WEST VIRGINIA CODE CHAPTER 5 ARTICLE 16C

WV Legislature

§5-16C-1. Legislative findings; purpose; short title.

The Legislature finds that the rapidly rising cost of prescription drugs places an undue financial burden on the State of West Virginia, the payors and the consumers of prescription drugs. The purpose of this legislation is to authorize the director of the Public Employees Insurance Agency to act on behalf of specified agencies, programs and political subdivisions to manage the steady increase in prescription drug costs, thus benefitting the citizens and fiscal strength of this state. This article shall be known and may be cited as the "Prescription Drug Cost Management Act."

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§5-16C-2. Definitions.

As used in this article:

(1) "Audit" means a systematic examination and collection of sufficient, competent evidential matter needed for an Auditor to attest to the fairness of management's assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations, conducted by an independent certified public accountant in accordance with the applicable statement on standards: Provided, That the report shall include an incurred-but-not-reported calculation, where available.

(2) "Director" means the director of the Public Employees Insurance Agency created under article sixteen of this chapter.

(3) "Finance board" means the Public Employees Insurance Agency finance board created in section four, article sixteen of this chapter.

(4) "Pharmacy benefit manager" means an entity that procures prescription drugs at a negotiated rate under a contract and which may serve as a third party prescription drug benefit administrator.

(5) "Prescription drug purchasing agreement" means a written agreement to pool all parties' prescription drug buying power in order to negotiate the best possible prices and which delegates authority to negotiate on behalf of the parties to the director.

(6) "Prescription drugs" mean substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or National Formulary", or any supplement thereto, dispensed pursuant to a prescription issued by an authorized health care practitioner, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in a human, as well as prescription drug delivery systems, testing kits and related supplies.

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§5-16C-3. Finance board responsibilities for review and approval of certain contracts.

The finance board is responsible for reviewing any proposed contract authorized by this article before it is executed by the director of the Public Employees Insurance Agency. If the board determines that the proposed contract meets the requirements of this article and would assist in effectively managing the costs for the programs involved and would not result in jeopardizing state funds or funds due the state, it shall approve the contract and authorize the director of the Public Employees Insurance Agency to execute the contract.

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§5-16C-4. Authorization to execute prescription drug purchasing agreements.

(a) The director may execute, subject to the provisions of subsections (b), (c) and (d) of this section and as permitted by applicable federal law, prescription drug purchasing agreements with:

(1) All departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions of this state, including, but not limited to, the Children's Health Insurance Program, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, the workers' compensation fund, state colleges and universities, public hospitals, state or local institutions such as nursing homes, veterans' homes, the division of rehabilitation, public health departments and the bureau of medical services: Provided, That any contract or agreement executed with or on behalf of the bureau of medical services shall contain all necessary provisions to comply with the provisions of Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., dealing with pharmacy services offered to recipients under the medical assistance plan of West Virginia;

(2) Governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions;

(3) Regional or multistate purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing power of the individual members in order to increase bargaining power; and

(4) Arrangements with entities in the private sector, including self-funded benefit plans, toward combined purchasing of health care services, health care management services, pharmacy benefits management services or pharmaceutical products: Provided, That no private entity may be compelled to participate in the prescription drug purchasing pool: Provided, however, That the director may not execute a contract with a private entity without further enactment of the Legislature specifically authorizing the agreement.

(b) The finance board shall approve each agreement before it is executed by the director and the director may not execute any agreement not approved by the finance board.

(c) The finance board may not approve and the director may not execute any agreement that does not effectively and efficiently manage rising drug costs on behalf of the parties to the agreement.

(d) The finance board may not approve and the director may not execute any agreement that grants the state's credit for the purchase of prescription drugs by any entity other than this state.

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§5-16C-5. Authorization to amend existing contracts.

The director may renegotiate and amend existing prescription drug contracts to which the Public Employees Insurance Agency is a party for the purpose of managing rising drug costs.

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§5-16C-6. Authorization to execute pharmacy benefit management contract.

The director may negotiate and execute pharmacy benefit management contracts for the purpose of managing rising drug costs for this state and all parties which have executed prescription drug purchasing agreements with the director.

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§5-16C-7. Exemption from Purchasing Division requirements.

The provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the Attorney General.

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§5-16C-8. Audit required; reports.

(a) The director shall cause to be conducted an audit of any funds expended pursuant to any prescription drug purchasing agreement or pharmacy benefit management contract executed under the provisions of this article for each fiscal year that the prescription drug purchasing agreement or pharmacy benefit management contract is in effect. The director shall submit the audit to the Joint Committee on Government and Finance upon completion, but in no event later than December 31, after the end of the fiscal year subject to audit.

(b) The director shall provide written notice to the Joint Committee on Government and Finance before executing a prescription drug purchasing agreement or a pharmacy benefit management contract or amending an existing prescription drug contract.

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§5-16C-9. Innovative strategies.

(a) The director may explore innovative strategies by which West Virginia may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state's citizens, including:

(1) Enacting fair prescription drug pricing policies;

(2) Providing for discount prices or rebate programs for seniors and persons without prescription drug insurance;

(3) Coordinating programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices;

(4) Requiring prescription drug manufacturers to disclose to the state expenditures for advertising, marketing and promotion, as well as for provider incentives and research and development efforts;

(5) Establishing counter-detailing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate; prescribing older, less costly drugs instead of newer, more expensive drugs, when appropriate; and prescribing lower dosages of prescription drugs, when available and appropriate;

(6) Establishing disease state management programs aimed at enhancing the effectiveness of treating certain diseases identified as prevalent among this state's population with prescription drugs;

(7) Studying the feasibility and appropriateness of executing prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts;

(8) Studying the feasibility and appropriateness of authorizing the establishment of voluntary private buying clubs, cooperatives or purchasing alliances comprised of small businesses and or individuals for the purpose of purchasing prescription drugs at optimal prices; and

(9) Other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all West Virginia citizens.

(b) The director shall report to the Joint Committee on Government and Finance on a multiannual basis regarding activities and recommendations relating to the mandates of this section.

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§5-16C-10.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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