policy, or contract for  
15 health care services issued or delivered by a health benefit plan issuer in the state.

16           “Health benefit plan issuer” means an entity subject to the insurance laws and rules of this  
17 state, or subject to the jurisdiction of the Insurance Commissioner, that contracts or offers to  
18 contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of  
19 the costs of health care services, including government agencies and any insurer subject to §5-  
20 16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-  
21 25A-1 *et seq.* of this code. For purposes of this article, the term “health benefit plan issuer” does  
22 not include insurers or managed care organizations with respect to their Medicaid or CHIP plans  
23 or contracts which are reviewed and approved by the Department of Health and Human  
24 Resources Bureau of Medical Services.

25           “Market introduction” means the month and year in which the manufacturer acquired or  
26 first marketed the drug for sale in the United States.

27           “National drug code” or “NDC” means the numerical code maintained by the United States  
28 Food and Drug Administration that includes the labeler code, product code, and package code.

29           “Specialty drug” means a prescription drug covered under Medicare Part D that exceeds  
30 the specialty tier cost threshold established by the Centers for Medicare and Medicaid Services.

31           “Total spending” means the total of allowed amounts associated with payment for a  
32 specified drug or drug group, for all covered lives.

33           “Utilization management” means a set of formal techniques designed to monitor the use  
34 of, or evaluate the medical necessity, appropriateness, efficacy, or efficiency of, health care  
35 services, procedures, or settings.

36           “Wholesale acquisition cost” or “WAC” is the manufacturer’s list price to wholesalers or  
37 direct purchasers in the United States on December 31 of the reference year, as reported in  
38 wholesale price guides or other publications of drug or biological pricing data; it does not include  
39 prompt pay or other discounts, rebates, or reductions in price. The current or proposed WAC is  
40 the amount that prompts reporting under this act. If reported by a drug group, it is the average  
41 WAC weighted by the relevant number of WAC units.

42           “Wholesale drug distributor” means an entity licensed by the West Virginia State Board of  
43 Pharmacy that is engaged in the sale of generic, brand-name, or specialty drugs to persons other  
44 than a consumer or patient.

**§33-53-3. Drug manufacturer reporting requirements.**

1           (a) Not later than January 15 of each calendar year, a drug manufacturer shall submit a  
2 report to the Auditor stating the following information for each brand-name, specialty, and generic  
3 drug manufactured by the drug manufacturer and sold in the state directly by the drug  
4 manufacturer or a wholesale drug distributor: *Provided*, That the requirements of this section only  
5 apply to:

6           (1) Generic, brand-name, or specialty drugs with a wholesale acquisition cost of at least  
7 \$100 for a 30-day supply; and

8           (2) A generic, brand-name, or specialty drug manufactured by a drug manufacturer that  
9 recognizes a wholesale acquisition cost increase of 40 percent or greater over the preceding three  
10 calendar years, or 15 percent or greater in the previous calendar year.

11           (b) The report shall include:

12           (1) The name of the drug;

13           (2) Whether the drug is a brand-name drug or generic drug;

14 (3) The effective date of any change or any reportable change in the wholesale acquisition  
15 cost price;

16 (4) The introductory price of the prescription drug when it was approved for marketing by  
17 the United States Food and Drug Administration;

18 (5) The national drug code for the specific drug;

19 (6) Aggregate company-level research and development costs for the most recent  
20 calendar year for which final audit data is available;

21 (7) The name and annual U.S. sales/revenue of each drug manufacturer's prescription  
22 drugs that lost patent exclusivity in the United States in the previous three calendar years; and

23 (8) A statement regarding the factor or factors that caused any increase in the wholesale  
24 acquisition cost.

25 (c) If the drug manufacturer is subject to reporting requirements established by the  
26 Securities and Exchange Commission, the quality and types of information submitted to the  
27 Auditor under this section must be consistent with the information that the drug manufacturer  
28 includes in the drug manufacturer's annual report submitted on Form 10-K to the Securities and  
29 Exchange Commission.

**§33-53-4. Health benefit plan issuer reporting requirements.**

1 No later than March 1 of each calendar year, each health benefit plan issuer shall submit  
2 to the Auditor a report providing the following information for the immediately preceding calendar  
3 year: *Provided*, That nothing in this article should be construed as to requiring a health benefit  
4 plan issuer to disclose confidential health information protected by the Health Insurance Portability  
5 and Accountability Act:

6 (1) The names of the 25 most frequently prescribed prescription drugs across all plans;

7 (2) The percent increase in annual net spending for prescription drugs across all plans;

8 (3) The percent increase in premiums that were attributable to prescription drugs across  
9 all plans;

10 (4) The percentage of specialty drugs with utilization management requirements across  
11 all plans; and

12 (5) The premium reductions that were attributable to specialty drug utilization  
13 management.

**§33-53-5. Auditor's searchable pharmaceutical transparency website created.**

1 (a) By July 1, 2021, the Auditor shall create a searchable pharmaceutical price  
2 transparency website, containing the information specified in §33-53-3 and §33-53-4 of this code,  
3 available to the public at no cost, and presented in a consumer-friendly, searchable format.

4 (b) Effective July 1, 2021, the Auditor shall update the information displayed on the  
5 searchable pharmaceutical price transparency website within 30 days of receiving updated or  
6 revised information from a drug manufacturer or health benefit plan issuer.

7 (c) Each drug manufacturer or health benefit plan issuer shall submit to the Auditor in  
8 writing contact information for those entities or individuals employed by the health benefit plan  
9 issuer or drug manufacturer responsible for complying with reporting requirements specified in  
10 §33-53-3 of this code, and shall notify the Auditor within 30 days of any changes to this  
11 information.

12 (d) The Auditor shall publish the identity of any drug manufacturer or health benefit plan  
13 issuer who fails to comply with the requirements of this article or who submits false or inaccurate  
14 information to the Auditor.

15 (e) The Auditor shall compile a report regarding information submitted pursuant to the  
16 provisions of §33-53-4 of this code and submit this analysis to the Legislative Oversight  
17 Commission on Health and Human Resources Accountability created pursuant to §16-29E-1 *et*  
18 *seq.* of this code beginning on December 30, 2022, and annually thereafter.

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

*Maurit H. Shapiro*  
.....  
Chairman, Senate Committee

*Noor Lupato*  
.....  
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

*Joe Lavin*  
.....  
Clerk of the Senate

*Steve Harris*  
.....  
Clerk of the House of Delegates

*Nittel B. Cornish*  
.....  
President of the Senate

*Greg Stumbo*  
.....  
Speaker of the House of Delegates

The within *is* ..... *approved* ..... this the *25<sup>th</sup>* .....  
Day of *March* ..... , 2020.

*James G. Fortson*  
.....  
Governor

OFFICE OF THE CLERK  
SECRETARY OF STATE

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FILED



PRESENTED TO THE GOVERNOR

MAR 18 2020

Time 9:50 am