



## WEST VIRGINIA INSURANCE BULLETIN

### No. 24 - 01

*Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.*

#### ► **Prior Authorization Prohibited for Prescription Drugs at Inpatient Discharge** ◀

West Virginia’s prior authorization law provides that any prescription written for an inpatient at the time of discharge usually requiring a prior authorization **may not be subject to a health insurer’s prior authorization requirements and shall be immediately approved for not less than three days**, provided that the cost of the medication does not exceed \$5,000 per day.<sup>1</sup> A physician or health care practitioner must note on the prescription, or notify the pharmacy, that the prescription is being provided to a patient at discharge. After three days, a prior authorization shall be obtained. To comply with the relevant provisions of West Virginia’s prior authorization law, an electronic portal should include an option to bypass or forego the usual prior authorization requirement for a three-day supply of a prescription drug at the time of an inpatient discharge so long as the cost of the prescription drug does not exceed \$5,000 per day.

Importantly, this three-day prescription drug allowance at the time of inpatient discharge is necessary because a health insurer, or its pharmacy benefit manager (“PBM”), usually has five business days, or two business days in certain serious or adverse situations, to act upon a prior authorization submitted through its electronic portal. Without a three-day prescription drug allowance at the time of inpatient discharge, a patient who undergoes an emergency or unscheduled procedure where a prior authorization is not possible may be forced to go without necessary prescription drugs at discharge, pay out-of-pocket for necessary prescription drugs at discharge, or remain in the hospital while a two-day or five-day prior authorization review is completed by a health insurer or its PBM.

Further, while the portion of West Virginia’s prior authorization law requiring a three-day prescription drug allowance for most prescription drugs at the time of an inpatient discharge has been in effect since January 1, 2020, an additional enforcement section became effective on January 1, 2024 that states that the Offices of the Insurance Commissioner (“OIC”) may assess a civil penalty for a violation of West Virginia’s prior authorization law pursuant to W.Va. Code §33-3-11.<sup>2</sup> W.Va. Code §33-3-11 states, in lieu of licensure suspension or revocation, the OIC may, by order, require an insurer to pay a penalty in a sum not exceeding \$10,000, and upon the failure of the insurer to pay such penalty within thirty (30) days after notice, the OIC

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<sup>1</sup> West Virginia’s prior authorization law is generally codified at W.Va. Code §§ 33-15-4s, 33-16-3dd, 33-24-7s, 33-25-8p, and 33-25A-8s for commercial insurers and at W.Va. Code §5-16-7f for the Public Employees Insurance Agency (“PEIA”) (collectively referred to herein as the “prior authorization law”). While the Offices of the Insurance Commissioner (“OIC”) does not usually regulate PEIA, the Legislature specifically provided that the OIC may assess a civil penalty for a violation of W.Va. Code §5-16-7f.

<sup>2</sup> The prior authorization law enforcement provisions are found at W.Va. Code §§ 33-15-4s(n), 33-16-3dd(n), 33-24-7s(n), 33-25-8p(n), 33-25A-8s(n), and 5-16-7f(n).

may revoke or suspend the license of such insurer. While the OIC recognizes the importance of prior authorizations in drug utilization management, both in terms of cost control and clinical outcomes, the OIC will not permit violations of West Virginia's prior authorization law without consequence. **As such, the OIC will begin issuing civil penalties pursuant to W.Va. Code §33-3-11 for violations of West Virginia's prior authorization law if a health insurer, or its PBM, does not permit a three-day prescription drug allowance at the time of an inpatient discharge when otherwise required.**

As previously noted in Insurance Bulletin 21-08, although not mandated in West Virginia's prior authorization law, the OIC also strongly encourages the availability of "real time" electronic prior authorization approvals for appropriate procedures, services, drugs, devices, and equipment whenever possible. An electronic portal should be easy to use, accessible, and comprehensive. When prior authorizations are submitted electronically, it should be relatively easy for a physician or health care practitioner to track approvals, rejections, and requests for more information in "real time." This transparency should allow physicians and health care practitioners to take any necessary steps to expediently move prior authorizations through the process and dedicate more time to direct patient care.

Please email any questions concerning this Insurance Bulletin to [OICBulletins@wv.gov](mailto:OICBulletins@wv.gov).

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