WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 628

By Senator Helton

[Introduced February 28, 2025; referred
to the Select Committee on Substance Use Disorder
and Mental Health; and then to the Committee on
Finance]

A BILL to amend and reenact §16-54-3 and §16-54-8 of the Code of West Virginia, 1931, as amended; and to amend the code by adding eight new sections, designated §5-16-7h, §9-5-33, §16-54-8a, §33-15-4y, §33-16-3ii, §33-24-7z, §33-25-8w, and §33-25A-8w, relating to non-opioid medication; defining terms; making it unlawful for the Public Employees Insurance Agency, the Bureau for Medical Services, and other insurer companies to discourage or disadvantage a non-opioid drug; requiring non-opioid drugs to be placed in lowest formulary tier; and permitting utilization review.

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.

§5-16-7h. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the Public Employees Insurance Agency to disadvantage or discourage a nonopioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for

generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

CHAPTER 9. HUMAN SERVICES.

§9-5-33. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the Bureau for Medical Services to disadvantage or discourage a nonopioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-3. Opioid prescription notifications.

Prior to issuing a prescription for a Schedule II opioid drug, a practitioner shall:

(1) Advise the patient regarding the quantity of the Schedule II opioid drug and a patient's option to fill the prescription in a lesser quantity; ~~and~~

(2) Inform the patient of the risks associated with the Schedule II opioid drug prescribed~~.~~;

(3) Inform the patient or the patient's representative of available prescription nonopioid alternatives for the treatment of pain, which may include available prescription nonopioid medicinal drugs or drug products, interventional procedures or treatments, acupuncture, chiropractic treatments, massage therapy, physical therapy, occupational therapy, or any other appropriate therapy as determined by the health care practitioner;

(4) Discuss with the patient or the patient's representative the advantages and disadvantages of the use of prescription nonopioid alternatives, and whether the patient is at high risk of, or has a history of, controlled substance abuse or misuse and the patient's personal preferences;

(5) Provide the patient or the patient's representative, electronically or in printed form, with the educational pamphlet described in §16-54-8(g) of this code; and

(6) Document in the patient's record that prescription nonopioid alternatives were considered and discussed with the patient or the patient's representative and, to the extent that the health care practitioner prescribes or orders an opioid for the treatment of pain, document the reasons for such a prescription or order.

§16-54-8. Treatment of pain.

(a) The Legislature finds that every competent adult has the fundamental right of self-determination regarding decisions pertaining to their own health, including the right to refuse an opioid drug.

(b) When a patient seeks treatment~~,~~:

(1) ~~a~~ A health care practitioner shall refer or prescribe to the patient any of the following treatment alternatives, as is appropriate based on the practitioner’s clinical judgment and the availability of the treatment, before starting a patient on a Schedule II opioid drug: physical therapy, occupational therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code~~.~~ ;

(2) The health care practitioner shall exercise their professional judgment in selecting appropriate treatment modalities for acute nonoperative, acute perioperative, subacute, or chronic pain in accordance with the most current Clinical Practice Guideline for Prescribing Opioids for Pain of the Centers for Disease Control and Prevention, including the use of nonopioid alternatives whenever reasonable, clinically appropriate, evidence-based alternatives exist; and

(3) The health care practitioner should consider prescribing nonopioids as the first line of pain control in patients unless not clinically appropriate in accordance with the provisions of subdivision (2) of this section.

~~(b)~~ (c) Nothing in this section should be construed to require that all of the treatment alternatives set forth in §16-54-8(a) of this code are required to be exhausted prior to the patient's receiving a prescription for a Schedule II opioid drug.

~~(c)~~ (d) At a minimum, an insurance provider who offers an insurance product in this state, the Bureau for Medical Services, and the Public Employees Insurance Agency shall provide coverage for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, when ordered or prescribed by a health care practitioner.

~~(d)~~ (e) A person may seek physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic services, as defined in §30-16-3 of this code, prior to seeking treatment from any other health care practitioner. The licensed health care practitioner providing services pursuant to this section may prescribe within their scope of practice as defined in §16-54-1 of this code. A health care practitioner referral although permitted is not required as a condition of coverage by the Bureau for Medical Services the Public Employees Insurance Agency, and any insurance provider who offers an insurance product in this state. Any deductible, coinsurance, or copay required for any of these services may not be greater than the deductible, coinsurance, or copay required for a primary care visit.

~~(e)~~ (f) Nothing in this section precludes a practitioner from simultaneously prescribing a Schedule II opioid drug and prescribing or recommending any of the procedures set forth in §16-54-8~~(a)~~ (b)(1) of this code.

(g) The Department of Health shall develop and publish on its website an educational pamphlet regarding the use of prescription nonopioid alternatives for the treatment of acute nonoperative, acute perioperative, subacute, or chronic pain. The pamphlet shall, at a minimum, conform with the most current Clinical Practice Guideline for Prescribing Opioids for Pain of the Centers for Disease Control and Prevention and shall include:

(1) Information on available prescription nonopioid alternatives for the treatment of pain, including available prescription nonopioid medicinal drugs or drug products and nonpharmacological therapies; and

(2) The advantages and disadvantages of the use of prescription nonopioid alternatives.

§16-54-8a. Coverage of nonopioid alternatives for the treatment of pain.

Notwithstanding any provision of law to the contrary, when a licensed health care practitioner prescribes a nonopioid medication for the treatment of acute nonoperative, acute perioperative, subacute, or chronic pain, it shall be unlawful for a health insurance carrier and for the purpose of this section, includes the Public Employees and Medicaid to deny coverage of the nonopioid prescription drug in favor of an opioid prescription drug.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4y. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the insurer to disadvantage or discourage a non-opioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ii. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the insurer to disadvantage or discourage a non-opioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

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

§33-24-7z. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the insurer to disadvantage or discourage a non-opioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8w. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the insurer to disadvantage or discourage a non-opioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8w. Requirements for non-discrimination in treatment of nonopioid drugs.

(a) As used in this section:

(1) "Nonopioid" drug means a pharmaceutical approved by the U.S. Food and Drug Administration for the treatment of moderate to severe pain that contains no opioid ingredients;

(2) "Formulary" means a list of generic and brand name prescription drugs covered by your health insurance plan; and

(3) "Tier" means a division of the formulary into categories.

(b) In establishing and maintaining its formulary, it is unlawful for the insurer to disadvantage or discourage a nonopioid medicinal drug or drug product with respect to coverage relative to any opioid drug for the treatment or management of pain.

(c) The nonopioid drug shall be placed in the lowest formulary tier, typically reserved for generic medications with the lowest copays, in order to make its selection for the treatment of pain competitive with generic opioid.

(d) Nothing in this section shall be construed to preclude existing utilization review.

NOTE: The purpose of this bill is to make it unlawful for the Public Employees Insurance Agency, the Bureau for Medical Services and other insurer companies to discourage or disadvantage a nonopioid drug; to require nonopioid drugs to be placed in lowest formulary tier; and permit utilization review.

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