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**SENATE BILL 5888**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Rivers, Cleveland, Hasegawa, and Nobles

AN ACT Relating to cost-sharing fairness; adding a new section to chapter 48.43 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Citizens of Washington frequently rely on state-regulated commercial carriers to secure access to the prescription medicines needed to protect their health;

(b) Commercial insurance benefit designs increasingly require patients to bear significant out-of-pocket costs for their prescription medicines;

(c) High out-of-pocket costs on prescription medicines impact the ability of patients to start new and necessary medicines and to stay adherent to their current medicines;

(d) High or unpredictable deductible and coinsurance cost-sharing requirements are a main driver of elevated patient out-of-pocket costs;

(e) The burdens of high or unpredictable deductibles and coinsurance are borne disproportionately by patients with chronic or debilitating conditions;

(f) Pharmaceutical manufacturers may offer sizeable rebates, discounts, and price concessions in connection with the dispensing or administration of a therapy, but patients do not necessarily financially benefit from these amounts at the point of sale, and, instead, carriers or other intermediaries may retain the value of rebates, discounts, and price concessions;

(g) Restrictions are needed on the ability of carriers and their intermediaries to retain rebates, discounts, and price concessions that instead should be directly passed on to patients as cost savings; and

(h) Patients need equitable and accessible health coverage that does not impose unfair cost-sharing burdens upon them.

(2) Therefore, the legislature of the state of Washington intends to add a new section to the Washington insurance code to ensure that, to the full extent permissible and consistent with applicable law, patients directly receive at the pharmacy counter their full and fair share of the benefit of rebates and discounts for prescription medicines that accrue directly or indirectly to state-regulated carriers. It is the intent of the legislature that these amendments be interpreted to pass on meaningful, direct, and durable cost savings to patients in Washington at the point of sale such that patients directly benefit from rebates and other price concessions that pharmaceutical manufacturers offer in connection with the dispensing or administration of a particular therapy.

NEW SECTION. **Sec.**  A new section is added to chapter 48.43 RCW to read as follows:

(1) An enrollee's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 80 percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug.

(2) The commissioner shall have enforcement authority over this section. Among other enforcement mechanisms, the commissioner may, after a hearing, suspend or revoke a carrier's license for failure to comply with the requirements of this section.

(3) Nothing in this section shall preclude a carrier from decreasing an enrollee's defined cost sharing by an amount greater than that required under subsection (2) of this section.

(4) In implementing the requirements of this section, the state shall only regulate a carrier to the extent permissible under applicable law.

(5) In complying with the provisions of this section, a carrier or its agents may not publish or otherwise reveal information regarding the amount of rebates or price protection rebates it receives on a product, manufacturer, or pharmacy-specific basis. Such information is a trade secret, is not a public record as defined in the public records act, RCW 42.56.010, and shall not be disclosed directly or indirectly. A carrier shall impose the confidentiality protections of this subsection on any third parties or vendors with which it contracts that may receive or have access to rebate or price protection rebate information.

(6) For the purposes of this section:

(a) "Defined cost sharing" means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee's health plan.

(b) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(c) "Rebate" means:

(i) Negotiated price concessions including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue directly or indirectly to the carrier during the coverage year from a manufacturer, dispensing pharmacy, or other party in connection with the dispensing or administration of a prescription drug; and

(ii) Reasonable estimates of any negotiated price concessions, fees, and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier and serve to reduce the carrier's liabilities for a prescription drug.

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