



WEST VIRGINIA INSURANCE BULLETIN

No. 22-06

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.

► Summary of 2022 Legislation ◀

This Insurance Bulletin summarizes legislation enacted during the 2022 Regular Session of the West Virginia Legislature that is significant to the Offices of the Insurance Commissioner. It does not include all legislation that may affect the insurance industry or consumers and is only intended to highlight the major points in the more important regulatory bills. The explanations contained herein should not be construed as being indicative of the Insurance Commissioner's views on, support of, or interpretation of, the legislation. The bills are available on the Legislature's website at www.wvlegislature.gov.

Senate Bill 1 – Relating to the Creation of a Mining Mutual Insurance Company (Effective March 12, 2022)

This bill allows for the creation of a Mining Mutual Insurance Company (Mutual). The Legislature opined that difficulty or impossibility of obtaining reclamation surety bonds on reasonable economic terms may result in challenges for coal operators to receive new coal-mining permits. The Legislature posits that there is a substantial public benefit in having a stable, self-sufficient entity that can issue coal mine reclamation surety bonds as a source of insurance coverage for coal mine permit holders in this state. Accordingly, the bill permits the formation of the Mutual as a domestic, private, nonstock corporation that is subject to insurance premium taxes and surcharges. Upon being approved by the Insurance Commissioner, the Mutual may issue nonassessable policies of performance bonds with respect to coal mine reclamation. Participation by coal operators in purchasing bonds from the Mutual is optional.

Senate Bill 312 – Relating to the Adoption of Rules (Effective July 1, 2022)

This bill authorizes the following legislative rules of the Insurance Commissioner:

114 CSR 42 – Continuing Education for Individual Insurance Producers and Adjusters

This rule was amended to conform an existing rule to the provisions of House Bill 2682 (2021) and allows for notices of insurance producer and adjuster license suspensions for failing to timely complete continuing education requirements to be sent via electronic mail, or regular mail if elected, as opposed to being required to be sent via certified mail, return receipt.

114 CSR 98 – Adoption of Valuation Manual

This rule was proposed for amendment solely to extend the existing sunset date of May 17, 2022 to August 1, 2027.

114 CSR 99 – Pharmacy Auditing Entities and Pharmacy Benefit Managers

This rule was amended to conform an existing rule to the provisions of House Bill 2263 (2021) that imposed additional regulations and reporting requirements upon Pharmacy Benefit Managers (PBMs). The proposed changes include requiring PBMs to provide certain annual and quarterly reports to the Insurance Commissioner, allowing the Insurance Commissioner to order reimbursement to an insurer, pharmacy or dispenser who has incurred a monetary loss as a result of a violation of state law, requiring drug rebates to be calculated at the point of sale and passed through to consumers, providing “freedom of choice” for consumers in regard to pharmacy services, and removing the ERISA exemption from the rule.

114 CSR 102 – Term and Universal Life Insurance Reserve Financing

This rule was proposed as a new legislative rule to adopt Model Regulation #787 of the National Association of Insurance Commissioners (NAIC). The NAIC previously adopted the Model Regulation as a state insurance department accreditation standard effective January 1, 2023. The rule establishes uniform, national standards governing reserve financing arrangements pertaining to term life and universal life insurance policies with secondary guarantees. The rule also includes provisions to ensure that funds backing these captive reinsurance transactions are held in the forms and amounts that are appropriate.

114 CSR 103 – Bail Bondsmen in Criminal Cases

This rule was proposed to comply with the provisions of House Bill 2758 (2021), which required the Insurance Commissioner to license and regulate bail bondsmen effective July 1, 2022. The rule provides, among other things, the qualifications needed to become licensed as a bail bondsman, prohibited activities and the required financial responsibilities of a professional bondsman.

Senate Bill 568 – Relating to Health Insurance Loss Ratio Information (Effective June 10, 2022)

This bill provides that if a health insurer considers a loss ratio at the time of renewal of a policy, the insurer must, upon request of an insured, provide the loss ratio and the components of the loss ratio calculation to the insured no more than ninety days but no less than sixty days before the renewal date of the policy. The legislation defines “loss ratio” as the total losses paid out in medical claims divided by the total earned premiums. Medical claims do not include dental only or vision only coverage.

House Bill 4112 – Relating to Pharmacy Benefit Managers (Effective June 10, 2022)

This bill provides that a pharmacy benefit manager (PBM) may not prohibit or otherwise limit a beneficiary’s access to prescription drugs from a pharmacy or pharmacist enrolled with a health benefit plan by unreasonably designating the covered prescription drug as a specialty drug. A specialty drug is defined as a

drug used to treat chronic and complex, or rare medical conditions and requiring special handling or administration, provider care coordination or patient education that cannot be provided by a non-specialty pharmacy or pharmacist. If a beneficiary or pharmacy is impacted by an alleged violation concerning the use of specialty drugs, the beneficiary or pharmacy may file a complaint with the Insurance Commissioner, who shall, in consultation with the West Virginia Board of Pharmacy, determine whether the covered prescription drug meets the definition of a specialty drug.

The legislation also states that a PBM may not require a pharmacy or pharmacist, as a condition for participating in a PBM's network, to obtain or maintain accreditation, certification or credentialing that is inconsistent with, more stringent than, or in addition to state requirements for licensure or other relevant federal or state standards. The bill further clarifies the provision that a PBM may not, with respect to a 340B entity that is subject to an agreement under 42 U.S.C. § 256b, assess any fee, charge-back, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the program. Pursuant to the bill, the term "other adjustment" includes placing any additional requirements, restrictions or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program.

The bill also provides that participating pharmacies in a PBM network is entitled to 30 business days' notice for any subsequent contract amendment or provider manual change by a health benefit plan or a PBM. The legislation also removed the definition of covered entity and defined health care payor, and substituted health care payor for covered entity in several places in the article.

House Bill 4295 – Relating to the State Office of the National Flood Insurance Program (Effective June 6, 2022)

This bill transferred the State Office of the National Flood Insurance Program (SONFIP) from the Offices of the Insurance Commissioner (OIC) to the Emergency Management Division (EMD) of the Department of Homeland Security. The legislation authorizes the Director of EMD to employ staff, grants rule-making authority to EMD and provides that state-owned property in any nonparticipating community shall be governed by rules proposed by EMD. SONFIP and floodplain managers must, pursuant to the bill, develop a strategic plan to meet goals and objectives relating to flooding in this state. The bill further requires SONFIP to establish floodplain management guidelines in special hazard areas which are in conformity with federal regulations. The legislation transfers the assets of NFIP to EMD. Funds from the flood insurance tax are to be used to finance the operations and responsibilities of NFIP and for subgrants to local units of government and other eligible entities.

House Bill 4296 – Relating to Workers Compensation (Effective June 8, 2022)

This bill revised outdated and/or unnecessary provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation. The legislation also repealed certain sections and articles within Chapter 23 that are obsolete. The bill did not substantively change regulatory matters or workers' compensation benefits, but simply updated the outdated/obsolete language in the Code.

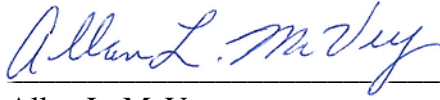
House Bill 4426 – Relating to Provider Sponsored Networks (Effective June 5, 2022)

This bill repealed articles in Chapters 16 and 33 of the West Virginia Code that permitted the establishment of provider sponsored networks. A provider sponsor network is defined as an entity that satisfies the definition

of a Medicaid managed care organization (as set forth in 42 U.S.C. §1396b(m)(1)(A)), is controlled by one or more Federally Qualified Health Centers (as set forth in 42 U.S.C. §1396b(m)(1)(C)(ii)(IV)), and provides or otherwise makes available health care services solely to Medicaid beneficiaries or beneficiaries of Medicaid or Medicare pursuant to a contract with the Secretary of the West Virginia Department of Health and Human Resources.

Please e-mail any questions concerning this Insurance Bulletin to OICBulletins@wv.gov.

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