

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 453**

By Senators Tarr, Woodrum, Grady, Rucker, Stuart,

Maroney, Roberts, Deeds, and Phillips

[Introduced January 15, 2024; referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended, relating to  
 2 requiring any pharmacy benefit manager who contracts with the Public Employees  
 3 Insurance Agency to be entirely transparent in providing its full data around pricing and  
 4 payments for drugs and to pharmacies.

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

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-9. Authorization to execute contracts.**

1 (a) The director is given exclusive authorization to execute such contract or contracts as  
 2 are necessary to carry out the provisions of this article.

3 (b) The provisions of §5A-3-1 *et seq.* of this code, relating to the Division of Purchasing of  
 4 the Department of Finance and Administration, shall not apply to any contracts for any insurance  
 5 coverage or professional services authorized to be executed under the provisions of this article.  
 6 Before entering into any contract for any insurance coverage, as authorized in this article, the  
 7 director shall invite competent bids from all qualified and licensed insurance companies or carriers  
 8 that may wish to offer plans for the insurance coverage desired. The director shall negotiate and  
 9 contract directly with health care providers and other entities, organizations, and vendors in order  
 10 to secure competitive premiums, prices, and other financial advantages. The director shall deal  
 11 directly with insurers or health care providers and other entities, organizations, and vendors in  
 12 presenting specifications and receiving quotations for bid purposes. No commission or finder's  
 13 fee, or any combination thereof, shall be paid to any individual or agent: *Provided*, That this shall  
 14 not preclude an underwriting insurance company or companies, at their own expense, from  
 15 appointing a licensed resident agent within this state to service the companies' contracts awarded  
 16 under the provisions of this article. Commissions reasonably related to actual service rendered for  
 17 the agent or agents may be paid by the underwriting company or companies. In no event shall  
 18 payment be made to any agent or agents when no actual services are rendered or performed. The  
 19 director shall award the contract or contracts on a competitive basis. In awarding the contract or

20 contracts the director shall take into account the experience of the offering agency, corporation,  
21 insurance company, or service organization in the group hospital and surgical insurance field,  
22 group major medical insurance field, group prescription drug field, and group life and accidental  
23 death insurance field, and its facilities for the handling of claims. In evaluating these factors, the  
24 director may employ the services of impartial, professional insurance analysts or actuaries, or  
25 both. Any contract executed by the director with a selected carrier shall be a contract to govern all  
26 eligible employees subject to the provisions of this article. Nothing contained in this article shall  
27 prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional  
28 hospital and surgical, major medical, or life and accidental death insurance coverage.

29 (c) The director may authorize the carrier with whom a primary contract is executed to  
30 reinsure portions of the contract with other carriers which elect to be a reinsurer and who are  
31 legally qualified to enter into a reinsurance agreement under the laws of this state.

32 (d) Each employee who is covered under any contract or contracts shall receive a  
33 statement of benefits to which the employee, his or her spouse, and his or her dependents are  
34 entitled under the contract, setting forth the information as to whom the benefits are payable, to  
35 whom claims shall be submitted, and a summary of the provisions of the contract or contracts as  
36 they affect the employee, his or her spouse, and his or her dependents.

37 (e) The director may at the end of any contract period discontinue any contract or contracts  
38 it has executed with any carrier and replace the same with a contract or contracts with any other  
39 carrier or carriers meeting the requirements of this article.

40 (f) The director shall include language in all contracts for pharmacy benefits management,  
41 as defined by §33-51-3 of this code, requiring the pharmacy benefit manager to report ~~quarterly~~  
42 monthly to the agency the following:

43 (1) The overall total amount charged to the agency for all claims processed by the  
44 pharmacy benefit manager during the ~~quarter~~ month;

45 (2) The overall total amount of reimbursements paid to pharmacy providers during the

46 ~~quarter~~ month;

47 (3) The overall total number of claims in which the pharmacy benefits manager reimbursed  
48 a pharmacy provider for more or less than the amount charged to the agency for all claims  
49 processed by the pharmacy benefit manager during the ~~quarter~~ month; and

50 (4) For all pharmacy claims, the total amount paid to the pharmacy provider per claim,  
51 including, but not limited to, the following:

52 (A) The cost of drug reimbursement;

53 (B) Dispensing fees;

54 (C) Copayments; and

55 (D) The amount charged to the agency for each claim by the pharmacy benefit manager;

56 (E) Date of Service;

57 (F) NDC-11;

58 (G) Drug Name;

59 (H) Drug Strength;

60 (I) Quantity;

61 (J) Days of Therapy;

62 (K) Rx Count;

63 (L) Mail/Retail Code;

64 (M) Brand/Generic Indicator;

65 (N) Specialty Drug Indicator;

66 (O) Compound Indicator;

67 (P) Formulary Indicator;

68 (Q) Gross Cost;

69 (R) Member Cost;

70 (S) Plan Cost;

71 (T) Dispense as Written;

- 72           (U) Pharmacy NPI Number;  
73           (V) Pharmacy Claim ID;  
74           (W) Prescriber NPI Number;  
75           (X) Pharmacy Name; and  
76           (Y) Ingredient Cost.

77           In the event there is a difference between the amount for any pharmacy claim paid to the  
78 pharmacy provider and the amount reimbursed to the agency, the pharmacy benefit manager shall  
79 report an itemization of all administrative fees, rebates, or processing charges associated with the  
80 claim. ~~All data and information provided by the pharmacy benefit manager shall be kept secure,~~  
81 ~~and notwithstanding any other provision of this code to the contrary, the agency shall maintain the~~  
82 ~~confidentiality of the proprietary information and not share or disclose the proprietary information~~  
83 ~~contained in the report or data collected with persons outside the agency. All data and information~~  
84 ~~provided by the pharmacy benefit manager shall be considered proprietary and confidential and~~  
85 ~~exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-~~  
86 ~~4(a)(1) of this code. Only those agency employees involved in collecting, securing, and analyzing~~  
87 ~~the data for the purpose of preparing the report provided for herein shall have access to the~~  
88 ~~proprietary data. The director shall provide a quarterly an annual report to the Joint Committee on~~  
89 ~~Health detailing the information required by this section, including any difference or spread~~  
90 ~~between the overall amount paid by pharmacy benefit managers to the pharmacy providers and~~  
91 ~~the overall amount charged to the agency for each claim by the pharmacy benefit manager. To the~~  
92 ~~extent necessary, the director shall use aggregated, nonproprietary data only: *Provided*, That the~~  
93 ~~director must provide a clear and concise summary of the total amounts charged to the agency~~  
94 ~~and reimbursed to pharmacy providers on a quarterly an annual basis.~~

95           (g) If the information required herein is not provided, the agency may terminate the contract  
96 with the pharmacy benefit manager and the Office of the Insurance Commissioner shall discipline  
97 the pharmacy benefit manager as provided in §33-51-8(e) of this code.

98 (h) The Public Employees Insurance Agency shall contract with networks to provide care  
99 to its members out of state.

100 (i) The Public Employees Insurance Agency shall require each of the following in its  
101 requests for proposals and contracts with a pharmacy benefit manager:

102 (1) A per member per month guarantee that is entirely based on the total pharmacy  
103 program cost, with the pharmacy benefit manager contractually agreeing to an at-risk  
104 administrative fee model if the total pharmacy program cost guarantee is not met.

105 (2) The pharmacy benefit manager shall disclose all information and data related to  
106 contracting, reimbursement, networks, rebates, fees, and any other information and data  
107 requested by the Public Employees Insurance Agency, Legislature, and vendors, for the purpose  
108 of performing study and analysis.

109 (3) The pharmacy benefit manager shall use a national average drug acquisition cost-  
110 based pricing source when charging PEIA and reimbursement source when reimbursing  
111 pharmacies, regardless of distribution channel. If NADAC is unavailable, wholesale acquisition  
112 cost (WAC) shall be used. In the event that the Centers for Medicare and Medicaid Services  
113 provides an additional pharmacy fee schedule that would be beneficial to PEIA, PEIA shall  
114 conduct a study and analysis of that model and report to the Legislature on these findings.

115 (4) 100% of drug manufacturer Rebates shall be passed entirely to the Public Employees  
116 Insurance Agency.

117 (5) "Rebate" means any and all payments that accrue to a pharmacy benefits manager or  
118 its health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not  
119 limited to, discounts, administration fees, credits, incentives, or penalties associated directly or  
120 indirectly in any way with claims administered on behalf of a health plan client. The term "rebate"  
121 does not include any discount or payment that may be provided to or made to any 340B entity  
122 through such program.

123 (6) A pharmacy benefit manager must offer network participation to all licensed West

124 Virginia pharmacies seeking participation in the pharmacy network.

125 (7) A pharmacy benefit manager shall not utilize any manner of spread pricing, clawbacks,  
126 fees, or make any formulary changes or decisions that favor brand or specialty pharmaceuticals  
127 over generic pharmaceuticals.

128 (8) The Public Employees Insurance Agency shall require all Specialty drugs to be  
129 dispensed or administered by a West Virginia pharmacy. "Specialty drug" means a drug used to  
130 treat chronic and complex, or rare medical conditions and requiring special handling or  
131 administration, provider care coordination, or patient education that cannot be provided by a non-  
132 specialty pharmacy or pharmacist.

133 (j) The Public Employees Insurance Agency shall issue a request for proposal for  
134 pharmacy benefit manager services, with an effective date of July 1, 2025, and at least every three  
135 years thereafter.

NOTE: The purpose of this bill is to require any pharmacy benefit manager ("PBM") who contracts with PEIA to be entirely transparent in providing its full data around pricing and payments for drugs and to pharmacies.

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