STATE OF WEST VIRGINIA
Offices *of the* Insurance Commissioner

**Erin K. Hunter**
**Insurance Commissioner**

July 31, 2026

The Honorable Kris Warner
West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

**Re: Comments Received Concerning 114 CSR 99**

Dear Secretary Warner,

During the public comment period for the proposed amendments to the above-referenced Legislative Rule relating to pharmacy auditing entities and pharmacy benefit managers ("PBMs"), the Offices of the Insurance Commissioner ("OIC") of the Department of Revenue received comments from three stakeholders. The three entities providing comments were EPIC Pharmacies, Inc. ("EPIC"), National Association of Chain Drug Stores ("NACDS") and the West Virginia Independent Pharmacy Association ("WVIPA"). The comments received, which are attached, were all generally supportive of the rule.

More specifically, each entity that provided comments were supportive of the proposed rule revision concerning group purchasing organizations ("GPOs"). EPIC asserted:

> First, we would highlight the importance of strongly enforcing the provisions of WV CSR § 114-99-5.17, which provides that a PBM may not utilize, participate in or own any part of a [GPO] for purposes of avoiding West Virginia's regulations.

WVIPA commented:

> Fortunately, this new law and rule will enable the OIC to license and oversee the [GPOs] often used by PBMs to circumvent West Virginia's laws at the expense of West Virginia pharmacies, patients, and health plan sponsors.

NACDS posited that the GPO provision "will help further promote fairness, transparency, and accountability in the administration of prescription drug benefits." Accordingly, the stakeholders agreed with, and commended, the OIC's incorporation of the GPO provision into the rule.

With respect to suggested modifications to the proposed rule, NACDS requested the OIC consider revising subsection 5.13, stating:

> [A]s currently written, [sub]section 5.13 creates uncertainty and potential discrepancy regarding whether PBMs may separately bill a health plan for the dispensing fee in order to comply with the reimbursement requirements applicable

to pharmacies. Furthermore, the current proposed rule does not expressly prohibit PBMs from recovering revenue prohibited under Article 51 through alternative mechanisms such as administrative, transaction, service, or other types of fees.

The OIC had proposed the following with respect to subsection 5.13 of the rule:

> 5.13. ~~A PBM shall offer a health benefit plan the option of pass-through pricing and file with the Commissioner an attestation that such offer has been made to each health benefit plan that the PBM provides pharmacy benefit management services for as described in subsection 4.2.18 of this rule.~~ A PBM may not charge a health care payor or health benefit plan an amount greater than the national average drug acquisition cost, if available, for prescription drugs. If the national average drug acquisition cost is not available, a pharmacy benefits manager may not charge a health care payor or health benefit plan an amount greater than the amount paid to the pharmacy. ~~However, pass-through~~ Pass-through pricing is required in regard to a PBM that contracts with a health benefit plan administered by or on behalf of the state or a political subdivision of the state.

In crafting this proposed revision, the OIC mirrored the statutory language of W. Va. Code §33-51-9(j) as enacted by House Bill 5430 (2026). The OIC notes that the respective prohibitions concerning "alternative mechanisms" are already addressed throughout the rule, which includes but is not limited to the following:

> 5.5. To prevent overcharges to consumers or insureds purchasing prescription drugs, so called "claw-back" provisions in contracts between pharmacies and PBMs are prohibited and a PBM shall not collect from a pharmacy, a pharmacist or a pharmacy technician a cost share or co-pay charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the PBM.
>
> 5.12. A PBM shall not engage in any practice that:
>
> > 5.12.1. Bases reimbursement for a drug on patient outcomes, scores, or metrics. This prohibition does not apply to reimbursement for pharmacy care, including dispensing fees, from being based on patient outcomes, scores or metrics so long as the terms are disclosed and agreed to by the pharmacy in advance;
> >
> > 5.12.2. Imposes a point-of-sale fee or retroactive fee; or
> >
> > 5.12.3. Derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services. This prohibition shall not prohibit a PBM from processing coinsurance, deductibles or co-payments that have been approved by a covered individual's health benefit plan.

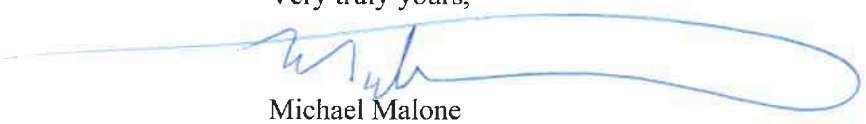
5.14.6. A PBM shall be responsible for calculating a covered individual's defined cost sharing for each prescription drug. No PBM shall charge or deduct from a pharmacist or pharmacy any fee, recoupment, charge back, or other monetary penalty, amount or adjustment due to the PBM's miscalculation of a rebate or defined cost sharing amount.

The West Virginia Legislature, through the approval of the above rule provisions, has mandated that PBMs not engage in any improper enrichment concerning the dispensing of prescription drugs and the OIC has undertaken regulatory actions when such violations were found.[1] Thus, the OIC declines to make any revisions to the rule as a result of NACDS's comment.

NACDS also requested the OIC review and modify subdivisions 4.2.10 and 9.3.3 of the subject rule. Subdivision 4.2.10 requires that a PBM must provide the OIC with a copy of its standard contract template and provider manual during the PBM licensure application process, while subdivision 9.3.3 states that a pharmacy under contract with a PBM is entitled to a 30-day notice concerning any contract amendment or subsequent provider manual change by the PBM or health benefit plan. NACDS recommended modification of the subdivisions to extend the notification period beyond 30 days and clarify that provider manual amendments cannot be unilaterally imposed by PBMs. NACDS also advocated for the incorporation of a new rule provision that would "prohibit a PBM from terminating, refusing to renew, or otherwise taking adverse action against a pharmacy that declines to accept a proposed contract or provider manual modification." In response to these suggestions, the OIC observes that the rule revisions were proposed to assist the OIC in the implementation of House Bill 5430 (2026). The OIC believes that modifying a rule provision after the comment period has closed with respect to a matter that was not addressed by the proposed rule or House Bill 5430 (2026) would be unfair to stakeholders and outside the spirit of the rulemaking process in this state. Moreover, the 30-day timeframe is established by statute in W. Va. Code §33-51-11(b) and cannot be altered by rule. Accordingly, the OIC has not modified the rule as suggested by NACDS.

The OIC sincerely thanks all the entities that provided comments and appreciates being able to review different perspectives on these important matters.

Very truly yours,



Michael Malone
Associate General Counsel
West Virginia Offices of the Insurance Commissioner

Attachments

[1] See https://www.wvinsurance.gov/legal-orders for a comprehensive listing of all OIC actions taken to date.

**Mullins, Victor A <victor.a.mullins@wv.gov>**

# Public Comment in Support of 114 CSR 99

**Richie Heath** <rheath@bowlesrice.com> Fri, Jul 24, 2026 at 11:07 AM
To: "Mullins, Victor A" <victor.a.mullins@wv.gov>

Victor,

On behalf of EPIC Pharmacies, Inc., we respectfully submit this public comment in strong support of the West Virginia Offices of the Insurance Commissioner's (WV OIC) proposed updates to its legislative rule, 114 CSR 99, governing the regulation of pharmacy benefit managers (PBMs).

EPIC Pharmacies is a nationwide network of independent community pharmacies dedicated to supporting locally owned pharmacies and improving patient access to quality pharmaceutical care. Many EPIC member pharmacies serve patients throughout West Virginia and are deeply embedded in their communities.

During the 2026 Regular Legislative Session, EPIC Pharmacies was a strong supporter and advocate for H.B. 5430, which made important updates to West Virginia's Pharmacy Audit Integrity Act (W.Va. Code § 33-51-1, et seq.). With this important piece of legislation, West Virginia continues to lead the nation in its efforts to regulate the questionable practices of pharmacy benefit managers, which are ever evolving.

As you know, strong enforcement of such laws is critical to preserve and protect West Virginia's independent and community pharmacies from the unscrupulous practices of pharmacy benefit managers. We commend WV OIC for your leadership on this front over the years as your office has played an integral part in the success of West Virginia's reforms and have established a regulatory framework that is truly a model for all other states.

WV OIC's updates to 114 CSR 99 continue along this path and EPIC Pharmacies believes that the proposed changes to the legislative rule sufficiently implement the Legislature's intent with respect to H.B. 5430. While we have do not have any suggested modifications to WV OIC's proposed updates to 114 CSR 99, EPIC Pharmacies would just like to highlight two points we feel are important regarding the enforcement of H.B. 5430.

First, we would highlight the importance of strongly enforcing the provisions of WV CSR § 114-99-5.17, which provides that a PBM may not utilize, participate in or own any part of a group purchasing organization for purposes of avoiding West Virginia's regulations. Over the years, PBMs have come up with "creative" ways to evade important federal and state regulations, and the use of group purchasing organizations ("GPOs") is the latest effort on this front. WV OIC has been a strong enforcer of West Virginia's laws and regulations, and we have full faith that you will continue to be a leader on this front. We would simply encourage WV OIC to ensure that PBMs operating in West Virginia are not evading the important reforms implemented by the WV OIC and the State through the use of GPOs.

Second, we would simply point to the importance of another provision of H.B. 5430 that is not directly implicated by the WV OIC's proposed legislative rule, but falls within the purview of your agency nonetheless. As you are well-aware, newly enacted provisions of W.Va. Code § 33-51-14 provide for the conduct of a pharmacy dispensing fee study by WV OIC. This is another critical update to the Pharmacy Audit Integrity Act that EPIC Pharmacies advocated for earlier this year.

The continued viability of independent community pharmacies is critical to maintaining healthcare access across rural West Virginia. Community pharmacies serve as essential healthcare infrastructure in towns where hospitals, clinics and other providers may be limited or entirely absent. Accurate and fair dispensing fees are essential to the survival of these community pharmacies.

These provisions of H.B. 5430 were modeled after similar legislation passed by the state of Kentucky. As you are likely well aware, Kentucky's Department of Insurance & Board of Pharmacy recently completed the attached cost of dispensing analysis, which showed that the average cost to fill a prescription in Kentucky's retail pharmacies in 2025 was $16.31. A similar analysis in West Virginia will help determine whether our state's current dispensing fees are in line with the actual cost for pharmacies to serve their patients and communities.

To that end, EPIC Pharmacies strongly supports WV OIC's pharmacy dispensing fee study and we are happy to serve as a resource as needed to successfully complete the study prior H.B. 5430's statutory deadline.
EPIC Pharmacies thanks WV OIC for your time and consideration, as well as your continued leadership and commitment to protecting the health and well-being of the citizens of West Virginia. We fully support the proposed changes to 114 CSR 99 and look forward to advocating for their final authorization.

Should you or Commissioner Hunter have any questions or need anything else on this front, please do not hesitate to contact me. Thank you for your time and consideration!

Respectfully submitted,

Richie Heath

**Richie Heath**
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Bowles Rice



**Kentucky Dept of Insurance COD Study Final Brief April_15_2026.docx**
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Kentucky Dept of Insurance & Board of Pharmacy

Cost of Dispensing Analysis

April 15, 2026

Study conducted by Ideal Health Strategies

**Objective:** To assess the cost, in dollars, for a Kentucky pharmacy to dispense a non-specialty prescription in the retail pharmacy setting.

**Study Design:** This study was based on a previous study commissioned by the National Association of Chain Drug Stores (NACDS), the National Association of Specialty Pharmacy (NASP) and the National Community Pharmacists Association that evaluated nation-wide dispensing data from 2018 to determine the cost to dispense a prescription[1].

Pharmacies in the State of Kentucky were required to submit summary data for calendar year 2025 to assess the overall cost to the pharmacy. Data requested fell under three categories (complete data collection form attached):

- Direct costs
    - Labor costs
    - Supplies and material costs
- Indirect costs
    - Facility costs
    - Operational costs
    - Other costs like marketing and other fees
    - Depreciation and amortization
- Prescription volume

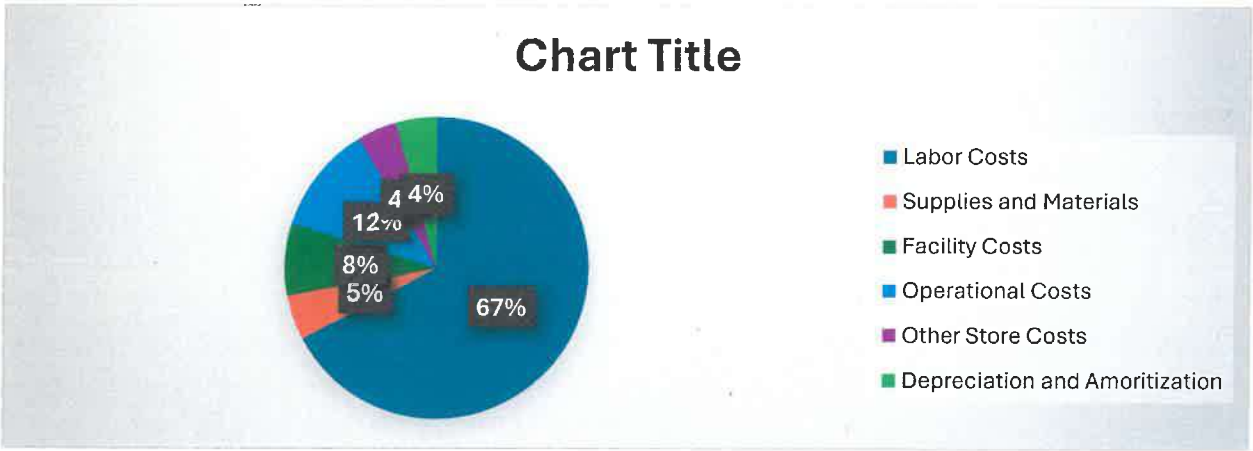
Total costs reported were divided by the total number of prescriptions to arrive at a per prescription dispensing cost.

As this study was focused on costs to dispense traditional medications in the retail setting, pharmacies that were identified as "specialty" or "mail-order", as well as "hospital", "infusion" or "long term care" were excluded. Additional, any retail pharmacy that reported more than 10% of the total claims as "specialty" or "mail order" were also excluded.

**Results:** A total of 329 data collection forms were received from pharmacies by the March 1, 2026 deadline. One hundred twenty-seven forms were excluded from the study for a number of reasons, including the above specialty and mail order exclusions, data not submitted in required format, incomplete data (specifically, lack of pharmacy volume) or

blank forms. Thirty-nine claims were submitted with no pharmacy identification, but with completed cost data. These 39 were included in the study.

The pharmacies reported a total cost for 2025 of $270,795,729.03. The distribution of the expenses over the cost categories is below.




The pharmacies reported filling a total of 16,598,709 retail prescriptions in 2025, for average dispensing fee of $16.31 per filled prescription. This would be in line with the previously referenced study that showed the average cost of $12.59 to dispense a prescription in the State of Kentucky.[1]

**Summary:** This study evaluated the cost to dispense a traditional prescription in Kentucky retail pharmacies. Data from over 200 respondents revealed 16,598,709 prescriptions filled in 2025. Non-medication costs reported by the pharmacies totaled $270,795,729.03. Based on this data, the average cost to fill a prescription in Kentucky retail pharmacies in 2025 was $16.31.

**Reference:**

Shoemaker-Hunt S, McClellan S, Bacon O, Gillis J, Brinkley J, Schalk M, Olsho L, Taninecz G, Brandt J. Cost of Dispensing Study, January 2020. Abt Associates; 2020.

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

July 24, 2026

Commissioner Allan L. McVey
West Virginia Offices of the Insurance Commissioner
900 Pennsylvania Ave
Charleston, WV 25302

**Re: Comments on Proposed Rule 114CSR99 – Pharmacy Benefit Managers and Pharmacy Auditing Entities**

Dear Commissioner McVey:

On behalf of our members operating in the state of West Virginia, the National Association of Chain Drug Stores (NACDS) appreciates the opportunity to provide comments on the proposed amendments to Title 114, Series 99, governing Pharmacy Benefit Managers (PBMs) and Pharmacy Auditing Entities. NACDS recognizes and greatly appreciates the state's efforts to help pharmacies remain accessible to the patients and communities they serve through existing provisions such as the clear and established pharmacy reimbursement methodology. The Commissioner's efforts to implement the provisions recently enacted through Article 51 focused on PBM compensation, spread pricing limitations, affiliated group purchasing organizations (GPOs), licensing requirements, and reporting obligations will help further promote fairness, transparency, and accountability in the administration of prescription drug benefits. To further support effective implementation of Article 51, NACDS offers the following recommendations.

- **Recommendation: Enact Parameters to Prohibit Alternate PBM Compensation Recovery**
- **Recommendation: Eliminate Unilateral Modifications to the Provider Manual and Extend the Pharmacy Notification Period**

**Recommendation: §114-99-5 - Enact Parameters to Prohibit Alternate PBM Compensation Recovery**
NACDS appreciates the Commissioner's efforts to implement provisions that would help ensure fair and transparent prescription drug reimbursement. However, as currently written, section 5.13 creates uncertainty and potential discrepancy regarding whether PBMs may separately bill a health plan for the dispensing fee in order to comply with the reimbursement requirements applicable to pharmacies. Furthermore, the current proposed rule does not expressly prohibit PBMs from recovering revenue prohibited under Article 51 through alternative mechanisms such as administrative, transaction, service, or other types of fees. Without such clarification, prohibited revenue may simply be shifted to another component of the financial infrastructure rather than being eliminated. NACDS recommends adding language throughout §114-99-5 to prohibit reconciliation, or other financial adjustments such as a PBMs directly or indirectly recovering compensation through alternative fees or charges. Ensuring that prohibited compensation cannot be reconciled would help support the establishment of transparent, predictable, and pass-through reimbursement practices.

Additionally, to avoid future shifts of this nature, West Virginia may also wish to consider subsequent regulatory or legislative approaches that transition PBM compensation away from transaction-based revenue streams and toward transparent service-based compensation models. Such an approach would further align PBM incentives with the interests of patients and health plan sponsors while reducing opportunities to shift compensation through other arrangements that ultimately undermine the impact of the originally drafted provision.

**Recommendation 3: Sections 4.2.10 and 9.3.3- Eliminate Unilateral Modifications to the Provider Manual and Extend the Pharmacy Notification Period**

NACDS appreciates the proposed requirements that PBMs must submit provider manuals and reimbursement methodologies as part of the licensing process. NACDS also appreciates requirements that will provide pharmacies with advance notice for any contract amendment or provider manual changes. These provisions are important steps to improving transparency as changes to such materials can affect reimbursement methodologies, claims processing requirements, audit standards, and other operational aspects. However, to provide greater contractual certainty and transparency, NACDS recommends extending the pharmacy notification period of contract or provider manual changes beyond 30 days and clarifying that provider manual amendments will not be unilaterally imposed by the PBMs. Instead, any provider manual revisions will require mutual agreement between both the PBM and the participating pharmacy.

In addition to the above, NACDS recommends incorporating protections to prohibit a PBM from terminating, refusing to renew, or otherwise taking adverse action against a pharmacy that declines to accept a proposed contract or provider manual modification. These additional safeguards are essential as provider manuals could potentially be used to effectively circumvent the protections established by Article 51 by imposing new reimbursement conditions, administrative requirements, or post-adjudication reconciliation, among other clawback mechanisms. Requiring advance notice and mutual agreement on provider manual changes, with anti-retaliation protections, will further support pharmacies in continuing to provide essential medication access to West Virginians.

NACDS appreciates the Commissioner's thoughtful implementation of Article 51 and recognizes West Virginia's continued leadership in advancing meaningful PBM reform. We respectfully encourage the Commissioner to consider the recommendations outlined above as they are intended to further the Legislature's objectives by providing additional regulatory clarity, reducing opportunities for circumvention, and strengthening the effectiveness of the statutory reforms to preserve patient access to community pharmacy services throughout the State.

Sincerely,

Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer
National Association of Chain Drug Stores (NACDS)

CC: Victor A Mullins

West Virginia Independent Pharmacy Association

To: **West Virginia Offices of the Insurance Commissioner**
Erin K. Hunter, Insurance Commissioner via Victor Mullins (victor.a.mullins@wv.gov)

From: West Virginia Independent Pharmacy Association

Date: July 17, 2026

Re: Letter of Support and Public Comments for 114-99 - Pharmacy Auditing Entities and Pharmacy Benefit Managers

Dear Commissioner Hunter and Mr. Mullins:

On behalf of the 150 independent community pharmacies proudly serving patients throughout the Mountain State, the West Virginia Independent Pharmacy Association ("WVIPA") respectfully submits this letter of support for 114 CSR 99 as written and proposed.

House Bill 5430 was the #1 priority bill for independent community pharmacies in West Virginia in 2026 – these are locally-owned and operated pharmacies throughout our state. The WVIPA supports and encourages robust oversight and regulation of pharmacy benefit managers ("PBMs") in accordance with the *Pharmacy Audit Integrity Act*. This is one area where West Virginia and the WVOIC have become nationally recognized and emulated.

Fortunately, this new law and rule will enable the WVOIC to license and oversee the group purchasing organizations ("GPOs") often used by PBMs to circumvent West Virginia's laws at the expense of West Virginia pharmacies, patients, and health plan sponsors. Further, this new law and rule should afford the WVOIC opportunity to oversee the Public Employees Insurance Agency ("PEIA") PBM contract, which is sorely needed. Finally, a long overdue pharmacy professional dispensing fee study is scheduled to be completed within the calendar year. These are all positive developments. Recent enforcement actions and consent orders are evidence that the WVOIC takes PBM regulation and lawful conduct seriously. Thank you for your time, effort, and consideration.

Respectfully Submitted:

Michael Rudge, Board President
West Virginia Independent Pharmacy Association

Matt Walker, Executive Director
West Virginia Independent Pharmacy Association

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