

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 577

By Senators Maroney, Woelfel, Rucker, Deeds,
Grady, Hamilton, Queen, Clements, Oliverio,
Woodrum, Jeffries, Chapman, Barrett, Roberts, Hunt,
and Taylor

[Passed March 11, 2023; to take effect January 1,
2024]

1 AN ACT to amend and reenact §5-16-2 and §5-16-7g of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §33-59-1 of said code, all relating to diabetes;
3 defining terms; reducing copayments; adding coverage for devices; permitting testing
4 equipment to be purchased without a prescription; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is
2 clearly indicated by the context, have the following meanings:

3 "Agency" or "PEIA" means the Public Employees Insurance Agency created by this
4 article.

5 "Applied behavior analysis" means the design, implementation, and evaluation of
6 environmental modifications using behavioral stimuli and consequences in order to produce
7 socially significant improvement in human behavior and includes the use of direct observation,
8 measurement, and functional analysis of the relationship between environment and behavior.

9 "Autism spectrum disorder" means any pervasive developmental disorder, including
10 autistic disorder, Asperger's syndrome, Rett syndrome, childhood disintegrative disorder, or
11 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
12 Statistical Manual of Mental Disorders of the American Psychiatric Association.

13 "Certified behavior analyst" means an individual who is certified by the Behavior Analyst
14 Certification Board or certified by a similar nationally recognized organization.

15 "Dependent" includes an eligible employee's child under the age of 26 as defined in the
16 Patient Protection and Affordable Care Act.

17 "Device" means a blood glucose test strip, glucometer, continuous glucose monitor
18 (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat
19 diabetes or low blood sugar, but does not include insulin pumps.

20 "Director" means the Director of the Public Employees Insurance Agency created by this
21 article.

22 "Distant site" means the telehealth site where the health care practitioner is seeing the
23 patient at a distance or consulting with a patient's health care practitioner.

24 "Employee" means any person, including an elected officer, who works regularly full-time
25 in the service of the State of West Virginia; and, for the purpose of this article only, the term
26 "employee" also means any person, including an elected officer, who works regularly full-time in
27 the service of a county board of education; a public charter school established pursuant to §18-
28 5G-1 et seq. of this code if the charter school includes in its charter contract entered into pursuant
29 to §18-5G-7 of this code a determination to participate in the Public Employees Insurance
30 program; a county, city, or town in the state; any separate corporation or instrumentality
31 established by one or more counties, cities, or towns, as permitted by law; any corporation or
32 instrumentality supported in most part by counties, cities, or towns; any public corporation charged
33 by law with the performance of a governmental function and whose jurisdiction is coextensive with
34 one or more counties, cities, or towns; any comprehensive community mental health center or
35 intellectually and developmentally disabled facility established, operated, or licensed by the
36 Secretary of the Department of Health and Human Resources pursuant to §27-2A-1 of this
37 code and which is supported in part by state, county, or municipal funds; any person who works
38 regularly full-time in the service of the Higher Education Policy Commission, the West Virginia
39 Council for Community and Technical College Education, or a governing board as defined in §18B-
40 1-2 of this code; any person who works regularly full-time in the service of a combined city-county
41 health department created pursuant to §16-2-1 et seq. of this code; any person designated as a
42 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a
43 long-term substitute as defined in §18A-1-1 of this code in the service of a county board of
44 education: Provided, That a long-term substitute who is continuously employed for at least 133
45 instructional days during an instructional term, and, until the end of that instructional term, is

46 eligible for the benefits provided in this article until September 1 following that instructional
47 term: Provided, however, That a long-term substitute employed fewer than 133 instructional days
48 during an instructional term is eligible for the benefits provided in this article only during such time
49 as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and
50 upon election by a county board of education to allow elected board members to participate in the
51 Public Employees Insurance Program pursuant to this article, any person elected to a county
52 board of education shall be considered to be an "employee" during the term of office of the elected
53 member. Upon election by the State Board of Education to allow appointed board members to
54 participate in the Public Employees Insurance Program pursuant to this article, any person
55 appointed to the State Board of Education is considered an "employee" during the term of office of
56 the appointed member: Provided further, That the elected member of a county board of education
57 and the appointed member of the State Board of Education shall pay the entire cost of the
58 premium if he or she elects to be covered under this article. Any matters of doubt as to who is an
59 employee within the meaning of this article shall be decided by the director.

60 On or after July 1, 1997, a person shall be considered an "employee" if that person meets
61 the following criteria:

62 (A) Participates in a job-sharing arrangement as defined in §18A-1-1 et seq. of this code;

63 (B) Has been designated, in writing, by all other participants in that job-sharing
64 arrangement as the "employee" for purposes of this section; and

65 (C) Works at least one-third of the time required for a full-time employee.

66 "Employer" means the State of West Virginia, its boards, agencies, commissions,
67 departments, institutions, or spending units; a county board of education; a public charter school
68 established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its charter
69 contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public
70 Employees Insurance Program; a county, city, or town in the state; any separate corporation or
71 instrumentality established by one or more counties, cities, or towns, as permitted by law; any

72 corporation or instrumentality supported in most part by counties, cities, or towns; any public
73 corporation charged by law with the performance of a governmental function and whose
74 jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive
75 community mental health center or intellectually and developmentally disabled facility established,
76 operated, or licensed by the Secretary of the Department of Health and Human Resources
77 pursuant to §27-2A-1 et seq. of this code and which is supported in part by state, county, or
78 municipal funds; a combined city-county health department created pursuant to §16-2-1 et seq. of
79 this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is
80 employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is
81 not considered an employer with respect to any employee other than a 21st Century Learner
82 Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be
83 decided by the director. The term "employer" does not include within its meaning the National
84 Guard.

85 "Established patient" means a patient who has received professional services, face-to-
86 face, from the physician, qualified health care professional, or another physician or qualified health
87 care professional of the exact same specialty and subspecialty who belongs to the same group
88 practice, within the past three years.

89 "Finance board" means the Public Employees Insurance Agency finance board created
90 by this article.

91 "Health care practitioner" means a person licensed under §30-1-1 et seq. of this code who
92 provides health care services.

93 "Originating site" means the location where the patient is located, whether or not
94 accompanied by a health care practitioner, at the time services are provided by a health care
95 practitioner through telehealth, including, but not limited to, a health care practitioner's office,
96 hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's

97 home, and other nonmedical environments such as school-based health centers, university-based
98 health centers, or the work location of a patient.

99 "Objective evidence" means standardized patient assessment instruments, outcome
100 measurements tools, or measurable assessments of functional outcome. Use of objective
101 measures at the beginning of treatment, during, and after treatment is recommended to quantify
102 progress and support justifications for continued treatment. The tools are not required but their use
103 will enhance the justification for continued treatment.

104 "Person" means any individual, company, association, organization, corporation, or other
105 legal entity.

106 "Plan" means a group hospital and surgical insurance plan or plans, a group prescription
107 drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and
108 accidental death insurance plan or plans.

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

- 111 (1) Rapid-acting;
- 112 (2) Short-acting;
- 113 (3) Intermediate-acting;
- 114 (4) Long-acting;
- 115 (5) Pre-mixed insulin products;
- 116 (6) Pre-mixed insulin/GLP-1 RA products; and
- 117 (7) Concentrated human regular insulin.

118 "Primary coverage" means individual or group hospital and surgical insurance coverage
119 or individual or group major medical insurance coverage or group prescription drug coverage in
120 which the spouse or dependent is the named insured or certificate holder.

121 "Remote patient monitoring services" means the delivery of home health services using
122 telecommunications technology to enhance the delivery of home health care, including monitoring

123 of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and
124 other condition-specific data; medication adherence monitoring; and interactive video
125 conferencing with or without digital image upload.

126 "Retired employee" means an employee of the state who retired after April 29, 1971, and
127 an employee of the Higher Education Policy Commission, the Council for Community and
128 Technical College Education, a state institution of higher education, or a county board of education
129 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after
130 the effective date of this article, meet the minimum eligibility requirements for their respective state
131 retirement system, and whose last employer immediately prior to retirement under the state
132 retirement system is a participating employer in the state retirement system and in the Public
133 Employees Insurance Agency: Provided, That for the purposes of this article, the employees who
134 are not covered by a state retirement system, but who are covered by a state-approved or state-
135 contracted retirement program or a system approved by the director, shall, in the case of education
136 employees, meet the minimum eligibility requirements of the State Teachers Retirement System,
137 and in all other cases, meet the minimum eligibility requirements of the Public Employees
138 Retirement System and may participate in the Public Employees Insurance Agency as retired
139 employees upon terms as the director sets by rule as authorized in this article. Employers with
140 employees who are, or who are eligible to become, retired employees under this article shall be
141 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 et
142 seq. of this code. Nonstate employers may opt out of the West Virginia other post-employment
143 benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the
144 Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon
145 the written certification, under oath, of an authorized officer of the employer that the employer has
146 no employees who are, or who are eligible to become, retired employees and that the employer
147 will defend and hold harmless the Public Employees Insurance Agency from any claim by one of
148 the employer's past, present, or future employees for eligibility to participate in the Public

149 Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees
150 Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee
151 of a nonstate employer which has opted out of the West Virginia other post-employment benefits
152 plan of the Retiree Health Benefit Trust Fund pursuant to this section.

153 "Telehealth services" means the use of synchronous or asynchronous telecommunications
154 technology or audio-only telephone calls by a health care practitioner to provide health care
155 services, including, but not limited to, assessment, diagnosis, consultation, treatment, and
156 monitoring of a patient; transfer of medical data; patient and professional health-related education;
157 public health services; and health administration. The term does not include e-mail messages or
158 facsimile transmissions.

159 "Virtual telehealth" means a new patient or follow-up patient for acute care that does not
160 require chronic management or scheduled medications.

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

1 (a) A policy, plan, or contract that is issued or renewed on or after January 1, 2024, shall
2 provide coverage for prescription insulin drugs and equipment to this section.

3 (b) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed
4 \$35 in aggregate, including situations where the covered person is prescribed more than one
5 insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such
6 covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not
7 exceed \$100 in aggregate, including situations where the covered person is prescribed more than
8 one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's
9 deductible, copayment, coinsurance, or any other cost-sharing requirement.

10 (c) Nothing in this section prevents the agency from reducing a covered person's cost
11 sharing by an amount greater than the amount specified in this subsection.

12 (d) No contract between the agency or its pharmacy benefits manager and a pharmacy or
13 its contracting agent shall contain a provision: (i) Authorizing the agency's pharmacy benefits

14 manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a
15 covered person to make a cost-sharing payment for a covered prescription insulin drug in an
16 amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin
17 drug established by the agency as provided in subsection (b) of this section.

18 (e) The agency shall provide coverage for the following equipment and supplies for the
19 treatment or management of diabetes for both insulin-dependent and noninsulin-dependent
20 persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor
21 supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for
22 controlling blood sugar, and orthotics.

23 (f) The agency shall provide coverage for diabetes self-management education to ensure
24 that persons with diabetes are educated as to the proper self-management and treatment of their
25 diabetes, including information on proper diets. Coverage for self-management education and
26 education relating to diet shall be provided by a health care practitioner who has been
27 appropriately trained as provided in §33-53-1(k) of this code.

28 (g) The education may be provided by a health care practitioner as part of an office visit for
29 diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a
30 patient regarding the proper use of covered equipment, supplies, and medications, or by a certified
31 diabetes educator or registered dietitian.

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

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 or

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

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

25 "Device" means a blood glucose test strip, glucometer, continuous glucose monitor
26 (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat
27 diabetes or low blood sugar, but does not include insulin pumps;

28 "Health plan" means any health benefit plan, as defined in §33-16-1a(h) of this code, that

29 provides coverage for a prescription insulin drug.

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

33 "Prescription insulin drug" means a prescription drug that contains insulin and is used to
34 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 January 1, 2023, shall
46 provide coverage for prescription insulin drugs and equipment pursuant to this section.

47 (e) Cost sharing for a 30-day supply of a covered prescription insulin drug may not exceed
48 \$35 in aggregate, including situations where the covered person is prescribed more than one
49 insulin drug, per 30-day supply, regardless of the amount or type of insulin needed to fill such
50 covered person's prescription. Cost sharing for a 30-day supply of covered device(s) may not
51 exceed \$100 in aggregate, including situations where the covered person is prescribed more than
52 one device, per 30-day supply. Each cost-share maximum is covered regardless of the person's
53 deductible, copayment, coinsurance or any other cost-sharing requirement.

54 (f) Nothing in this section prevents an insurer from reducing a covered person's cost

55 sharing to an amount less than the amount specified in subsection (e) of this section.

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

63 (h) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et*
64 *seq.*, and §33-25A-1 *et seq.* of this code shall provide coverage for the following equipment and
65 supplies for the treatment and/or management of diabetes for both insulin-dependent and non-
66 insulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose
67 monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices,
68 pharmacological agents for controlling blood sugar, and orthotics.

69 (i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et*
70 *seq.*, and §33-25A-1 *et seq.* 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) All health care plans must offer an appeals process for persons who are not able to take
74 one or more of the offered prescription insulin drugs noted in subsection (c) of this section. The
75 appeals process shall be provided to covered persons in writing and afford covered persons and
76 their health care providers a meaningful opportunity to participate with covered persons health
77 care providers.

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

88 (m) A prescription is not required to obtain a blood testing kit for ketones.