

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4058**

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[Introduced January 08, 2020; Referred to the  
Committee on Health and Human Resources then the  
Judiciary.]



1 A BILL 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 ~~5-7~~ §33-51-7 of this code may continue to do business in the state until the Insurance  
5 Commissioner has completed the legislative rule as set forth in ~~§33-55-10~~ §33-51-10 of this code:  
6 *Provided, however*, That additionally the pharmacy benefit manager shall submit an application  
7 within six months of completion of the final rule. The Insurance Commissioner shall make an  
8 application form available on its publicly accessible Internet website that includes a request for  
9 the following information:

- 10 (1) The identity, address, and telephone number of the applicant;
- 11 (2) The name, business address, and telephone number of the contact person for the  
12 applicant;
- 13 (3) When applicable, the federal employer identification number for the applicant; and
- 14 (4) Any other information the Insurance Commissioner considers necessary and  
15 appropriate to establish the qualifications to receive a license as a pharmacy benefit manager to  
16 complete the licensure process, as set forth by legislative rule promulgated by the Insurance  
17 Commissioner pursuant to ~~§33-51-9(f)~~ §33-51-10 of this code.

18 (b) *Term and fee.* —

- 19 (1) The term of licensure shall be two years from the date of issuance.
- 20 (2) The Insurance Commissioner shall determine the amount of the initial application fee  
21 and the renewal application fee for the registration. The fee shall be submitted by the applicant

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

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

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

29 (c) *Licensure.* —

30 (1) The Insurance Commissioner shall propose legislative rules, in accordance with ~~§33-~~  
31 ~~51-9(f)~~ §33-51-10 of this code, establishing the licensing, fees, application, financial standards,  
32 and reporting requirements of pharmacy benefit managers.

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

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

41 (d) *Network adequacy.* —

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

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

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

50 (e) *Enforcement.* —

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

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

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

64 (f) *Applicability.* —

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

67 (2) The requirements of this section, and any rules promulgated by the Insurance  
68 Commissioner pursuant to ~~§33-51-9(f)~~ §33-51-10 of this code, do not apply to the coverage of  
69 prescription drugs under a plan that is subject to the Employee Retirement Income Security Act  
70 of 1974 or any information relating to such coverage.

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

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

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NOTE: The purpose of this bill is to update the law regulating pharmacy benefit managers.

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