

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2493**

5  
6 (By Delegates McCuskey, Westfall, Ashley, Bates, Ellington, Frich, Householder, Perdue,  
7 Sobonya, Walters and Rohrbach)

8  
9 [Passed March 12, 2015; in effect ninety days from passage.]

10  
11 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
12 designated §33-15-4l; to amend said code by adding thereto a new section, designated  
13 §33-16-3x; to amend said code by adding thereto a new section, designated §33-24-7m; to  
14 amend said code by adding thereto a new section, designated §33-25-8j; and to amend said  
15 code by adding thereto a new section, designated §33-25A-8l, all relating to anti-cancer  
16 medications; providing accident and sickness insurance cover anti-cancer medications;  
17 providing direct health care services that cover anti-cancer medications; prohibiting certain  
18 copayments, deductibles or coinsurance for orally administered anti-cancer medications;  
19 prohibiting certain acts to comply with the requirements; defining terms; providing an  
20 effective date; and allowing cost containment measures.

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

22 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
23 section, designated §33-15-4l; that said code be amended by adding thereto a new section, designated  
24 §33-16-3x; that said code be amended by adding thereto a new section, designated §33-24-7m; that  
25 said code be amended by adding thereto a new section, designated §33-25-8j; and that said code be

1 amended by adding thereto a new section, designated §33-25A-81, all to read as follows:

2 **ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

3 **§33-15-4l. Deductibles, copayments and coinsurance for anti-cancer medications.**

4 (a) Any accident and sickness insurance policy issued by an insurer pursuant to this article  
5 that covers anti-cancer medications that are injected or intravenously administered by a health care  
6 provider and patient administered anti-cancer medications, including, but not limited to, those  
7 medications orally administered or self-injected, may not require a less favorable basis for a  
8 copayment, deductible or coinsurance amount for patient administered anti-cancer medications than  
9 it requires for injected or intravenously administered anti-cancer medications, regardless of the  
10 formulation or benefit category determination by the policy or plan.

11 (b) An accident or sickness insurance policy may not comply with subsection (a) of this  
12 section by:

13 (1) Increasing the copayment, deductible or coinsurance amount required for injected or  
14 intravenously administered anti-cancer medications that are covered under the policy or plan; or

15 (2) Reclassifying benefits with respect to anti-cancer medications.

16 (c) As used in this section, "anti-cancer medication" means a FDA approved medication  
17 prescribed by a treating physician who determines that the medication is medically necessary to kill  
18 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of  
19 practice.

20 (d) This section is effective for policy and plan years beginning on or after January 1, 2016.  
21 This section applies to all group accident and sickness insurance policies and plans subject to this  
22 article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after  
23 the effective date of this section.

1 (e) Notwithstanding any other provision in this section to the contrary, in the event that an  
2 insurer can demonstrate actuarially to the Insurance Commissioner that its total costs for compliance  
3 with this section will exceed or have exceeded two percent of the total costs for all accident and  
4 sickness insurance coverage issued by the insurer subject to this article in any experience period, then  
5 the insurer may apply whatever cost containment measures may be necessary to maintain costs below  
6 two percent of the total costs for the coverage: Provided, That the cost containment measures  
7 implemented are applicable only for the plan year or experience period following approval of the  
8 request to implement cost containment measures.

9 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the  
10 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health  
11 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection  
12 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term  
13 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined  
14 in subsection (a) of this section shall be applicable only after the minimum annual deductible  
15 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,  
16 this limit shall be applicable at any point in the benefit design, including before and after any  
17 applicable deductible is reached.

18 **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

19 **§33-16-3x. Deductibles, copayments and coinsurance for anti-cancer medications.**

20 (a) Any group accident and sickness insurance policy issued by an insurer pursuant to this  
21 article that covers anti-cancer medications that are injected or intravenously administered by a health  
22 care provider and patient administered anti-cancer medications, including, but not limited to, those  
23 medications orally administered or self-injected, may not require a less favorable basis for a

1 copayment, deductible or coinsurance amount for patient administered anti-cancer medications than  
2 it requires for injected or intravenously administered anti-cancer medications, regardless of the  
3 formulation or benefit category determination by the policy or plan.

4 (b) A group accident and sickness insurance policy may not comply with subsection (a) of  
5 this section by:

6 (1) Increasing the copayment, deductible or coinsurance amount required for injected or  
7 intravenously administered anti-cancer medications that are covered under the policy or plan; or

8 (2) Reclassifying benefits with respect to anti-cancer medications.

9 (c) As used in this section, "anti-cancer medication" means a FDA approved medication  
10 prescribed by a treating physician who determines that the medication is medically necessary to kill  
11 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of  
12 practice.

13 (d) This section is effective for policy and plan years beginning on or after January 1, 2016.  
14 This section applies to all group accident and sickness insurance policies and plans subject to this  
15 article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after  
16 the effective date of this section.

17 (e) Notwithstanding any other provision in this section to the contrary, in the event that an  
18 insurer can demonstrate actuarially to the Insurance Commissioner that its total anticipated costs for  
19 any plan to comply with this section will exceed or have exceeded two percent of the total costs for  
20 such plan in any experience period, then the insurer may apply whatever cost containment measures  
21 may be necessary to maintain costs below two percent of the total costs for the plan: Provided, That  
22 such cost containment measures implemented are applicable only for the plan year following  
23 approval of the request to implement cost containment measures.

1 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the  
2 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health  
3 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in  
4 connection with every enrollment, opens and maintains for each enrollee a Health Savings Account  
5 as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit  
6 outlined in subsection (a) of this section shall be applicable only after the minimum annual  
7 deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all  
8 other cases, this limit shall be applicable at any point in the benefit design, including before and after  
9 any applicable deductible is reached.

10 **ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE**  
11 **CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH**  
12 **SERVICE CORPORATIONS.**

13 **§33-24-7m. Deductibles, copayments and coinsurance for anti-cancer medications.**

14 (a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to  
15 which this article applies, any group accident and sickness insurance policy, plan, contract or  
16 agreement issued by an entity regulated by this article that covers anti-cancer medications that are  
17 injected or intravenously administered by a health care provider and patient administered anti-cancer  
18 medications, including, but not limited to, those medications orally administered or self-injected,  
19 may not require a less favorable basis for a copayment, deductible or coinsurance amount for patient  
20 administered anti-cancer medications than it requires for injected or intravenously administered  
21 anti-cancer medications, regardless of the formulation or benefit category determination by the policy  
22 or plan.

23 (b) An accident or sickness insurance policy, plan, contract or agreement may not comply

1 with subsection (a) of this section by:

2 (1) Increasing the copayment, deductible or coinsurance amount required for injected or  
3 intravenously administered anti-cancer medications that are covered under the policy or plan; or

4 (2) Reclassifying benefits with respect to anti-cancer medications.

5 (c) As used in this section, "anti-cancer medication" means a FDA approved medication  
6 prescribed by a treating physician who determines that the medication is medically necessary to kill  
7 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of  
8 practice.

9 (d) This section is effective for policy and plan years beginning on or after January 1, 2016.  
10 This section applies to all group accident and sickness insurance policies and plans subject to this  
11 article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after  
12 the effective date of this section.

13 (e) Notwithstanding any other provision in this section to the contrary, in the event that an  
14 entity subject to this article can demonstrate actuarially to the Insurance Commissioner that its total  
15 anticipated costs for any policy, plan, contract or agreement to comply with this section will exceed  
16 or have exceeded two percent of the total costs for such policy, plan, contract or agreement in any  
17 experience period, then the entity may apply whatever cost containment measures may be necessary  
18 to maintain costs below two percent of the total costs for the policy, plan, contract or agreement:  
19 Provided, That such cost containment measures implemented are applicable only for the plan year  
20 or experience period following approval of the request to implement cost containment measures.

21 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the  
22 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health  
23 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in

1 connection with every enrollment, opens and maintains for each enrollee a Health Savings Account  
2 as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit  
3 outlined in subsection (a) of this section shall be applicable only after the minimum annual  
4 deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all  
5 other cases, this limit shall be applicable at any point in the benefit design, including before and after  
6 any applicable deductible is reached.

7 **ARTICLE 25. HEALTH CARE CORPORATIONS.**

8 **§33-25-8j. Deductibles, copayments and coinsurance for anti-cancer medications.**

9 (a) Notwithstanding any provision of any policy, contract, plan or agreement to which this  
10 article applies, a policy, contract, plan or agreement issued to a member or subscriber by an entity  
11 regulated by this article that covers anti-cancer medications that are injected or intravenously  
12 administered by a health care provider and patient administered anti-cancer medications, including,  
13 but not limited to, those medications orally administered or self-injected, may not require a less  
14 favorable basis for a copayment, deductible or coinsurance amount for patient administered  
15 anti-cancer medications than it requires for injected or intravenously administered anti-cancer  
16 medications, regardless of the formulation or benefit category determination by the policy or plan.

17 (b) A contract issued to a member or subscriber that is subject to this article may not comply  
18 with subsection (a) of this section by:

19 (1) Increasing the copayment, deductible or coinsurance amount required for injected or  
20 intravenously administered anti-cancer medications that are covered under the policy, contract, or  
21 plan or agreement; or

22 (2) Reclassifying benefits with respect to anti-cancer medications.

23 (c) As used in this section, "anti-cancer medication" means a FDA approved medication

1 prescribed by a treating physician who determines that the medication is medically necessary to kill  
2 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of  
3 practice.

4 (d) This section is effective for policy, plan or agreement years beginning on or after January  
5 1, 2016. This section applies to all policies, plans, contracts or agreements subject to this article that  
6 are delivered, executed, issued, amended, adjusted or renewed in this state, on and after the effective  
7 date of this section.

8 (e) Notwithstanding any other provision in this section to the contrary, in the event that an  
9 entity subject to this article can demonstrate actuarially to the Insurance Commissioner that its total  
10 anticipated costs for benefits to all members or subscribers to comply with this section will exceed  
11 or have exceeded two percent of the total costs for all benefits of the policy, plan, contract or  
12 agreement in any experience period, then the entity may apply whatever cost containment measures  
13 may be necessary to maintain costs below two percent of the total costs for the policy, plan, contract  
14 or agreement: Provided, That such cost containment measures implemented are applicable only for  
15 the plan year or experience period following approval of the request to implement cost containment  
16 measures.

17 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the  
18 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health  
19 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in connection  
20 with every enrollment, opens and maintains for each enrollee a Health Savings Account as that term  
21 is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit outlined  
22 in subsection (a) of this section shall be applicable only after the minimum annual deductible  
23 specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all other cases,



1 this limit shall be applicable at any point in the benefit design, including before and after any  
2 applicable deductible is reached.

3 **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

4 **§33-25A-8I. Deductibles, copayments and coinsurance for anti-cancer medications.**

5 (a) Notwithstanding any provision of any policy, contract, plan or agreement to which this  
6 article applies, any policy, contract, plan or agreement issued by a health maintenance organization  
7 pursuant to this article that covers anti-cancer medications that are injected or intravenously  
8 administered by a health care provider and patient administered anti-cancer medications, including,  
9 but not limited to, those medications orally administered or self-injected, may not require a less  
10 favorable basis for a copayment, deductible or coinsurance amount for patient administered  
11 anti-cancer medications than it requires for injected or intravenously administered anti-cancer  
12 medications, regardless of the formulation or benefit category determination by the policy or plan.

13 (b) A policy, contract, plan or agreement of a health maintenance organization may not  
14 comply with subsection (a) of this section by:

15 (1) Increasing the copayment, deductible or coinsurance amount required for injected or  
16 intravenously administered anti-cancer medications that are covered under the policy, contract, or  
17 plan or agreement; or

18 (2) Reclassifying benefits with respect to anti-cancer medications.

19 (c) As used in this section, "anti-cancer medication" means a FDA approved medication  
20 prescribed by a treating physician who determines that the medication is medically necessary to kill  
21 or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of  
22 practice.

23 (d) This section is effective for policy, contract, plan or agreement beginning on or after

1 January 1, 2016. This section applies to all policies, contracts, plans or agreements subject to this  
2 article that are delivered, executed, issued, amended, adjusted or renewed in this state, on and after  
3 the effective date of this section.

4 (e) Notwithstanding any other provision in this section to the contrary, in the event that a  
5 health maintenance organization subject to this article can demonstrate actuarially to the Insurance  
6 Commissioner that its total anticipated costs for any health maintenance contract to comply with this  
7 section will exceed or have exceeded two percent of the total costs for the policy, contract, plan or  
8 agreement in any experience period, then the health maintenance organization may apply whatever  
9 cost containment measures may be necessary to maintain costs below two percent of the total costs  
10 for the policy, contract, plan or agreement: Provided, That such cost containment measures  
11 implemented are applicable only for the plan year or experience period following approval of the  
12 request to implement cost containment measures.

13 (f) For any enrollee that is enrolled in a catastrophic plan as defined in Section 1302(e) of the  
14 Affordable Care Act or in a plan that, but for this requirement, would be a High Deductible Health  
15 Plan as defined in section 223(c)(2)(A) of the Internal Revenue Code of 1986, and that, in  
16 connection with every enrollment, opens and maintains for each enrollee a Health Savings Account  
17 as that term is defined in section 223(d) of the Internal Revenue Code of 1986, the cost-sharing limit  
18 outlined in subsection (a) of this section shall be applicable only after the minimum annual  
19 deductible specified in section 223(c)(2)(A) of the Internal Revenue Code of 1986 is reached. In all  
20 other cases, this limit shall be applicable at any point in the benefit design, including before and after  
21 any applicable deductible is reached.