

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5365

FISCAL
NOTE

By Delegates Green, Worrell, Jeffries, Hott, Roop,

Hite, Rohrbach, Heckert, and Ellington

[Introduced February 09, 2026; referred to the

Committee on Finance]

1 A BILL to amend and reenact §5-16-2, §5-16-9, and §5-16-12a of the Code of West Virginia 1931,
 2 as amended, relating to the Public Employees Insurance Agency; defining terms; creating
 3 a special investigating unit of PEIA; and permitting the Insurance Commissioner certain
 4 authority over investigation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is
 2 clearly indicated by the context, have the following meanings:

3 "Agency" or "PEIA" means the Public Employees Insurance Agency created by this article.

4 "Applied behavior analysis" means the design, implementation, and evaluation of
 5 environmental modifications using behavioral stimuli and consequences in order to produce
 6 socially significant improvement in human behavior and includes the use of direct observation,
 7 measurement, and functional analysis of the relationship between environment and behavior.

8 "Autism spectrum disorder" means any pervasive developmental disorder, including
 9 autistic disorder, Asperger's syndrome, Rett syndrome, childhood disintegrative disorder, or
 10 Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and
 11 Statistical Manual of Mental Disorders of the American Psychiatric Association.

12 "Certified behavior analyst" means an individual who is certified by the Behavior Analyst
 13 Certification Board or certified by a similar nationally recognized organization.

14 "Dependent" includes an eligible employee's child under the age of 26 as defined in the
 15 Patient Protection and Affordable Care Act.

16 "Device" means a blood glucose test strip, glucometer, continuous glucose monitor
 17 (CGM), lancet, lancing device, or insulin syringe used to cure, diagnose, mitigate, prevent, or treat
 18 diabetes or low blood sugar, but does not include insulin pumps.

19 "Director" means the Director of the Public Employees Insurance Agency created by this

20 article.

21 "Distant site" means the telehealth site where the health care practitioner is seeing the
22 patient at a distance or consulting with a patient's health care practitioner.

23 "Employee" means any person, including an elected officer, who works regularly full-time
24 in the service of the State of West Virginia; and, for the purpose of this article only, the term
25 "employee" also means any person, including an elected officer, who works regularly full-time in
26 the service of a county board of education; a public charter school established pursuant to §18-
27 5G-1 *et seq.* of this code if the charter school includes in its charter contract entered into pursuant
28 to §18-5G-7 of this code a determination to participate in the Public Employees Insurance
29 program; a county, city, or town in the state; any separate corporation or instrumentality
30 established by one or more counties, cities, or towns, as permitted by law; any corporation or
31 instrumentality supported in most part by counties, cities, or towns; any public corporation charged
32 by law with the performance of a governmental function and whose jurisdiction is coextensive with
33 one or more counties, cities, or towns; any comprehensive community mental health center or
34 intellectually and developmentally disabled facility established, operated, or licensed pursuant to
35 §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any
36 person who works regularly full-time in the service of the Higher Education Policy Commission, the
37 West Virginia Council for Community and Technical College Education, or a governing board as
38 defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a
39 combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; any
40 person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any
41 person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a
42 county board of education: *Provided*, That a long-term substitute who is continuously employed
43 for at least 133 instructional days during an instructional term, and, until the end of that
44 instructional term, is eligible for the benefits provided in this article until September 1 following that
45 instructional term: *Provided, however*, That a long-term substitute employed fewer than 133

46 instructional days during an instructional term is eligible for the benefits provided in this article only
47 during such time as he or she is actually employed as a long-term substitute. On and after January
48 1, 1994, and upon election by a county board of education to allow elected board members to
49 participate in the Public Employees Insurance Program pursuant to this article, any person elected
50 to a county board of education shall be considered to be an "employee" during the term of office of
51 the elected member. Upon election by the State Board of Education to allow appointed board
52 members to participate in the Public Employees Insurance Program pursuant to this article, any
53 person appointed to the State Board of Education is considered an "employee" during the term of
54 office of the appointed member: *Provided further*, That the elected member of a county board of
55 education and the appointed member of the State Board of Education shall pay the entire cost of
56 the premium if he or she elects to be covered under this article. Any matters of doubt as to who is
57 an employee within the meaning of this article shall be decided by the director.

58 On or after July 1, 1997, a person shall be considered an "employee" if that person meets
59 the following criteria:

60 (A) Participates in a job-sharing arrangement as defined in §18A-1-1 *et seq.* of this code;

61 (B) Has been designated, in writing, by all other participants in that job-sharing
62 arrangement as the "employee" for purposes of this section; and

63 (C) Works at least one-third of the time required for a full-time employee.

64 "Employer" means the State of West Virginia, its boards, agencies, commissions,
65 departments, institutions, or spending units; a county board of education; a public charter school
66 established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its charter
67 contract entered into pursuant to §18-5G-7 of this code a determination to participate in the Public
68 Employees Insurance Program; a county, city, or town in the state; any separate corporation or
69 instrumentality established by one or more counties, cities, or towns, as permitted by law; any
70 corporation or instrumentality supported in most part by counties, cities, or towns; any public
71 corporation charged by law with the performance of a governmental function and whose

72 jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive
73 community mental health center or intellectually and developmentally disabled facility established,
74 operated, or licensed by the Secretary of the Department of Health and Human Resources
75 pursuant to §27-2A-1 *et seq.* of this code and which is supported in part by state, county, or
76 municipal funds; a combined city-county health department created pursuant to §16-2-1 *et seq.* of
77 this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is
78 employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is
79 not considered an employer with respect to any employee other than a 21st Century Learner
80 Fellow. Any matters of doubt as to who is an "employer" within the meaning of this article shall be
81 decided by the director. The term "employer" does not include within its meaning the National
82 Guard.

83 "Established patient" means a patient who has received professional services, face-to-
84 face, from the physician, qualified health care professional, or another physician or qualified health
85 care professional of the exact same specialty and subspecialty who belongs to the same group
86 practice, within the past three years.

87 "Finance board" means the Public Employees Insurance Agency finance board created
88 by this article.

89 "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who
90 provides health care services.

91 "Originating site" means the location where the patient is located, whether or not
92 accompanied by a health care practitioner, at the time services are provided by a health care
93 practitioner through telehealth, including, but not limited to, a health care practitioner's office,
94 hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's
95 home, and other nonmedical environments such as school-based health centers, university-based
96 health centers, or the work location of a patient.

97 "Objective evidence" means standardized patient assessment instruments, outcome

98 measurements tools, or measurable assessments of functional outcome. Use of objective
99 measures at the beginning of treatment, during, and after treatment is recommended to quantify
100 progress and support justifications for continued treatment. The tools are not required but their use
101 will enhance the justification for continued treatment.

102 "Person" means any individual, company, association, organization, corporation, or other
103 legal entity.

104 "Plan" means a group hospital and surgical insurance plan or plans, a group prescription
105 drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and
106 accidental death insurance plan or plans.

107 "Prescription insulin drug" means a prescription drug that contains insulin and is used to
108 treat diabetes, and includes at least one type of insulin in all of the following categories:

- 109 (1) Rapid-acting;
- 110 (2) Short-acting;
- 111 (3) Intermediate-acting;
- 112 (4) Long-acting;
- 113 (5) Pre-mixed insulin products;
- 114 (6) Pre-mixed insulin/GLP-1 RA products; and
- 115 (7) Concentrated human regular insulin.

116 "Primary coverage" means individual or group hospital and surgical insurance coverage
117 or individual or group major medical insurance coverage or group prescription drug coverage in
118 which the spouse or dependent is the named insured or certificate holder.

119 "Remote patient monitoring services" means the delivery of home health services using
120 telecommunications technology to enhance the delivery of home health care, including monitoring
121 of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and
122 other condition-specific data; medication adherence monitoring; and interactive video
123 conferencing with or without digital image upload.

124 "Retired employee" means an employee of the state who retired after April 29, 1971, and
125 an employee of the Higher Education Policy Commission, the Council for Community and
126 Technical College Education, a state institution of higher education, or a county board of education
127 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after
128 the effective date of this article, meet the minimum eligibility requirements for their respective state
129 retirement system, and whose last employer immediately prior to retirement under the state
130 retirement system is a participating employer in the state retirement system and in the Public
131 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who
132 are not covered by a state retirement system, but who are covered by a state-approved or state-
133 contracted retirement program or a system approved by the director, shall, in the case of education
134 employees, meet the minimum eligibility requirements of the State Teachers Retirement System,
135 and in all other cases, meet the minimum eligibility requirements of the Public Employees
136 Retirement System and may participate in the Public Employees Insurance Agency as retired
137 employees upon terms as the director sets by rule as authorized in this article. Employers with
138 employees who are, or who are eligible to become, retired employees under this article shall be
139 mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et*
140 *seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment
141 benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the
142 Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon
143 the written certification, under oath, of an authorized officer of the employer that the employer has
144 no employees who are, or who are eligible to become, retired employees and that the employer
145 will defend and hold harmless the Public Employees Insurance Agency from any claim by one of
146 the employer's past, present, or future employees for eligibility to participate in the Public
147 Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees
148 Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee
149 of a nonstate employer which has opted out of the West Virginia other post-employment benefits

150 plan of the Retiree Health Benefit Trust Fund pursuant to this section.

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

154 "Telehealth services" means the use of synchronous or asynchronous telecommunications
155 technology or audio-only telephone calls by a health care practitioner to provide health care
156 services, including, but not limited to, assessment, diagnosis, consultation, treatment, and
157 monitoring of a patient; transfer of medical data; patient and professional health-related education;
158 public health services; and health administration. The term does not include e-mail messages or
159 facsimile transmissions.

160 "Virtual telehealth" means a new patient or follow-up patient for acute care that does not
161 require chronic management or scheduled medications.

§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 consider the experience of the offering agency, corporation, insurance
21 company, or service organization in the group hospital and surgical insurance field, group major
22 medical insurance field, group prescription drug field, and group life and accidental death
23 insurance field, and its facilities for the handling of claims. In evaluating these factors, the director
24 may employ the services of impartial, professional insurance analysts or actuaries, or both. Any
25 contract executed by the director with a selected carrier shall be a contract to govern all eligible
26 employees subject to the provisions of this article. Nothing contained in this article shall prohibit
27 any insurance carrier from soliciting employees covered hereunder to purchase additional hospital
28 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 to
42 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;

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

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

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. The director shall provide an annual report to the Joint Committee on Health detailing the
81 information required by this section, including any difference or spread between the overall
82 amount paid by pharmacy benefit managers to the pharmacy providers and the overall amount
83 charged to the agency for each claim by the pharmacy benefit manager. To the extent necessary,
84 the director shall use aggregated, nonproprietary data only: *Provided*, That the director must
85 provide a clear and concise summary of the total amounts charged to the agency and reimbursed
86 to pharmacy providers on an annual basis.

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

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

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

94 (1) The pharmacy benefit manager shall disclose all information and data related to
95 contracting, reimbursement, networks, rebates, fees, and any other information and data
96 requested by the Public Employees Insurance Agency, the Legislature, and vendors for the
97 purpose of performing study and analysis. ~~Effective with the changes made to this section during
98 the regular session of the Legislature, 2024, A comprehensive pharmacy business intelligence
99 study and analysis shall be conducted by an organization with expertise in studying and analyzing
100 pharmacy benefit managers to determine what, if any, changes could be made to facilitate savings
101 with respect to the Public Employees Insurance Agency's pharmacy benefit manager services. A
102 final report, including recommendations, shall be presented no later than December 31, 2024, to
103 the Public Employees Insurance Agency and the Joint Committee on Government and Finance.~~

104 (2) A pharmacy benefit manager shall not reimburse a West Virginia pharmacy or
105 pharmacist for a prescription drug or pharmacy service in an amount less than the national
106 average drug acquisition cost for a prescription drug or pharmacy service at the time the drug is
107 administered or dispensed, plus a professional dispensing fee at least equal to the professional
108 dispensing fee paid by West Virginia Medicaid for outpatient drugs. Increases to the professional
109 dispensing fee may be set by the Director in accordance with this subdivision: *Provided*, That if the
110 national average drug acquisition cost is not available at the time a drug is administered or
111 dispensed, a pharmacy benefit manager may not reimburse a West Virginia pharmacy or
112 pharmacist in an amount that is less than the wholesale acquisition cost of the drug, as defined in
113 42 U.S.C. § 1395w-3a(c)(6)(B), plus a dispensing fee as described in this subdivision. A West
114 Virginia pharmacy is a domestic business entity as registered with the West Virginia Secretary of
115 State. ~~The provisions in this subdivision shall be effective for the Public Employees Insurance
116 Agency plan year beginning on July 1, 2024.~~

117 (3) A transparent PBM;

118 (4) Prohibit or otherwise limit a beneficiary's access to prescription drugs from a pharmacy
119 or pharmacist enrolled with the health benefit plan under the terms offered to all pharmacies in the
120 plan coverage area by unreasonably designating the covered prescription drug as a specialty
121 drug. Any beneficiary or pharmacy impacted by an alleged violation of this subsection may file a
122 complaint with the Insurance Commissioner, who shall, in consultation with the West Virginia
123 Board of Pharmacy, make a determination as to whether the covered prescription drug meets the
124 definition of a specialty drug;

125 (5) Require a beneficiary, as a condition of payment or reimbursement, to purchase
126 pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy; or

127 (6) Impose upon a beneficiary any copayment, amount of reimbursement, number of days
128 of a drug supply for which reimbursement will be allowed, or any other payment or condition
129 relating to purchasing pharmacy services from any pharmacy, including prescription drugs, that
130 are more costly or more restrictive than that which would be imposed upon the beneficiary if such
131 services were purchased from a mail-order pharmacy or any other pharmacy that is willing to
132 provide the same services or products for the same cost and copayment as any mail order service.

§5-16-12a. Inspections; violations and penalties.

1 (a) (1) The director may establish a special investigation unit of the Public Employees
2 Insurance Agency to investigate violations of this article including false, fraudulent, or fictitious
3 claims made against the plan or plans established by the Public Employees Insurance Agency
4 Finance Board.

5 (2) Employers and employees participating in any of the Public Employees Insurance
6 Agency plans shall provide, to the director, upon request, all documentation reasonably required
7 for the director to discharge the responsibilities under this article. This documentation includes, but
8 is not limited to, employment or eligibility records sufficient to verify actual full-time employment
9 and eligibility of employees who participate in the Public Employees Insurance Agency plans.

10 (b) Upon a determination of the director or his or her designated representative that there is

11 probable cause to believe that fraud, abuse or other illegal activities involving transactions with the
12 agency has occurred, the director or his or her designated representative is authorized to refer the
13 alleged violations to the Insurance Commissioner for investigation and, if appropriate,
14 prosecution, pursuant to article forty-one, chapter thirty-three of this code. For purposes of this
15 section, "transactions with the agency" includes, but is not limited to, application by any insured or
16 dependent, any employer or any type of health care provider for payment to be made to that
17 person or any third party by the agency.

18 (c) The Public Employees Insurance Agency is authorized through administrative
19 proceeding to recover any benefits or claims paid to or for any employee, or their dependents, who
20 obtained or received benefits through fraud. The Public Employees Insurance Agency is also
21 authorized through administrative proceeding to recover any funds due from an employer that
22 knowingly allowed or provided benefits or claims to be fraudulently paid to an employee or
23 dependents.

24 (d) For the purpose of any investigation or proceeding under this article, the director or any
25 officer designated by him or her may administer oaths and affirmations, issue administrative
26 subpoenas, take evidence, and require the production of any books, papers, correspondences,
27 memoranda, agreements or other documents or records which may be relevant or material to the
28 inquiry.

29 (1) Administrative subpoenas shall be served by personal service by a person over the age
30 of eighteen, or by registered or certified mail addressed to the entity or person to be served at his
31 or her residence, principal office or place of business. Proof of service, when necessary, shall be
32 made by a return completed by the person making service, or in the case of registered or certified
33 mail, such return shall be accompanied by the post office receipt of delivery of the subpoena. A
34 party requesting the administrative subpoena is responsible for service and payment of any fees
35 for service. Any person who serves the administrative subpoena pursuant to this section is entitled
36 to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

37 (2) Fees for the attendance and travel of witnesses subpoenaed shall be the same as for
38 witnesses before the circuit courts of this state. All such fees related to any administrative
39 subpoena issued at the request of a party to an administrative proceeding shall be paid by the
40 requesting party. All requests by parties for administrative subpoenas shall be in writing and shall
41 contain a statement acknowledging that the requesting party agrees to pay such fees.

42 (3) In case of disobedience or neglect of any administrative subpoena served, or the
43 refusal of any witness to testify to any matter for which he or she may be lawfully interrogated, or to
44 produce documents subpoenaed, the circuit court of the county in which the hearing is being held,
45 or the judge thereof in vacation, upon application by the director, may compel obedience by
46 attachment proceedings for contempt as in the case of disobedience of the requirements of a
47 subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.
48 Witnesses at such hearings shall testify under oath or affirmation.

49 (e) Only authorized employees or agents shall have access to confidential data or systems
50 and applications containing confidential data within the Public Employees Insurance Agency.

51 (f) The Insurance Commissioner shall have authority to examine, regulate, and enforce
52 compliance with this article by pharmacy benefit managers providing services to or on behalf of the
53 Public Employees Insurance Agency.

54 (g) Any violation of this article by a pharmacy benefit manager serving the Public
55 Employees Insurance Agency is subject to enforcement action by the Insurance Commissioner,
56 including civil penalties, corrective action orders, suspension or revocation of licensure, and any
57 other remedies authorized under this chapter.

58 (h) The Public Employees Insurance Agency shall cooperate with the Insurance
59 Commissioner and provide information reasonably necessary to effectuate oversight under this
60 article.

NOTE: The purpose of this bill is to update the authority of PEIA.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.