

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 852

**FISCAL
NOTE**

By Senator Takubo

[Introduced March 20, 2025; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to amend and reenact §33-51-9 of the Code of West Virginia, 1931, as amended, relating to
2 regulation of pharmacy benefit managers; providing an exemption as to when a pharmacy
3 benefit manager may reimburse a pharmacy or pharmacist for a prescription drug or
4 pharmacy service for an amount less than the national average if certain requirements
5 occur; and clarifying the amount of payment an insured pays at the point of sale and when
6 the cash payment is considered payment in full.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

§33-51-9. Regulation of pharmacy benefit managers.

1 (a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a
2 covered individual with information related to lower cost alternatives and cost share for the
3 covered individual to assist health care consumers in making informed decisions. Neither a
4 pharmacy, a pharmacist, nor a pharmacy technician may be penalized by a pharmacy benefit
5 manager for discussing information in this section or for selling a lower cost alternative to a
6 covered individual, if one is available, without using a health insurance policy.

7 (b) A pharmacy benefit manager may not collect from a pharmacy, a pharmacist, or a
8 pharmacy technician a cost share charged to a covered individual that exceeds the total submitted
9 charges by the pharmacy or pharmacist to the pharmacy benefit manager.

10 (c) A pharmacy benefit manager that reimburses a 340B entity for drugs that are subject to
11 an agreement under 42 U.S.C. § 256b shall not reimburse the 340B entity for pharmacy-
12 dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in
13 prescription volume that are not 340B entities, and shall not assess any fee, charge-back, or other
14 adjustment upon the 340B entity on the basis that the 340B entity participates in the program set
15 forth in 42 U.S.C. §256b. For purposes of this subsection, the term "other adjustment" includes
16 placing any additional requirements, restrictions, or unnecessary burdens upon the 340B entity
17 that results in administrative costs or fees to the 340B entity that are not placed upon other

18 pharmacies that do not participate in the 340B program, including affiliate pharmacies of the
19 pharmacy benefit manager, and further includes but is not limited to requiring a claim for a drug to
20 include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug:
21 *Provided*, That nothing in this subsection shall be construed to prohibit the Medicaid program or a
22 Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing
23 duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection
24 are applicable to the West Virginia Public Employees Insurance Agency.

25 (d) With respect to a patient eligible to receive drugs subject to an agreement under 42
26 U.S.C. § 256b, a pharmacy benefit manager shall not discriminate against a 340B entity in a
27 manner that prevents or interferes with the patient's choice to receive such drugs from the 340B
28 entity: *Provided*, That this section, does not apply to the state Medicaid program when Medicaid is
29 providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. §1396r-
30 8(k), on a fee-for-service basis: *Provided, however*, That this subsection does apply to a Medicaid-
31 managed care organization as described in 42 U.S.C. § 1396b(m). For purposes of this
32 subsection, it shall be considered a discriminatory practice that prevents or interferes with a
33 patient's choice to receive drugs at a 340B entity if a pharmacy benefit manager places additional
34 requirements, restrictions or unnecessary burdens upon a 340B entity that results in
35 administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do
36 not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit
37 manager or any other third-party, and further includes but is not limited to requiring a claim for a
38 drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug:
39 *Provided further*, That nothing in this subsection shall be construed to prohibit the Medicaid
40 program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from
41 preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this
42 subsection are applicable to the West Virginia Public Employees Insurance Agency.

43 (e)(1) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a

prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of \$10.49: *Provided*, That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in an amount that is less than the wholesale acquisition cost of the drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee of \$10.49.

(2) Beginning January 1, 2026, the above provision shall not apply if:

(A) The pharmacy or pharmacist submits charges that are less than the amounts mandated above in subsection (c); or

(B) The cost sharing amount paid by or on behalf of an insured is less than the amount imposed by the insured's health plan.

(f) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the pharmacy benefit manager reimburses itself or an affiliate for the same prescription drug or pharmacy service.

(g) The commissioner may order reimbursement to an insured, pharmacy, or dispenser who has incurred a monetary loss as a result of a violation of this article or legislative rules implemented pursuant to this article.

(h)(1) Any methodologies utilized by a pharmacy benefits manager in connection with reimbursement shall be filed with the commissioner at the time of initial licensure and at any time thereafter that the methodology is changed by the pharmacy benefit manager for use in determining maximum allowable cost appeals. The methodologies are not subject to disclosure and shall be treated as confidential and exempt from disclosure under the West Virginia Freedom of Information Act §29B-1-4(a)(1) of this code. The filed methodologies shall comply with the provisions of §33-51-9(e) of this code, and a pharmacy benefits manager shall not enter into a contract with a pharmacy that provides for reimbursement methodology not permissible under the

provisions of §33-51-9(e) of this code.

(2) For purposes of complying with the provisions of §33-51-9(e) of this code, a pharmacy benefits manager shall utilize the most recently published monthly national average drug acquisition cost as a point of reference for the ingredient drug product component of a pharmacy's reimbursement for drugs appearing on the national average drug acquisition cost list; and,

(i) A pharmacy benefits manager may not:

(1) Discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the pharmacy benefit manager's network on the basis that the pharmacy dispenses drugs subject to an agreement under 42 U.S.C. § 256b; or

(2) Engage in any practice that:

(A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics. This does not prohibit pharmacy reimbursement for pharmacy care, including dispensing fees from being based on patient outcomes, scores, or metrics so long as the patient outcomes, scores, or metrics are disclosed to and agreed to by the pharmacy in advance;

(B) Includes imposing a point-of-sale fee or retroactive fee; or

(C) Derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services: *Provided*, That this may not be construed to prohibit pharmacy benefits managers from processing deductibles or copayments as have been approved by a covered individual's health benefit plan.

(j) A pharmacy benefits manager shall offer a health plan the option of charging such health plan the same price for a prescription drug as it pays a pharmacy for the prescription drug: *Provided*, That a pharmacy benefits manager shall charge a health benefit plan administered by or on behalf of the state or a political subdivision of the state, the same price for a prescription drug as it pays a pharmacy for the prescription drug.

(k) A covered individual's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100

96 percent of all rebates received, or to be received, in connection with the dispensing or
97 administration of the prescription drug. Any rebate over and above the defined cost sharing would
98 then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from
99 decreasing a covered individual's defined cost sharing by an amount greater than what is
100 previously stated. The commissioner may propose a legislative rule or by policy effectuate the
101 provisions of this subsection.

102 (l) Notwithstanding any other provision of law, an insured shall not be required to make a
103 payment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

104 (1) The insured's cost share as stated in the health plan; or

105 (2) The amount an individual would pay for a prescription if that individual were paying
106 cash.

107 If the cash payment is the lower payment, it shall be considered payment in full for the
108 prescription drug.

NOTE: The purpose of this bill is to provide an exemption as to when a pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service for an amount less than the nation average if certain requirements occur and clarify the amount of payment an insured pays at the point of sale and when the cash payment is considered payment in full.

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