

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5379**

By Delegates Summers and Tully

[Originating in the Committee on Finance; Reported  
on February 23, 2024]



1 A BILL to amend and reenact §33-15-4t of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §33-16-3ee of said code; to amend and reenact §33-24-7t of said  
3 code; to amend and reenact §33-25-8q of said code; and to amend and reenact §33-25A-  
4 8t of said code, all relating to cost sharing under health plans; requiring pharmacy benefits  
5 managers to include any cost sharing amounts paid by insured or by another person when  
6 calculating insured's contribution to any applicable cost sharing requirement; applying  
7 certain annual limitation on cost sharing to all health plans issued in this state; preventing  
8 insurers, pharmacy benefits managers, and third-party administrators from changing the  
9 terms of health plan coverage based on the availability or amount of financial assistance  
10 available for a prescription drug; defining terms; providing civil penalties and authorizing  
11 restitution; and providing effective date.

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

**ARTICLE            15.            ACCIDENT            AND            SICKNESS            INSURANCE.**  
**§33-15-4t.            Fairness            in            Cost-Sharing            Calculation.**

1            (a) As used in this section:  
2            "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf  
3 of an insured in order to receive a specific health care item or service covered by a health plan.  
4            "Drug" means the same as the term is defined in §30-5-4 of this code.  
5            "Person" means a natural person, corporation, mutual company, unincorporated  
6 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit  
7 corporation, unincorporated organization, or government or governmental subdivision or agency.  
8            "Health care service" means an item or service furnished to any individual for the purpose  
9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.  
10            "Health plan" means a policy, contract, certification, or agreement offered or issued by an  
11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care  
12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this  
14 code.

15 "Third party administrator" means the same as that term is defined in § 33-46-2 of this  
16 code.

17 (b) When calculating an insured's contribution to any applicable cost sharing requirement,  
18 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(e)  
19 and 42 U.S.C. § 300gg-6(b)

20 (1) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid  
21 by the insured or on behalf of the insured by another person. ~~and~~

22 (2) ~~A pharmacy benefits manger shall include any cost sharing amounts paid by the~~  
23 ~~insured or on behalf of the insured by another person~~

24 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall  
25 apply to all health care services covered under any health plan offered or issued by an insurer in  
26 this state.

27 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or  
28 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit  
29 design, based in part or entirely on information about the availability or amount of financial or  
30 product assistance available for a prescription drug.

31 (e) ~~(e)~~ The commissioner is authorized to propose rules for legislative approval in  
32 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

33 (d) ~~(f)~~ This section is effective for policy, contract, plans, or agreements beginning on or  
34 after January 1, 2020. The amendments made to this section in 2024 are effective for policy,  
35 contract, plans, or agreements beginning on or after January 1, 2025. This section applies to all  
36 policies, contracts, plans, or agreements, subject to this article that are delivered, executed,  
37 issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

38           ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in  
39 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this  
40 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans  
41 with respect to the deductible of such a plan after the enrollee has satisfied the minimum  
42 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items  
43 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue  
44 Code, the requirements of subsection (b) of this section shall apply regardless of whether the  
45 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

46           (h) In addition to the penalties and other enforcement provisions of this chapter, any person  
47 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of  
48 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.  
49 The commissioner's order may require a person found to be in violation of this section to make  
50 restitution to persons aggrieved by violations of this section.

**ARTICLE   16.   GROUP   ACCIDENT   AND   SICKNESS   INSURANCE.**  
**§33-16-3ee.       Fairness           in           Cost-Sharing           Calculation.**

1           (a) As used in this section:

2           "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf  
3 of an insured in order to receive a specific health care item or service covered by a health plan.

4           "Drug" means the same as the term is defined in §30-5-4 of this code.

5           "Person" means a natural person, corporation, mutual company, unincorporated  
6 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit  
7 corporation, unincorporated organization, or government or governmental subdivision or agency.

8           "Health care service" means an item or service furnished to any individual for the purpose  
9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an  
11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care  
12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this  
14 code.

15 "Third party administrator" means the same as that term is defined in §33-46-2 of this code.

16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,  
17 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(e)  
18 and 42 U.S.C. § 300gg-6(b)

19 (1) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid  
20 by the insured or on behalf of the insured by another person. ~~and~~

21 (2) ~~A pharmacy benefits manger shall include any cost sharing amounts paid by the~~  
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall  
24 apply to all health care services covered under any health plan offered or issued by an insurer in  
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or  
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit  
28 design, based in part or entirely on information about the availability or amount of financial or  
29 product assistance available for a prescription drug.

30 (e) (e) The commissioner is authorized to propose rules for legislative approval in  
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32 (d) (f) This section is effective for policy, contract, plans, or agreements beginning on or  
33 after January 1, 2020. The amendments made to this section in 2024 are effective for policy,  
34 contract, plans, or agreements beginning on or after January 1, 2025. This section applies to all

35 policies, contracts, plans, or agreements, subject to this article that are delivered, executed,  
36 issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

37 ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in  
38 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this  
39 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans  
40 with respect to the deductible of such a plan after the enrollee has satisfied the minimum  
41 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items  
42 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue  
43 Code, the requirements of subsection (b) of this section shall apply regardless of whether the  
44 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

45 (h) In addition to the penalties and other enforcement provisions of this chapter, any person  
46 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of  
47 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.  
48 The commissioner's order may require a person found to be in violation of this section to make  
49 restitution to persons aggrieved by violations of this section.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE  
CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH  
SERVICE CORPORATIONS.**

**§33-24-7t. Fairness in Cost-Sharing Calculation.**

1 (a) As used in this section:

2 "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf  
3 of an insured in order to receive a specific health care item or service covered by a health plan.

4 "Drug" means the same as the term is defined in §30-5-4 of this code.

5 "Person" means a natural person, corporation, mutual company, unincorporated  
6 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit  
7 corporation, unincorporated organization, or government or governmental subdivision or agency.

8 "Health care service" means an item or service furnished to any individual for the purpose  
9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an  
11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care  
12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this  
14 code.

15 "Third party administrator" means the same as that term is defined in §33-46-2 of this code.

16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,  
17 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(e)  
18 and 42 U.S.C. § 300gg-6(b)

19 (4) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid  
20 by the insured or on behalf of the insured by another person. ~~and~~

21 ~~(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the~~  
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall  
24 apply to all health care services covered under any health plan offered or issued by an insurer in  
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or  
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit  
28 design, based in part or entirely on information about the availability or amount of financial or  
29 product assistance available for a prescription drug.



30           ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in  
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32           ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or  
33 after January 1, 2020. The amendments made to this section in 2024 are effective for policy,  
34 contract, plans, or agreements beginning on or after January 1, 2025. This section applies to all  
35 policies, contracts, plans, or agreements, subject to this article that are delivered, executed,  
36 issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

37           ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in  
38 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this  
39 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans  
40 with respect to the deductible of such a plan after the enrollee has satisfied the minimum  
41 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items  
42 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue  
43 Code, the requirements of subsection (b) of this section shall apply regardless of whether the  
44 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

45           (h) In addition to the penalties and other enforcement provisions of this chapter, any person  
46 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of  
47 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.  
48 The commissioner's order may require a person found to be in violation of this section to make  
49 restitution to persons aggrieved by violations of this section.

**ARTICLE                    25.                    HEALTH                    CARE                    CORPORATIONS.**  
**§33-25-8q.                    Fairness                    in                    Cost-Sharing                    Calculation.**

1            (a) As used in this section:  
2            "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf  
3 of an insured in order to receive a specific health care item or service covered by a health plan.

4            "Drug" means the same as the term is defined in §30-5-4 of this code.

5 "Person" means a natural person, corporation, mutual company, unincorporated  
6 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit  
7 corporation, unincorporated organization, or government or governmental subdivision or agency.

8 "Health care service" means an item or service furnished to any individual for the purpose  
9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an  
11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care  
12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this  
14 code.

15 "Third party administrator" means as that term is defined in §33-46-2 of this code.

16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,  
17 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(e)  
18 and 42 U.S.C. § 300gg-6(b)

19 (4) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid  
20 by the insured or on behalf of the insured by another person. ~~and~~

21 ~~(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the~~  
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall  
24 apply to all health care services covered under any health plan offered or issued by an insurer in  
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or  
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit  
28 design, based in part or entirely on information about the availability or amount of financial or  
29 product assistance available for a prescription drug.

30           ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in  
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32           ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or  
33 after January 1, 2020. The amendments made to this section in 2024 are effective for policy,  
34 contract, plans, or agreements beginning on or after January 1, 2025. This section applies to all  
35 policies, contracts, plans, or agreements, subject to this article that are delivered, executed,  
36 issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

37           ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in  
38 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this  
39 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans  
40 with respect to the deductible of such a plan after the enrollee has satisfied the minimum  
41 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items  
42 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue  
43 Code, the requirements of subsection (b) of this section shall apply regardless of whether the  
44 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

45           (h) In addition to the penalties and other enforcement provisions of this chapter, any person  
46 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of  
47 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.  
48 The commissioner's order may require a person found to be in violation of this section to make  
49 restitution to persons aggrieved by violations of this section.

**ARTICLE      25A.      HEALTH      MAINTENANCE      ORGANIZATION      ACT.**  
**§33-25A-8t.      Fairness      in      Cost-Sharing      Calculation.**

1           (a) As used in this section:

2           "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf  
3 of an insured in order to receive a specific health care item or service covered by a health plan.

4           "Drug" means the same as the term is defined in §30-5-4 of this code.

5 "Person" means a natural person, corporation, mutual company, unincorporated  
6 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit  
7 corporation, unincorporated organization, or government or governmental subdivision or agency.

8 "Health care service" means an item or service furnished to any individual for the purpose  
9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an  
11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care  
12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this  
14 code.

15 "Third party administrator" means as that term is defined in §33-46-2 of this code.

16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,  
17 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(e)  
18 and 42 U.S.C. § 300gg-6(b)

19 (1) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid  
20 by the insured or on behalf of the insured by another person. ~~and~~

21 ~~(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the~~  
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall  
24 apply to all health care services covered under any health plan offered or issued by an insurer in  
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or  
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit  
28 design, based in part or entirely on information about the availability or amount of financial or  
29 product assistance available for a prescription drug.

30           ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in  
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32           ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or  
33 after January 1, 2020. The amendments made to this section in 2024 are effective for policy,  
34 contract, plans, or agreements beginning on or after January 1, 2025. This section applies to all  
35 policies, contracts, plans, or agreements, subject to this article that are delivered, executed,  
36 issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

37           ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in  
38 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this  
39 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans  
40 with respect to the deductible of such a plan after the enrollee has satisfied the minimum  
41 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items  
42 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue  
43 Code, the requirements of subsection (b) of this section shall apply regardless of whether the  
44 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

45           (h) In addition to the penalties and other enforcement provisions of this chapter, any person  
46 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of  
47 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.  
48 The commissioner's order may require a person found to be in violation of this section to make  
49 restitution to persons aggrieved by violations of this section.

NOTE: The purpose of this bill is to ensure financial or product assistance are available for a prescription drug.

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