## **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

## Introduced

## **Senate Bill 831**

By Senators Takubo and Maroney

[Introduced February 16, 2024; referred

to the Committee on Health and Human Resources]

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

Be it enacted by the Legislature of West Virginia:

	Do it offactor by the Logislatare of Woot Virginia.							
	ARTICLE	15.	ACCIDENT	AND	SICKNESS	INSURANCE.		
	§33-15-4t.	Fa	irness	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) Wh	en calculat	ing an insured's	contribution to	any applicable cost	sharing requirement,		
17	including, but I	not limited	to, the annual lir	nitation on co	st sharing subject to	42 U.S.C. § 18022(c)		
18	and 42 U.S.C.	§ 300gg-6	<del>(b)</del>					

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) 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 after January 1, 2020 January 1, 2025. This section applies to all policies, contracts, plans, or 33 34 agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section. 35 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.

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

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45	who violates	this sect	ion is subject	to civil penalties	s of up to	\$10,000 per violat	ion. 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 16. GROUP ACCIDENT AND SICKNESS INSURANCE							
	§33-16-3ee.		Fairness	in	Cos	st-Sharing	Calculation.	
1	(a) As	s used in	this section:					
2	"Cost sharing" means any copayment, coinsurance, or deductible required by or on behal							
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	"Phar	macy be	nefits manage	er" means the sa	ime as tha	t term is defined i	n §33-51-3 of this	
14	code.							
15	<u>"Thire</u>	d party ac	lministrator" n	neans the same a	as that tern	n is defined in §33	-46-2 of this code.	
16	(b) W	hen calc	ulating an ins	ured's contributio	on to any a	pplicable cost sha	aring 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 insure	d or on b	ehalf of the ir	nsured by anothe	er 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 (c) (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

who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of

civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.

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47 The commissioner's order may require a person found to be in violation of this section to make restitution to persons aggrieved by violations of this section. 48 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 (1) An insurer or pharmacy benefits manager shall include any cost sharing amounts paid

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

- (2) A pharmacy benefits manger shall include any cost sharing amounts paid by the insured or on behalf of the insured by another person
- (c) The annual limitation on cost sharing provided for under 42 U.S.C. § 18022(c)(1) shall apply to all health care services covered under any health plan offered or issued by an insurer in this state.
- (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit design, based in part or entirely on information about the availability or amount of financial or product assistance available for a prescription drug.
- (e) (e) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.
- (d) (f) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020 January 1, 2025. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.
- (e) (g) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.
- (h) In addition to the penalties and other enforcement provisions of this chapter, any person 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. **Cost-Sharing** §33-25-8q. **Fairness** in 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) and 42 U.S.C. § 300gg-6(b) 18 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

insured or on behalf of the insured by another person

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

- (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit design, based in part or entirely on information about the availability or amount of financial or product assistance available for a prescription drug.
- (c) (e) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement the provisions of this section.
- (d) (f) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020 January 1, 2025. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.
- (e) (g) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.
- (h) In addition to the penalties and other enforcement provisions of this chapter, any person who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing.

  The commissioner's order may require a person found to be in violation of this section to make

48 <u>restitution to persons aggrieved by violations of this section.</u>

	ARTICLE	25A.	HEALIH	MAINIEN	ANCE ORG	ANIZATION	ACI.
	§33-25A-8t.		Fairness	in	Cost-Sharing	Ca	alculation.
1	(a) As	s used in th	is section:				
2	"Cost	sharing" m	eans any copay	yment, coinsura	ance, or deductible	required by c	or on behalf
3	of an insured	l in order to	receive a spec	ific health care	item or service co	vered by a he	alth plan.
4	"Drug	ı" means th	e same as the t	erm is defined	in §30-5-4 of this	code.	
5	"Pers	on" mean	s a natural p	erson, corpor	ation, mutual co	mpany, unin	corporated
6	association, p	partnership	, joint venture, l	imited liability o	ompany, trust, est	ate, foundation	n, nonprofit
7	corporation,	unincorpora	ated organizatio	n, or governme	ent or government	al subdivision	or agency.
8	<u>"Heal</u>	th care ser	vice" means an	item or service	furnished to any i	ndividual for th	he purpose
9	of preventing	ı, alleviatinç	g, curing, or hea	ıling human illn	ess, injury, or phys	sical disability.	<u>-</u>
10	<u>"Heal</u>	th plan" me	eans a policy, co	ontract, certifica	ation, or agreemer	t offered or is:	sued by an
11	insurer to pr	ovide, deli	ver, arrange fo	r, pay for, or r	eimburse any of t	the costs of h	<u>nealth care</u>
12	services.						
13	"Phar	macy bene	fits manager" n	neans the same	e as that term is d	efined in §33-	51-3 of this
14	code.						
15	<u>"Thire</u>	d party adm	inistrator" mear	ns as that term	is defined in §33-4	16-2 of this co	<u>de.</u>
16	(b) W	hen calcula	ating an insured	's contribution	to any applicable o	ost sharing re	quirement,
17	including, but	t not limited	l to, the annual	limitation on co	est sharing subject	to 42 U.S.C.	<del>§ 18022(c)</del>
18	and 42 U.S.C	C. § 300gg-	6 <del>(b)</del>				
19	<del>(1)</del> ar	n insurer <u>or</u>	pharmacy bene	efits manager s	hall include any co	ost sharing am	nounts paid
20	by the insure	d or on bel	nalf of the insure	ed by another p	erson. <del>and</del>		
21	<del>(2) A</del>	pharmacy	benefits mang	er shall includ	e any cost sharir	<del>ig amounts p</del>	aid by the
22	insured or on	behalf of t	he insured by a	nother person			
23	<u>(c) Th</u>	ne annual li	mitation on cost	t sharing provid	led for under 42 U	.S.C. § 18022	?(c)(1) shall

apply to all health care services covered under any health plan offered or issued by an insurer in this state.

- (d) An insurer, pharmacy benefits manager, or third-party administrator may not directly or indirectly set, alter, implement, or condition the terms of health plan coverage, including the benefit design, based in part or entirely on information about the availability or amount of financial or product assistance available for a prescription drug.
- (c) (e) The commissioner is authorized to propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement the provisions of this section.
- (d) (f) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020 January 1, 2025. This section applies to all policies, contracts, plans, or agreements, subject to this article that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.
- (e) (g) If under federal law application of subsection (b) of this section would result in Health Savings Account ineligibility under Section 223 of the Internal Revenue Code, this requirement shall apply only for Health Savings Account-qualified High Deductible Health Plans with respect to the deductible of such a plan after the enrollee has satisfied the minimum deductible under Section 223 of the Internal Revenue Code: *Provided*, That with respect to items or services that are preventive care pursuant to Section 223(c)(2)(C) of the Internal Revenue Code, the requirements of subsection (b) of this section shall apply regardless of whether the minimum deductible under Section 223 of the Internal Revenue Code has been satisfied.
- (h) In addition to the penalties and other enforcement provisions of this chapter, any person who violates this section is subject to civil penalties of up to \$10,000 per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued after notice and hearing. The commissioner's order may require a person found to be in violation of this section to make 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.

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