

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5340**

By Delegates Summers, Tully and Westfall

[Introduced January 30, 2024; Referred to the  
Committee on Banking and Insurance then Health  
and Human Resources]

1 A BILL to amend and reenact §16-54-1 of the Code of West Virginia, 1931, as amended, and to  
2 amend said code by adding thereto a new section, designated, §16-54-10, all relating to  
3 require insurance coverage to not prioritize the use of an opioid over a nonopioid drug for  
4 the treatment of pain.

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

**ARTICLE 54. OPIOID REDUCTION AND NON-OPIOID TREATMENT ACT.**

**§16-54-1. Definitions.**

1 As used in this section:

2 "Acute pain" means a time limited pain caused by a specific disease or injury.

3 "Chronic pain" means a noncancer, nonend of life pain lasting more than three months or  
4 longer than the duration of normal tissue healing.

5 "Health care practitioner" or "practitioner" means:

6 (1) A physician authorized pursuant to the provisions of §30-3-1 *et seq.* and §30-14-1 *et*  
7 *seq.* of this code;

8 (2) A podiatrist licensed pursuant to the provisions of §30-3-1 *et seq.* of this code;

9 (3) A physician assistant with prescriptive authority as set forth in §30-3E-3 of this code;

10 (4) An advanced practice registered nurse with prescriptive authority as set forth in §30-7-  
11 15a of this code;

12 (5) A dentist licensed pursuant to the provisions of §30-4-1 *et seq.* of this code;

13 (6) An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.* of this code;

14 (7) A physical therapist licensed pursuant to the provisions of §30-20-1 *et seq.* of this code;

15 (8) An occupational therapist licensed pursuant to the provisions of §30-28-1 *et seq.* of this  
16 code;

17 (9) An osteopathic physician licensed pursuant to the provisions of §30-14-1 *et seq.* of this  
18 code; and

19 (10) A chiropractor licensed pursuant to the provisions of §30-16-1 *et seq.* of this code.

20 "Insurance provider" means an entity that is regulated under the provisions of §33-15-1 *et*  
21 *seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.* and §33-25A-1 *et seq.* of this code.

22 "Nonopioid medicinal drug or drug product" means a drug or biological that has a label  
23 indication approved by the Federal Food and Drug Administration to reduce pain or produce  
24 analgesia without acting upon the body's opioid receptors.

25 "Office" means the Office of Drug Control Policy.

26 "Pain clinic" means the same as that term is defined in §16-5H-2 of this code.

27 "Pain specialist" means a practitioner who is board certified in pain management or a  
28 related field.

29 "Prescribe" means the advisement of a physician or other licensed practitioner to a patient  
30 for a course of treatment. It can include but is not limited to medication, services, supplies,  
31 equipment, procedures, diagnostic tests, or screening as permitted by the physician or other  
32 licensed practitioner's scope of practice.

33 "Referral" means the recommendation by a person to another person for the purpose of  
34 initiating care by a health care practitioner.

35 "Schedule II opioid drug" means an opioid drug listed in §60A-2-206 of this code.

36 "Surgical procedure" means a medical procedure involving an incision with instruments  
37 performed to repair damage or arrest disease in a living body.

**§16-54-10. Prescriber Practices Relative to Nonopioid Alternatives/Education and Awareness**

1 Notwithstanding any provision of law to the contrary, when a licensed health care  
2 practitioner prescribes a nonopioid medicinal drug or drug product for the treatment of acute pain,  
3 it shall be unlawful for a commercial health insurer, Medicaid, Medicaid Managed Care  
4 Organization, health maintenance organization , pharmacy benefit manager or the WV Public  
5 Employees Insurance Agency (PEIA) to deny coverage of a medically appropriate nonopioid  
6 medicinal drug or drug product in favor of an opioid prescription drug, or to require the patient to try

- 7 an opioid prescription drug prior to providing coverage of the nonopioid medicinal drug or drug  
8 product.

NOTE: The purpose of this bill is to require insurance coverage to not prioritize the use of an opioid over a nonopioid drug for the treatment of pain.

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