

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2708**

BY DELEGATES ROHRBACH, FLEISCHAUER, GRIFFITH,  
BARACH, BATES, TULLY, TONEY, WALKER, PUSHKIN,  
DEAN AND WORRELL

[Introduced February 23, 2021; Referred to the  
Committee on Health and Human Resources then  
Finance]

1 A BILL to amend and reenact §5-16-7g of the Code of West Virginia, 1931, as amended, and to  
 2 amend and reenact §33-59-1 of said code, all relating generally to required health  
 3 insurance coverage for diabetics; providing cost sharing in prescription drugs used to  
 4 diabetes; defining terms; requiring insurance coverage for prescription insulin drugs;  
 5 providing for coverage pursuant to 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.**

**§5-16-7g. Coverage for prescription insulin drugs.**

1 (a) A policy, plan, or contract that is issued or renewed on or after July 1, ~~2020~~ 2021, shall  
 2 provide coverage for prescription insulin drugs pursuant to this section.

3 (b) For the purposes of this subdivision,

4 (1) "Noninsulin drug" means a drug, including, but not limited to, a glucagon drug, glucose  
 5 tablet or glucose gel, that does not contain insulin and is approved by the federal Food and Drug  
 6 Administration to treat diabetes.

7 (2) "Prescription insulin drug" means a prescription drug that contains insulin and is used  
 8 to treat diabetes, and includes at least one type of insulin in all of the following categories:

9 ~~(1)~~ (A) Rapid-acting;

10 ~~(2)~~ (B) Short-acting;

11 ~~(3)~~ (C) Intermediate-acting;

12 ~~(4)~~ (D) Long-acting;

13 ~~(5)~~ (E) Pre-mixed insulin products;

14 ~~(6)~~ (F) Pre-mixed insulin/GLP-1 RA products; and

15 ~~(7)~~ (G) Concentrated human regular insulin; and

16 (c) Cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed  
17 ~~\$100~~ \$25 for a 30-day supply of a covered prescription insulin, regardless of the quantity or type  
18 of prescription insulin used to fill the covered person's prescription needs.

19 (d) Cost sharing for a 30-day supply of a covered prescription noninsulin drug shall not  
20 exceed \$25 for a 30-day supply of a noninsulin drug, regardless of the quantity or type of  
21 noninsulin drug to fill the covered person's prescription needs.

22 ~~(d)~~ (e) Nothing in this section prevents the agency from reducing a covered person's cost  
23 sharing by an amount greater than the amount specified in this subsection.

24 ~~(e)~~ (f) No contract between the agency or its pharmacy benefits manager and a pharmacy  
25 or its contracting agent shall contain a provision (i) authorizing the agency's pharmacy benefits  
26 manager or the pharmacy to charge, (ii) requiring the pharmacy to collect, or (iii) requiring a  
27 covered person to make a cost-sharing payment for a covered prescription insulin drug and a  
28 noninsulin drug in an amount that exceeds the amount of the cost-sharing payment for the  
29 covered prescription insulin drug and a noninsulin drug established by the agency as provided in  
30 subsection (c) of this section.

31 ~~(f)~~ (g) The agency shall provide coverage for the following equipment and supplies for the  
32 treatment or management of diabetes for both insulin-dependent and noninsulin-dependent  
33 persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor  
34 supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for  
35 controlling blood sugar, and orthotics. Cost sharing shall not exceed \$100 for a 30-day supply.

36 ~~(g)~~ (h) The agency shall provide coverage for diabetes self-management education to  
37 ensure that persons with diabetes are educated as to the proper self-management and treatment  
38 of their diabetes, including information on proper diets. Coverage for self-management education

39 and education relating to diet shall be provided by a health care practitioner who has been  
 40 appropriately trained as provided in ~~§33-53-1(k)~~ §33-59-1(k) of this code.

41 ~~(h)~~ (i) The education may be provided by a health care practitioner as part of an office visit  
 42 for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a  
 43 patient regarding the proper use of covered equipment, supplies, and medications, or by a  
 44 certified diabetes educator or registered dietitian.

45 ~~(i)~~ (j) A pharmacy benefits manager, a health plan, or any other third party that reimburses  
 46 a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not  
 47 assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered  
 48 person's costs sharing is being impacted.

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 59. REQUIRED COVERAGE FOR HEALTH INSURANCE.**

#### **§33-59-1. Cost sharing in prescription insulin drugs.**

1 (a) Findings. –

2 (1) It is estimated that over 240,000 West Virginians are diagnosed and living with type 1  
 3 or type 2 diabetes and another 65,000 are undiagnosed;

4 (2) Every West Virginian with type 1 diabetes and many with type 2 diabetes rely on daily  
 5 doses of insulin to survive;

6 (3) The annual medical cost related to diabetes in West Virginia is estimated at \$2.5 billion  
 7 annually;

8 (4) Persons diagnosed with diabetes will incur medical costs approximately 2.3 times  
 9 higher than persons without diabetes;

10 (5) The cost of insulin has increased astronomically, especially the cost of insurance  
 11 copayments, which can exceed \$600 per month. Similar increases in the cost of diabetic  
 12 equipment and supplies, and insurance premiums have resulted in out-of-pocket costs for many

13 West Virginia diabetics in excess of \$1,000 per month;

14 (6) National reports indicate as many as one in four type 1 diabetics underuse, or ration,  
15 insulin due to these increased costs. Rationing insulin has resulted in nerve damage, diabetic  
16 comas, amputation, kidney damage, and even death; and

17 (7) It is important to enact policies to reduce the costs for West Virginians with diabetes to  
18 obtain life-saving and life-sustaining insulin.

19 (b) As used in this section:

20 (1) "Cost-sharing payment" means the total amount a covered person is required to pay  
21 at the point of sale in order to receive a prescription drug that is covered under the covered  
22 person's health plan.

23 (2) "Covered person" means a policyholder, subscriber, participant, or other individual  
24 covered by a health plan.

25 (3) "Health plan" means any health benefit plan, as defined in §33-16-1a(h) of this code,  
26 that provides coverage for a prescription insulin drug.

27 (4) "Noninsulin drug" means a drug, including, but not limited to, a glucagon drug, glucose  
28 tablet or glucose gel, that does not contain insulin and is approved by the federal Food and Drug  
29 Administration to treat diabetes.

30 ~~(4)~~ (5) "Pharmacy benefits manager" means an entity that engages in the administration  
31 or management of prescription drug benefits provided by an insurer for the benefit of its covered  
32 persons.

33 ~~(5)~~ (6) "Prescription insulin drug" means a prescription drug that contains insulin and is  
34 used to treat diabetes.

35 (c) Each health plan shall cover at least one type of insulin in all the following categories:

36 (1) Rapid-acting;

37 (2) Short-acting;

38 (3) Intermediate-acting;

- 39 (4) Long-acting;  
40 (5) Pre-mixed insulin products;  
41 (6) Pre-mixed insulin/GLP-1 RA products; and  
42 (7) Concentrated human regular insulin.

43 (d) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to  
44 §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 *et seq.* of  
45 this code which issues or renews a health insurance policy on or after July 1, 2020, shall provide  
46 coverage for ~~prescription insulin drugs~~ pursuant to this section.

47 (e) Cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed  
48 ~~\$100~~ \$25 for a 30-day supply of a covered prescription insulin, regardless of the quantity or type  
49 of prescription insulin drug used to fill the covered person's prescription needs.

50 (f) Cost sharing for a 30-day supply of a covered prescription noninsulin drug shall not  
51 exceed \$25 for a 30-day supply of a noninsulin drug, regardless of the quantity or type of  
52 noninsulin drug to fill the covered person's prescription needs.

53 ~~(f)~~ (g) Nothing in this section prevents an insurer from reducing a covered person's cost  
54 sharing to an amount less than the amount specified in subsection (e) of this section.

55 ~~(g)~~ (h) No contract between an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-  
56 24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code or its pharmacy benefits manager and  
57 a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the insurer's  
58 pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or  
59 (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin  
60 drug in an amount that exceeds the amount of the cost-sharing payment for the covered  
61 prescription insulin drug established by the insurer pursuant to subsection (e) of this code.

62 ~~(h)~~ (i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-  
63 1 *et seq.*, and §33-25A-1 of this code shall provide coverage for the following equipment and  
64 supplies for the treatment and/or management of diabetes for both insulin-dependent and

65 noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose  
66 monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices,  
67 pharmacological agents for controlling blood sugar, and orthotics. Cost sharing shall not exceed  
68 \$100 for a 30-day supply.

69 (j) (i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1  
70 *et seq.*, and §33-25A-1 of this code shall include coverage for diabetes self-management  
71 education to ensure that persons with diabetes are educated as to the proper self-management  
72 and treatment of their diabetes, including information on proper diets.

73 (j) (k) All health care plans must offer an appeals process for persons who are not able to  
74 take one or more of the offered prescription insulin drugs and a noninsulin drug. ~~noted in~~  
75 ~~subsection (c) of this code.~~ The appeals process shall be provided to covered persons in writing  
76 and afford covered persons and their health care providers a meaningful opportunity to participate  
77 with covered persons health care providers.

78 (k) (l) Diabetes self-management education shall be provided by a health care practitioner  
79 who has been appropriately trained. The Secretary of the Department of Health and Human  
80 Resources shall promulgate legislative rules to implement training requirements and procedures  
81 necessary to fulfill provisions of this subsection. ~~Provided, That any rules promulgated by the~~  
82 ~~secretary shall be done after consultation with the Coalition for Diabetes Management, as~~  
83 ~~established in §16-5Z-1 *et seq.* of this code.~~

84 (l) (m) A pharmacy benefits manager, a health plan, or any other third party that  
85 reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and  
86 shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered  
87 person's costs sharing is being impacted.

NOTE: The purpose of this bill is to reduce drug costs for diabetics.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.