

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

**Introduced**

### **House Bill 2651**

**FISCAL  
NOTE**

BY DELEGATES ELLINGTON, HILL, SUMMERS, PUSHKIN,

AND BATES

[Introduced January 24, 2019; Referred  
to the Committee on Health and Human Resources  
then Finance.]

1 A BILL to amend and reenact §33-51-9 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §33-51-10, all relating to  
 3 pharmacy benefit managers; mandating the disclosure of cost alternatives to covered  
 4 individuals; requiring quarterly reports on cost and claim data; and requiring the Public  
 5 Employees Insurance Agency to prepare a public report of impact on costs.

*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  
 2 a covered individual with information related to lower cost alternatives and cost share for such  
 3 covered individual to assist health care consumers in making informed decisions. Neither a  
 4 pharmacy, a pharmacist, nor a pharmacy technician shall 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 shall 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 may only directly or indirectly charge or hold a pharmacy,  
 11 a pharmacist, or a pharmacy technician responsible for a fee related to the adjudication of a claim  
 12 if:

13 (1) The total amount of the fee is identified, reported, and specifically explained for each  
 14 line item on the remittance advice of the adjudicated claim; or

15 (2) The total amount of the fee is apparent at the point of sale and not adjusted between  
 16 the point of sale and the issuance of the remittance advice.

17 (d) This section shall not apply with respect to claims under an employee benefit plan  
 18 under the Employee Retirement Income Security Act of 1974 or Medicare Part D.

**§33-51-10. Reports.**

1           (a) The Public Employees Insurance Agency shall require the plan sponsor to report  
2 quarterly, for all quarters through the one ending June 30, 2022, to the agency for all pharmacy  
3 claims:

4           (1) The amount paid to the pharmacy provider per claim, including, but not limited to, cost  
5 of drug reimbursement;

6           (2) Dispensing fees;

7           (3) Copayments; and

8           (4) The amount charged to the plan sponsor for each claim by its pharmacy benefit  
9 manager.

10           (b) If there is a difference between these amounts, the plan sponsor shall report an  
11 itemization of all administrative fees, rebates, or processing charges associated with the claim.

12           (c) All data and information provided by the plan sponsor shall be kept secure; and  
13 notwithstanding any other provision of law, the agency shall maintain the confidentiality of the  
14 proprietary information and not share or disclose the proprietary information contained in the  
15 report or data collected with persons outside the agency. Only those agency employees involved  
16 in collecting, securing and analyzing the data for the purpose of preparing the report shall have  
17 access to the proprietary data.

18           (d) The agency shall provide a report using aggregated data to the Governor's Office and  
19 the Joint Committee on Government and Finance on the implementation of this initiative and its  
20 impact on program expenditures by December 1, 2019.

21           (e) Nothing in the report to the Governor or the Joint Committee on Government and  
22 Finance shall contain confidential or proprietary information.

23           (f) If the information is not provided, the agency shall terminate the contract.

NOTE: The purpose of this bill is to require a pharmacy benefit manager who contracts

with the state to provide certain information to the state and to covered individuals.

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