

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5109**

By Delegates Rohrbach and Amos

[Introduced February 03, 2026; referred to the  
Committee on Health and Human Resources]

1 A BILL to amend and reenact §33-51-3 of the Code of West Virginia, 1931, as amended, relating to  
2 pharmacies; and changing the duties and definition of pharmacy benefits management.

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

**ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.**

**§33-51-3. Definitions.**

1 For purposes of this article:

2 "340B entity" means an entity participating in the federal 340B drug discount program, as  
3 described in 42 U.S.C. § 256b, including its pharmacy or pharmacies, or any pharmacy or  
4 pharmacies, contracted with the participating entity to dispense drugs purchased through such  
5 program.

6 "Affiliate" means a pharmacy, pharmacist, or pharmacy technician which, either directly or  
7 indirectly through one or more intermediaries: (A) Has an investment or ownership interest in a  
8 pharmacy benefits manager licensed under this chapter; (B) shares common ownership with a  
9 pharmacy benefits manager licensed under this chapter; or (C) has an investor or ownership  
10 interest holder which is a pharmacy benefits manager licensed under this article.

11 "Auditing entity" means a person or company that performs a pharmacy audit, including a  
12 pharmacy benefits manager, managed care organization, or third-party administrator.

13 "Business day" means any day of the week excluding Saturday, Sunday, and any legal  
14 holiday as set forth in §2-2-1 of this code.

15 "Claim level information" means data submitted by a pharmacy, required by a payor, or  
16 claims processor to adjudicate a claim.

17 "Covered individual" means a member, participant, enrollee, or beneficiary of a health  
18 benefit plan who is provided health care service coverage by a health benefit plan, including a  
19 dependent or other person provided health coverage through the policy or contract of a covered  
20 individual.

21 "Extrapolation" means the practice of inferring a frequency of dollar amount of

22 overpayments, underpayments, nonvalid claims, or other errors on any portion of claims  
23 submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid  
24 claims, or other errors actually measured in a sample of claims.

25 "Defined cost sharing" means a deductible payment or coinsurance amount imposed on  
26 an enrollee for a covered prescription drug under the enrollee's health plan.

27 "Health benefit plan" or "health plan" means a policy, contract, certificate, or agreement  
28 entered into, offered, or issued by a health care payor to provide, deliver, arrange for, pay for, or  
29 reimburse any of the costs of health care services.

30 "Health care payor" or "payor" means a health insurance company, a health maintenance  
31 organization, a hospital, medical, or dental corporation, a health care corporation, an entity that  
32 provides, administers, or manages a self-funded health benefit plan, including a governmental  
33 plan, or any other payor that provides prescription drug coverages, including a workers'  
34 compensation insurer. Health care payor does not include an insurer that provides coverage under  
35 a policy of casualty or property insurance.

36 "Health care provider" has the same meaning as defined in §33-41-2 of this code.

37 "Health insurance policy" means a policy, subscriber contract, certificate, or plan that  
38 provides prescription drug coverage. The term includes both comprehensive and limited benefit  
39 health insurance policies.

40 "Insurance commissioner" or "commissioner" has the same meaning as defined in §33-1-5  
41 of this code.

42 "Network" means a pharmacy or group of pharmacies that agree to provide prescription  
43 services to covered individuals on behalf of a health benefit plan in exchange for payment for its  
44 services by a pharmacy benefits manager or pharmacy services administration organization. The  
45 term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals  
46 or dispenses particular types of prescriptions, provides pharmacy services to particular types of  
47 covered individuals or dispenses prescriptions in particular health care settings, including

48 networks of specialty, institutional or long-term care facilities.

49 "Maximum allowable cost" means the per unit amount that a pharmacy benefits manager  
50 reimburses a pharmacist for a prescription drug, excluding dispensing fees and copayments,  
51 coinsurance, or other cost-sharing charges, if any.

52 "National average drug acquisition cost" means the monthly survey of retail pharmacies  
53 conducted by the federal Centers for Medicare and Medicaid Services to determine average  
54 acquisition cost for Medicaid covered outpatient drugs.

55 "Nonproprietary drug" means a drug containing any quantity of any controlled substance or  
56 any drug which is required by any applicable federal or state law to be dispensed only by  
57 prescription.

58 "Pharmacist" means an individual licensed by the West Virginia Board of Pharmacy to  
59 engage in the practice of pharmacy.

60 "Pharmacy" means any place within this state where drugs are dispensed and pharmacist  
61 care is provided.

62 "Pharmacy audit" means an audit, conducted by or on behalf of an auditing entity of any  
63 records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a  
64 covered individual.

65 "Pharmacy benefits management" means the performance of any of the following:

66 (1) The procurement or claims processing of prescription drugs at a negotiated contracted  
67 rate for dispensation within the state of West Virginia to covered individuals; and

68 (2) The administration or management of prescription drug or pharmacy benefits provided  
69 by a health benefit plan for the benefit of covered individuals including one or more of the following:

70 (3) ~~The administration of pharmacy benefits, including:~~

71 (A) Operating a mail-service pharmacy;

72 (B) ~~Claims processing~~

73 (C) (B) Managing a retail pharmacy network;

74           (D) (C) Paying claims to a pharmacy for prescription drugs dispensed to covered  
75 individuals via retail or mail-order pharmacy;

76           (E) (D) Developing and managing a clinical formulary including utilization management  
77 and quality assurance programs;

78           (F) (E) Rebate contracting administration; and or

79           (G) (F) Managing a patient compliance, therapeutic intervention, and generic substitution  
80 program.

81           "Pharmacy benefits manager" means a person, business, or other entity that performs  
82 pharmacy benefits management for health benefit plans;

83           "Pharmacy record" means any record stored electronically or as a hard copy by a  
84 pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy  
85 services or other component of pharmacist care that is included in the practice of pharmacy.

86           "Pharmacy services administration organization" means any entity that contracts with a  
87 pharmacy to assist with payor interactions and that may provide a variety of other administrative  
88 services, including contracting with pharmacy benefits managers on behalf of pharmacies and  
89 managing pharmacies' claims payments from payors.

90           "Point-of-sale fee" means all or a portion of a drug reimbursement to a pharmacy or other  
91 dispenser withheld at the time of adjudication of a claim for any reason.

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

98           "Retroactive fee" means all or a portion of a drug reimbursement to a pharmacy or other  
99 dispenser recouped or reduced following adjudication of a claim for any reason, except as

100 otherwise permissible as described in this article.

101 "Specialty drug" means a drug used to treat chronic and complex, or rare medical  
102 conditions and requiring special handling or administration, provider care coordination, or patient  
103 education that cannot be provided by a non-specialty pharmacy or pharmacist.

NOTE: The purpose of this bill is to change the duties and definition of pharmacy benefits management.

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