

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5379

By Delegates Summers and Tully

[Introduced January 31, 2024; Referred to the
Committee on Health and Human Resources then
Finance]

1 A BILL to amend and reenact §33-15-4t of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §33-16-3ee of said code; to amend and reenact §33-15-4t of said
 3 code; to amend and reenact §33-24-7t of said code; to amend and reenact §33-25-8q of
 4 said code; and to amend and reenact §33-25A-8t of said code; all relating to financial
 5 assistance available for a prescription drug; defining terms; and providing for civil
 6 penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.
§33-15-4t. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:
 2 "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf
 3 of an insured in order to receive a specific health care item or service covered by a health plan.

4 "Drug" means the same as the term is defined in §30-5-4 of this code.

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

8 "Health care service" means an item or service furnished to any individual for the purpose
 9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an
 11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
 12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this
 14 code.

15 "Third party administrator" means the same as that term is defined in § 33-46-2 of this
 16 code.

17 (b) When calculating an insured's contribution to any applicable cost sharing requirement,

18 including, but not limited to, the annual limitation on cost sharing subject to ~~42 U.S.C. § 18022(c)~~
19 and ~~42 U.S.C. § 300gg-6(b)~~

20 (1) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid
21 by the insured or on behalf of the insured by another person. ~~and~~

22 (2) ~~A pharmacy benefits manger shall include any cost sharing amounts paid by the~~
23 ~~insured or on behalf of the insured by another person~~

24 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall
25 apply to all health care services covered under any health plan offered or issued by an insurer in
26 this state.

27 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or
28 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit
29 design, based in part or entirely on information about the availability or amount of financial or
30 product assistance available for a prescription drug.

31 ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in
32 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

33 ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or
34 after ~~January 1, 2020~~ January 1, 2025. This section applies to all policies, contracts, plans, or
35 agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or
36 renewed in this state on or after the effective date of this section.

37 ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in
38 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this
39 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans
40 with respect to the deductible of such a plan after the enrollee has satisfied the minimum
41 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items
42 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue
43 Code, the requirements of subsection (b) of this section shall apply regardless of whether the

44 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

45 (h) In addition to the penalties and other enforcement provisions of this chapter, any person
46 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of
47 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.
48 The commissioner's order may require a person found to be in violation of this section to make
49 restitution to persons aggrieved by violations of this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.
§33-16-3ee. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

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

4 "Drug" means the same as the term is defined in §30-5-4 of this code.

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

8 "Health care service" means an item or service furnished to any individual for the purpose
9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an
11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this
14 code.

15 "Third party administrator" means the same as that term is defined in §33-46-2 of this code.

16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,
17 including, but not limited to, ~~the annual limitation on cost sharing subject to 42 U.S.C. § 18022(e)~~
18 ~~and 42 U.S.C. § 300gg-6(b)~~

19 ~~(1)~~ an insurer or pharmacy benefits manager shall include any cost sharing amounts paid
20 by the insured or on behalf of the insured by another person. ~~and~~

21 ~~(2)~~ A ~~pharmacy benefits manger~~ shall ~~include any cost sharing amounts paid by the~~
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall
24 apply to all health care services covered under any health plan offered or issued by an insurer in
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit
28 design, based in part or entirely on information about the availability or amount of financial or
29 product assistance available for a prescription drug.

30 ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32 ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or
33 after ~~January 1, 2020~~ January 1, 2025. This section applies to all policies, contracts, plans, or
34 agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or
35 renewed in this state on or after the effective date of this section.

36 ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in
37 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this
38 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans
39 with respect to the deductible of such a plan after the enrollee has satisfied the minimum
40 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items
41 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue
42 Code, the requirements of subsection (b) of this section shall apply regardless of whether the
43 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

44 (h) In addition to the penalties and other enforcement provisions of this chapter, any person

45 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of
 46 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.
 47 The commissioner's order may require a person found to be in violation of this section to make
 48 restitution to persons aggrieved by violations of this section.

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

§33-24-7t. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

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

4 "Drug" means the same as the term is defined in §30-5-4 of this code.

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

8 "Health care service" means an item or service furnished to any individual for the purpose
 9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an
 11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
 12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this
 14 code.

15 "Third party administrator" means the same as that term is defined in §33-46-2 of this code.

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

18 ~~and 42 U.S.C. § 300gg-6(b)~~

19 (4) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid
20 by the insured or on behalf of the insured by another person. ~~and~~

21 ~~(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the~~
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall
24 apply to all health care services covered under any health plan offered or issued by an insurer in
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit
28 design, based in part or entirely on information about the availability or amount of financial or
29 product assistance available for a prescription drug.

30 ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32 ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or
33 after ~~January 1, 2020~~ January 1, 2025. This section applies to all policies, contracts, plans, or
34 agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or
35 renewed in this state on or after the effective date of this section.

36 ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in
37 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this
38 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans
39 with respect to the deductible of such a plan after the enrollee has satisfied the minimum
40 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items
41 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue
42 Code, the requirements of subsection (b) of this section shall apply regardless of whether the
43 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

44 (h) In addition to the penalties and other enforcement provisions of this chapter, any person
 45 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of
 46 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.
 47 The commissioner's order may require a person found to be in violation of this section to make
 48 restitution to persons aggrieved by violations of this section.

ARTICLE 25. HEALTH CARE CORPORATIONS.
§33-25-8q. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:

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

4 "Drug" means the same as the term is defined in §30-5-4 of this code.

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

8 "Health care service" means an item or service furnished to any individual for the purpose
 9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an
 11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
 12 services.

13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this
 14 code.

15 "Third party administrator" means as that term is defined in §33-46-2 of this code.

16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,
 17 ~~including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c)~~
 18 ~~and 42 U.S.C. § 300gg-6(b)~~

19 (4) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid

20 by the insured or on behalf of the insured by another person. ~~and~~

21 ~~(2) A pharmacy benefits manger shall include any cost sharing amounts paid by the~~
22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall
24 apply to all health care services covered under any health plan offered or issued by an insurer in
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit
28 design, based in part or entirely on information about the availability or amount of financial or
29 product assistance available for a prescription drug.

30 ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32 ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or
33 after ~~January 1, 2020~~ January 1, 2025. This section applies to all policies, contracts, plans, or
34 agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or
35 renewed in this state on or after the effective date of this section.

36 ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in
37 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this
38 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans
39 with respect to the deductible of such a plan after the enrollee has satisfied the minimum
40 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items
41 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue
42 Code, the requirements of subsection (b) of this section shall apply regardless of whether the
43 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

44 (h) In addition to the penalties and other enforcement provisions of this chapter, any person
45 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of

46 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.
 47 The commissioner's order may require a person found to be in violation of this section to make
 48 restitution to persons aggrieved by violations of this section.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.
§33-25A-8t. Fairness in Cost-Sharing Calculation.

1 (a) As used in this section:
 2 "Cost sharing" means any copayment, coinsurance, or deductible required by or on behalf
 3 of an insured in order to receive a specific health care item or service covered by a health plan.
 4 "Drug" means the same as the term is defined in §30-5-4 of this code.
 5 "Person" means a natural person, corporation, mutual company, unincorporated
 6 association, partnership, joint venture, limited liability company, trust, estate, foundation, nonprofit
 7 corporation, unincorporated organization, or government or governmental subdivision or agency.
 8 "Health care service" means an item or service furnished to any individual for the purpose
 9 of preventing, alleviating, curing, or healing human illness, injury, or physical disability.
 10 "Health plan" means a policy, contract, certification, or agreement offered or issued by an
 11 insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care
 12 services.
 13 "Pharmacy benefits manager" means the same as that term is defined in §33-51-3 of this
 14 code.
 15 "Third party administrator" means as that term is defined in §33-46-2 of this code.
 16 (b) When calculating an insured's contribution to any applicable cost sharing requirement,
 17 ~~including, but not limited to, the annual limitation on cost sharing subject to 42 U.S.C. § 18022(c)~~
 18 ~~and 42 U.S.C. § 300gg-6(b)~~
 19 (1) an insurer or pharmacy benefits manager shall include any cost sharing amounts paid
 20 by the insured or on behalf of the insured by another person. ~~and~~
 21 (2) ~~A pharmacy benefits manger shall include any cost sharing amounts paid by the~~

22 ~~insured or on behalf of the insured by another person~~

23 (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall
24 apply to all health care services covered under any health plan offered or issued by an insurer in
25 this state.

26 (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or
27 indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit
28 design, based in part or entirely on information about the availability or amount of financial or
29 product assistance available for a prescription drug.

30 ~~(e)~~ (e) The commissioner is authorized to propose rules for legislative approval in
31 accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

32 ~~(d)~~ (f) This section is effective for policy, contract, plans, or agreements beginning on or
33 after ~~January 1, 2020~~ January 1, 2025. This section applies to all policies, contracts, plans, or
34 agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or
35 renewed in this state on or after the effective date of this section.

36 ~~(e)~~ (g) If under federal law application of subsection (b) of this section would result in
37 Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this
38 requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans
39 with respect to the deductible of such a plan after the enrollee has satisfied the minimum
40 deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items
41 or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue
42 Code, the requirements of subsection (b) of this section shall apply regardless of whether the
43 minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.

44 (h) In addition to the penalties and other enforcement provisions of this chapter, any person
45 who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of
46 civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.
47 The commissioner's order may require a person found to be in violation of this section to make

48 restitution to persons aggrieved by violations of this section.

NOTE: The purpose of this bill is to ensure financial or product assistance are available for a prescription drug.

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