

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2770**

BY DELEGATE ROHRBACH, ELLINGTON, BARRETT, QUEEN,

WAXMAN, BYRD, WESTFALL AND NELSON

[Introduced January 30, 2019; Referred  
to the Committee on Banking and Insurance then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §33-52-1, §33-52-2, §33-52-3, and §33-52-4, all relating to establishing the  
 3 Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan  
 4 cost sharing calculations; establishing pharmacy benefits cost sharing calculations; and  
 5 providing for rule-making authority.

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

**ARTICLE 52. FAIRNESS IN COST-SHARING CALCULATION ACT.**

**§33-52-1. Definitions.**

1 As used in this article:

2 “Commissioner” meant the West Virginia Insurance Commissioner.

3 “Cost sharing” means any copayment, coinsurance, or deductible required by or on behalf  
 4 of an insured in order to receive a specific health care item or service covered by a health plan.

5 “Health care services” means items or services furnished to any individual for the purpose  
 6 of preventing, alleviating, curing, or healing human illness, injury, or physical or mental disability.

7 “Health plan” means any individual or group health care plan, subscription contract,  
 8 evidence of coverage, certificate, health services plan, medical or hospital services plan as  
 9 defined in §33-24-1 et seq, accident and sickness insurance policy or certificate, managed care  
 10 health insurance plan, or health maintenance organization subject to state regulation pursuant to  
 11 §33-25-1 et seq of this code, which is offered, arranged, issued, or administered in the state by  
 12 an insurer authorized under this chapter, a third-party administrator or an intermediary. Health  
 13 plan does not mean:

14 (A) Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §1395  
 15 et seq, Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq, or Title XX of the Social  
 16 Security Act, 42 U.S.C. §1397 et seq, 5 U.S.C. §8901 et seq, or 10 U.S.C. §1071 et seq; or §5-  
 17 16-1 et seq of this code;

18 (B) Accident only, credit or disability insurance, long-term care insurance, TRICARE

19 supplement, Medicare supplement, workers' compensation coverages, or limited benefits policy  
20 as defined in §33-16E-1 et seq of this code; or

21 (C) Any third-party administrator or an intermediary acting on behalf of providers as  
22 denoted in subparagraphs (A) and (B).

23 "Insured" means a person who is provided health insurance coverage or other health care  
24 services coverage from an insurer under a health plan.

25 "Insurer" means any person required to be licensed under chapter 33 or this code, which  
26 offers or administers as a third-party administrator, health insurance; operates a health plan  
27 subject to this chapter; or provides or arranges for the provisions of health care services through  
28 networks or provider panels which are subject to regulation as the business of insurance under  
29 this chapter. "Insurer" also included intermediaries. "Insurer" does not include:

30 (A) Credit accident and sickness insurance;

31 (B) Accidence and sickness policies which provide benefits for loss of income due to  
32 disability;

33 (C) Any policy of liability of workers' compensation insurance;

34 (D) Hospital indemnity or other fixed indemnity insurance;

35 (E) Life insurance, including endowment or annuity contracts, or contracts supplemental  
36 thereto, which contain on provisions relating to accident and sickens insurance that:

37 (i) Provide additional benefits in cases of death by accidental means; or

38 (ii) Operate to safeguard the contracts against lapse, in the event that the insured shall  
39 become totally and permanently disabled as defined by the contract or supplemental contract;

40 (F) Property and casualty insurance; and

41 (G) Any coverage issued pursuant to §5-16-1 et seq of this code.

42 "Person" means a natural person, corporation, mutual company, unincorporated  
43 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit  
44 corporation, unincorporated organization, or government or governmental subdivision or agency.

45 “Pharmacy benefits manager” means the performance of any of the following:

46 (A) The procurement of prescription drugs at a negotiated contracted rate for dispensation  
47 within this state insureds;

48 (B) The administration or management of prescription drug benefits provided by an insurer  
49 or health plan for the benefit of insureds;

50 (C) The administration of pharmacy benefits, including, but not limited to:

51 (i) Operating a mail-service pharmacy;

52 (ii) Claims processing;

53 (iii) Managing a retail pharmacy network;

54 (iv) Paying claims to a pharmacy for prescription drugs dispensed to insureds via retail or  
55 mail-order pharmacy;

56 (v) Developing and managing a clinical formulary including utilization management and  
57 quality assurance programs;

58 (vi) Rebate contracting administration; and

59 (vii) Managing a patient compliance, therapeutic intervention and generic substitution  
60 program.

61 “Pharmacy benefits manager” means a person business, or other entity that performs  
62 pharmacy benefits management for an insurer or health plan.

**§33-52-2. Health plan cost sharing calculation.**

1 When calculating an insured’s contribution to any applicable cost sharing requirement,  
2 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c)  
3 and 42 U.S.C. § 300gg-6(b), an insurer shall include any cost sharing amounts paid by the insured  
4 or on behalf of the insured by another person.

**§33-52-3. Pharmacy benefits manager cost sharing calculation.**

1 When calculating an insured’s contribution to any applicable cost sharing requirement,  
2 including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. §18022(c)

3 and 42 U.S.C. § 300gg-6(b), a pharmacy benefits manger shall include any cost sharing amounts  
4 paid by the insured or on behalf of the insured by another person.

**§33-52-4. Commissioner is authorized to propose rules.**

1 The commissioner is authorized to propose rules for legislative approval in accordance  
2 with §29A-3-1 et seq of this code, to implement the provisions of this article.

NOTE: The purpose of this bill is to create the Fairness in Cost-Sharing Calculation Act by establishing cost sharing calculations for health plans and pharmacy benefits.

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