

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4058

BY DELEGATES HILL, PACK AND FLEISCHAUER

[Passed February 18, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §33-51-8 and §33-51-10 of the Code of West Virginia, 1931, as
2 amended, all relating to pharmacy benefit managers; civil penalties; rules required.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

§33-51-8. Licensure of pharmacy benefit managers.

1 (a) A person or organization may not establish or operate as a pharmacy benefits manager
2 in the State of West Virginia without first obtaining a license from the Insurance Commissioner
3 pursuant to this section: *Provided*, That a pharmacy benefit manager registered pursuant to §33-
4 51-7 of this code may continue to do business in the state until the Insurance Commissioner has
5 completed the legislative rule as set forth in §33-51-10 of this code: *Provided, however*, That
6 additionally the pharmacy benefit manager shall submit an application within six months of
7 completion of the final rule. The Insurance Commissioner shall make an application form available
8 on its publicly accessible Internet website that includes a request for the following information:

9 (1) The identity, address, and telephone number of the applicant;

10 (2) The name, business address, and telephone number of the contact person for the
11 applicant;

12 (3) When applicable, the federal employer identification number for the applicant; and

13 (4) Any other information the Insurance Commissioner considers necessary and
14 appropriate to establish the qualifications to receive a license as a pharmacy benefit manager to
15 complete the licensure process, as set forth by legislative rule promulgated by the Insurance
16 Commissioner pursuant to §33-51-10 of this code.

17 (b) Term and fee. —

18 (1) The term of licensure shall be two years from the date of issuance.

19 (2) The Insurance Commissioner shall determine the amount of the initial application fee
20 and the renewal application fee for the registration. The fee shall be submitted by the applicant

21 with an application for registration. An initial application fee is nonrefundable. A renewal
22 application fee shall be returned if the renewal of the registration is not granted.

23 (3) The amount of the initial application fees and renewal application fees must be
24 sufficient to fund the Insurance Commissioner's duties in relation to his/her responsibilities under
25 this section, but a single fee may not exceed \$10,000.

26 (4) Each application for a license, and subsequent renewal for a license, shall be
27 accompanied by evidence of financial responsibility in an amount of \$1 million.

28 (c) Licensure. —

29 (1) The Insurance Commissioner shall propose legislative rules, in accordance with §33-
30 51-10 of this code, establishing the licensing, fees, application, financial standards, and reporting
31 requirements of pharmacy benefit managers.

32 (2) Upon receipt of a completed application, evidence of financial responsibility, and fee,
33 the Insurance Commissioner shall make a review of each applicant and shall issue a license if
34 the applicant is qualified in accordance with the provisions of this section and the rules
35 promulgated by the Insurance Commissioner pursuant to this section. The commissioner may
36 require additional information or submissions from an applicant and may obtain any documents
37 or information reasonably necessary to verify the information contained in the application.

38 (3) The license may be in paper or electronic form, is nontransferable, and shall
39 prominently list the expiration date of the license.

40 (d) Network adequacy. —

41 (1) A pharmacy benefit manager's network shall not be comprised only of mail-order
42 benefits but must have a mix of mail-order benefits and physical stores in this state.

43 (2) A pharmacy benefit manager shall provide a pharmacy benefit manager's network
44 report describing the pharmacy benefit manager's network and the mix of mail-order to physical
45 stores in this state in a time and manner required by rule issued by the Insurance Commissioner
46 pursuant to this section.

47 (3) Failure to provide a timely report may result in the suspension or revocation of a
48 pharmacy benefit manager's license by the Insurance Commissioner.

49 (e) Enforcement. —

50 (1) The Insurance Commissioner shall enforce this section and may examine or audit the
51 books and records of a pharmacy benefit manager providing pharmacy benefits management to
52 determine if the pharmacy benefit manager is in compliance with this section: *Provided*, That any
53 information or data acquired during the examination or audit is considered proprietary and
54 confidential and exempt from disclosure under the West Virginia Freedom of Information Act
55 pursuant to §29B-1-4(a)(1) of this code.

56 (2) The Insurance Commissioner shall propose rules for legislative approval in accordance
57 with §29A-3-1 *et seq.* of this code regulating pharmacy benefit managers in a manner consistent
58 with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines,
59 including, without limitation, monetary fines, suspension of licensure, and revocation of licensure
60 for violations of this chapter and the rules adopted pursuant to this section.

61 (3) A person who violates this provision of this article or the legislative rules implementing
62 its provisions may be fined not less than \$1,000 and not more than \$10,000 per violation.

63 (f) Applicability. —

64 (1) This section is applicable to any contract or health benefit plan issued, renewed,
65 recredentialled, amended, or extended on or after July 1, 2019.

66 (2) The requirements of this section, and any rules promulgated by the Insurance
67 Commissioner pursuant to §33-51-10 of this code, do not apply to the coverage of prescription
68 drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or
69 any information relating to such coverage.

§33-51-10. Commissioner required to propose rules.

1 The Insurance Commissioner shall propose rules for legislative approval in accordance
2 with §29A-3-1 *et seq.* of this code that are necessary to effectuate the provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor