



WEST VIRGINIA INSURANCE BULLETIN No. 24-02

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 2024 Legislation** ◀

This Insurance Bulletin summarizes legislation enacted during the 2024 Regular Session of the West Virginia Legislature that may be significant to the Offices of the Insurance Commissioner or to stakeholders. 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 50 – Relating to the Adoption of Rules (Effective March 8, 2024)

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

114 CSR 100 - Health Benefit Plan Network Access and Adequacy

This rule was promulgated for amendment due to the 2023 Notice of Benefit and Payment Parameters (Payment Notice) issued by the federal Centers for Medicare and Medicaid Services (CMS). The revisions to 114 CSR 100 mirror the network adequacy standards set forth in the federal regulation and, in turn, permits the Offices of the Insurance Commissioner to conduct periodic evaluations of health insurance companies operating in this state with respect to their network adequacy and prevent federal preemption of the same review.

114 CSR 103 – Bail Bondsmen in Criminal Cases

Amendments to this rule were made to conform it to the provisions of House Bill 2621 (2023). The referenced legislation mandates that the Insurance Commissioner “formulate testing requirements for all initial [bail bondsman] license applicants.” Accordingly, the existing legislative rule was revised to include the testing requirement and provide certain parameters concerning the examination such as what constitutes a satisfactory score and the fee associated with taking the test. The amended rule further provides that the Insurance Commissioner may make arrangements for administering the test, including contracting with an outside testing service. House Bill 2621 (2023) also made a change to the definition of “approved securities,” which is correspondingly updated in the rule. Finally, Senate Bill 50 requires the following new subsection, as proposed by the Legislative Rule-Making and Review Committee: “3.12. Any person who has been convicted of a felony is not qualified to be licensed as a bail bondsman and the Commissioner

shall not license any such person. The Commissioner shall revoke or not renew the license of a bail bondsman who is convicted of a felony, after licensure, and shall not renew the license of a bail bondsman who was previously convicted of a felony, and who was issued a license prior to the enactment of this subsection.”

Senate Bill 170 – Relating to Compensable Diseases of Certain Firefighters (Effective March 8, 2024)

This legislation revises an existing statute to include three types of cancer for which rebuttable presumption of injury for professional firefighters exists in connection with a workers’ compensation claim. Legislation enacted in 2018 created a rebuttable presumption for professional firefighters who develop a certain type of cancer (leukemia, lymphoma, or multiple myeloma). Senate Bill 170 adds bladder cancer, mesothelioma, and testicular cancer to the types of cancer that may be presumed to have been incurred as a result of being a professional firefighter. The presumption for the newly added types of cancer expires July 1, 2027, unless extended by the Legislature. For the rebuttable presumption to apply, it must be shown that the person has been actively employed by a fire department as a professional firefighter for a minimum of five years in the state prior to the development of the cancer, has not used tobacco products for at least ten years, and is not over the age of sixty-five years. The bill also removes or updates obsolete references in the state code.

Senate Bill 325 – Relating to Distribution of 340B Drugs (Effective June 6, 2024)

This bill prohibits a pharmaceutical manufacturer, or its agent or affiliate, from denying, restricting, or prohibiting the acquisition of a designated 340B drug by, or delivery of a 340B drug to, a location authorized by a 340B entity to receive such 340B drug unless the receipt of the 340B drug is prohibited by the U.S. Department of Health and Human Services. A “340B drug” is a pharmaceutical medicine that (1) is a covered outpatient drug within the meaning of 42 U.S.C. §256b; (2) has been subject to any offer for reduced prices by a manufacturer under 42 U.S.C. §256b(a)(1); and (3) is purchased by a covered entity within the meaning of 42 U.S.C. §256b. The bill further prohibits a drug manufacturer from requiring a 340B entity to submit any claims or utilization data as a condition for allowing the acquisition of a 340B drug by, or delivery of a 340B drug to, a 340B entity unless the claims or utilization data sharing is required by the U.S. Department of Health and Human Services. A “340B entity” is an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. §256b, including its pharmacy or any pharmacy contracted with the participating entity to dispense drugs purchased through such program.

The legislation also states that a violation of the either prohibition constitutes a violation of W. Va. Code §46A-6-104 and subjects the violator to a civil penalty of \$50,000 per each violation, as well as any action provided for in W. Va. Code §46A-7-101. Additionally, a violation of either prohibition constitutes a violation of W. Va. Code §33-11-1 and subjects the violator to any action provided for in W. Va. Code §33-11-6. The bill further provides that each package of 340B drugs determined to be subject to a prohibited act constitutes a separate violation and that there is no right to bring a private cause of action based on any violation.

Senate Bill 533 – Relating to Emergency Medical Services (Effective June 6, 2024)

This bill amends Article 4C of Chapter 16 of the West Virginia Code to provide that an emergency medical services agency (*i.e.*, a ground ambulance) may triage and transport a patient to an alternative treatment destination or treat in place if the agency is coordinating the care of the patient through medical command or telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint. The bill requires the emergency medical services agency to execute a memorandum of understanding with an alternative treatment destination as permitted by the protocols to transport patients. An “alternative destination” is defined as “a lower-acuity facility that provides medical services,” which includes a federally qualified health center, an urgent care center, a rural health clinic, a physician office or medical clinic as selected by the patient, and a behavioral or mental health clinic facility.

The legislation further amends various articles within Chapter 33 (Insurance Code) to require commercial health insurance plans issued on or after January 1, 2025, to provide coverage pertaining to the amendments made to Article 4C of Chapter 16, as set forth above. The bill also requires insurance coverage, subject to deductibles or copayment requirements, for prehospital screening and stabilization of emergency condition by an ambulance service if the insured is transported to an emergency room of a facility provider or if the patient declines to be transported against medical advice.

Senate Bill 875 – Relating to the Board of Risk and Insurance Management (Effective March 9, 2024)

This bill institutes a moratorium on the authority of the Board of Risk and Insurance Management (BRIM) to provide new or additional property or liability insurance coverage for certain entities. More specifically, the moratorium prohibits new or additional insurance coverage by BRIM regarding those entities to which coverage is permissive, and not mandatory, under Article 12 of Chapter 29 of the West Virginia Code. Those entities include, but are not limited to, a political subdivision, charitable or public service organization, or an emergency medical services agency, each as defined in W. Va. Code §29-12-5(b)(1). The moratorium shall, according to the bill, have no effect upon any contracts or agreements that are in effect upon the enactment of the legislation. The moratorium does not apply to county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, school board members, public charter schools, and any other entity or person required to be insured by the board pursuant to W. Va. Code §29-12-5a. The moratorium is to remain in effect until July 1, 2025.

The legislation also provides that, notwithstanding any provision of law to the contrary or the decision of the West Virginia Supreme Court of Appeals in State ex rel. Human Res. Dev. & Empl. v. Bd. of Risk & Ins. Mgmt. of W. Va., 214 W. Va. 460 (2003), BRIM may, upon 60 days' advance notice to the insured, non-renew any policy of liability insurance or other insurance by it to a non-governmental entity for which coverage is permissive, and not mandatory.

House Bill 4786 – Relating to Delivery Network Companies (Effective July 1, 2025)

This bill creates the Delivery Network Company Insurance Act as a new article within Chapter 33 of the West Virginia Code. A delivery network company (DNC) is statutorily defined as a company that operates in West Virginia and uses a digital network to connect a customer to a driver to provide delivery services of goods. The bill requires a DNC to ensure that, during the delivery available period or the delivery service period, the vehicle making the delivery or on call to make deliveries is insured under a motor vehicle liability insurance policy that provides insurance coverage of not less than \$50,000 for damages arising out of bodily injury sustained by any one person in an accident, of not less than \$100,000 for damages arising out of bodily injury sustained by all persons injured in an accident, and of not less than \$25,000 for all damages arising out of damage to or destruction of property in an accident. The bill further mandates that the state's uninsured motorists' coverage requirements are applicable to the delivery vehicle.

The legislation requires that, with respect to an investigation about an insurance liability claim, the DNC or its insurer must cooperate with all insurers that are involved in the investigation to facilitate the exchange of information and must immediately provide upon request by directly involved parties or any insurer the precise times that a delivery network driver began and ended the delivery available period, the delivery service period, or both periods on the DNC's digital network in the 12-hour period immediately preceding the accident and in the 12-hour period immediately following the accident. An insurer of a DNC must assume primary liability for a claim when a dispute exists as to when the delivery available period, the delivery service period, or both periods began or ended and the DNC does not have available, did not retain, or fails to provide the information regarding the 12-hour periods, as stated above.

Finally, the bill provides that an authorized insurer that writes motor vehicle liability insurance in this state may exclude coverage for any injury or loss that occurs during the delivery available period and the delivery service period.

House Bill 4809 – Relating to Health Care Sharing Ministries (Effective May 26, 2024)

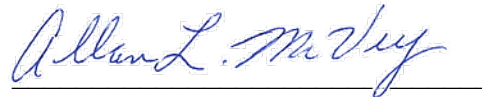
This bill exempts health care sharing ministries from the state’s insurance laws. As set forth in the legislation, a health care sharing ministry is one where members share a common set of ethical or religious beliefs and provide for the financial or medical needs of a member through contributions from other members. In addition to stating that a health care sharing ministry shall not be considered as being engaged in the business of insurance for the purpose of regulation by the Insurance Commissioner, the bill requires that such an entity hire an independent certified public accounting firm to conduct annual audits of the organization to be made available to the public. The bill further mandates that a health care sharing ministry provide a written disclaimer to prospective members that the organization facilitating the sharing of medical expenses is not an insurance company, that payment of any medical expenses by the organization is totally voluntary because no other participant can be compelled by law to contribute towards the medical bills, and that a member who receives medical care is always personally responsible for the payment of his or her medical expenses. The bill also provides that participation as a member in a health care sharing ministry shall satisfy a requirement by a West Virginia public institution of higher education that the student purchase health care insurance. Finally, the bill states that a health care sharing ministry may not be considered a “third party payer” where that term appears in the West Virginia Code.

House Bill 5057 – Relating to Insurance Business Referrals (Effective May 23, 2024)

This legislation defines “nominal fee” with respect to an unlicensed person providing a referral to an insurance company or insurance producer. The bill provides a new subsection within W. Va. Code §33-11A-7, which states that a nominal fee, as referenced in the section, means a one-time fee of \$100 or less.

Please email any questions concerning this Insurance Bulletin to OICBulletins@wv.gov.

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