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**SUBSTITUTE HOUSE BILL 2473**

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**State of Washington                      59th Legislature                      2006 Regular Session**

**By** House Committee on Health Care (originally sponsored by Representatives Schual-Berke, Appleton, Moeller, Morrell and Cody)

READ FIRST TIME 02/03/06.

1            AN ACT Relating to protection against unfair prescription drug  
2 practices by pharmacy benefit managers; and adding a new chapter to  
3 Title 19 RCW.

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

5            NEW SECTION.    **Sec. 1.** DEFINITIONS.    The definitions in this  
6 section apply throughout this chapter, unless the context clearly  
7 requires otherwise.

8            (1) "Covered entity" means a health plan as defined in RCW  
9 48.43.005(19), a health carrier as defined in RCW 48.43.005(18), a  
10 state purchased health care program as defined in RCW 41.05.011(2), the  
11 Washington state health insurance pool as established in RCW 48.41.040,  
12 or an employer, labor union, or other group of persons organized in the  
13 state, that provides health coverage to covered individuals who are  
14 employed or reside in the state.

15            (2) "Covered individual" means a member, participant, enrollee,  
16 contract holder, or policyholder or beneficiary of a covered entity,  
17 who is provided health coverage by the covered entity. "Covered  
18 individual" includes a dependent or other person provided health  
19 coverage through a contract or health plan for a covered individual.

1 (3) "Generic drug" means a chemically equivalent copy of a brand-  
2 name drug with an expired patent.

3 (4) "Labeler" means an entity or person that receives prescription  
4 drugs from a manufacturer or wholesaler and repackages those drugs for  
5 later retail sale and that has a labeler code from the federal Food and  
6 Drug Administration under 21 C.F.R. Sec. 270.20 (1999). "Labeler" does  
7 not mean a person or entity that repackages drugs for use of its  
8 participants, members, or enrollees or pharmacy operations of any  
9 integrated delivery system undertaken for the benefit of patients  
10 obtaining care through that system.

11 (5) "Pharmacy benefits management" means the procurement of  
12 prescription drugs at a negotiated rate for dispensation within  
13 Washington state to covered individuals, the administration or  
14 management of prescription drug benefits provided by a covered entity  
15 for the benefit of covered individuals, or any of the following  
16 services provided with regard to the administration of pharmacy  
17 benefits:

18 (a) Mail order pharmacy;

19 (b) Claims processing, retail network management, and payment of  
20 claims to pharmacies for prescription drugs dispensed to covered  
21 individuals;

22 (c) Clinical formulary development and management services;

23 (d) Rebate contracting and administration;

24 (e) Certain patient compliance, therapeutic intervention, and  
25 generic substitution programs; and

26 (f) Disease management programs.

27 (6) "Pharmacy benefits manager" means an entity that performs  
28 pharmacy benefits management. "Pharmacy benefits manager" includes a  
29 person or entity acting for a pharmacy benefits manager in a  
30 contractual or employment relationship in the performance of pharmacy  
31 benefits management for a covered entity and includes mail order  
32 pharmacy. "Pharmacy benefit manager" does not include a health carrier  
33 as defined in RCW 48.43.005(18) if the health carrier provides or  
34 administers pharmacy benefits management to its insureds, participants,  
35 members, or enrollees, or pharmacy operations of any integrated  
36 delivery system undertaken for the benefit of patients obtaining care  
37 through that system.

1        NEW SECTION.    **Sec. 2.**    PRESCRIPTION DRUG PRACTICES.    All pharmacy  
2    benefit managers, and any contract for pharmacy benefits management  
3    entered into in this state or by a covered entity in this state, must  
4    comply with this chapter.

5        NEW SECTION.    **Sec. 3.**    REQUIRED PRACTICES.    (1) A pharmacy benefits  
6    manager owes a fiduciary duty to a covered entity and must discharge  
7    that duty in accordance with state and federal law.

8        (2) A pharmacy benefits manager shall perform its duties with care,  
9    skill, prudence, and diligence and in accordance with the standards of  
10    conduct applicable to a fiduciary in an enterprise of a like character  
11    and with like aims.

12       (3) A pharmacy benefits manager shall discharge its duties with  
13    respect to the covered entity for the primary purpose of providing  
14    benefits to covered individuals and defraying reasonable expenses of  
15    administering health plans.

16       (4) A pharmacy benefits manager shall notify the covered entity in  
17    writing of any activity, policy, or practice of the pharmacy benefits  
18    manager that directly or indirectly presents any conflict of interest  
19    with the duties imposed by this section.

20       (5) A pharmacy benefits manager shall provide to a covered entity  
21    all financial and utilization information requested by the covered  
22    entity relating to providing benefits to covered individuals through  
23    that covered entity and all financial and utilization information  
24    relating to services to that covered entity.    A pharmacy benefits  
25    manager providing information under this section may designate that  
26    material as confidential.    Information designated as confidential by a  
27    pharmacy benefits manager and provided to a covered entity under this  
28    section may not be disclosed by the covered entity to any person  
29    without the consent of the pharmacy benefits manager, except that  
30    disclosure may be made in a court filing under the consumer protection  
31    act, chapter 19.86 RCW, or when authorized by chapter 19.86 RCW or  
32    ordered by a court for good cause shown.

33       (6) With regard to the dispensation of a substitute prescription  
34    drug for a prescribed drug to a covered individual, the provisions in  
35    this subsection apply when a pharmacy benefits manager derives any  
36    payment or benefit related to the price or cost of a drug dispensed  
37    through a pharmacy benefits management contract.

1 (a) The pharmacy benefits manager may substitute a lower-priced  
2 generic or therapeutically equivalent drug for a higher-priced  
3 prescribed drug as authorized in chapter 69.41 RCW.

4 (b) The pharmacy benefits manager may substitute a higher-priced  
5 drug for a lower-priced prescribed drug on behalf of a person enrolled  
6 in a state-purchased health care program, as defined in RCW 41.05.011,  
7 when the drug substituted for the prescribed drug is a preferred drug  
8 on the Washington state preferred drug list established under RCW  
9 70.14.050.

10 (c) With regard to substitutions other than those authorized in (b)  
11 of this subsection in which the substitute drug costs more than the  
12 prescribed drug, the substitution must be made for medical reasons that  
13 benefit the covered individual. If a substitution is being made under  
14 this subsection, the pharmacy benefits manager shall obtain the  
15 approval of the prescribing health professional or that person's  
16 authorized representative after disclosing to the covered individual  
17 and the covered entity the cost of both drugs and any benefit or  
18 payment directly or indirectly accruing to the pharmacy benefits  
19 manager as a result of the substitution.

20 (d) The pharmacy benefits manager shall disclose in full to the  
21 covered entity any benefit or payment received in any form by the  
22 pharmacy benefits manager as a result of a prescription drug  
23 substitution under this subsection.

24 (7) A pharmacy benefits manager who derives any payment or benefit  
25 for the dispensation of prescription drugs within the state based on  
26 volume of sales for certain prescription drugs or classes or brands of  
27 drugs within the state must disclose that payment or benefit in full to  
28 the covered entity.

29 (8) A pharmacy benefits manager shall disclose to the covered  
30 entity all financial terms and arrangements for remuneration of any  
31 kind that apply between the pharmacy benefits manager and any  
32 prescription drug manufacturer or labeler, including, without  
33 limitation, formulary management and drug-switch programs, educational  
34 support, claims processing and pharmacy network fees that are charged  
35 from retail pharmacies, and data sales fees.

36 (9) The agreement between a pharmacy benefits manager and a covered  
37 entity must include a provision allowing the covered entity to have  
38 audited the pharmacy benefits manager's books, accounts, and records,

1 including deidentified utilization information, as necessary to confirm  
2 that the benefit of a payment received by the pharmacy benefits manager  
3 is being shared as required by the contract.

4 NEW SECTION. **Sec. 4.** WAIVERS. Any waiver by a covered entity of  
5 the provisions of this act is contrary to public policy and shall be  
6 unenforceable and void.

7 NEW SECTION. **Sec. 5.** ENFORCEMENT. (1) The legislature finds that  
8 the practices covered by this chapter are matters vitally affecting the  
9 public interest for the purpose of applying the consumer protection  
10 act, chapter 19.86 RCW. A violation of this chapter is not reasonable  
11 in relation to the development and preservation of business and is an  
12 unfair or deceptive act in trade or commerce and an unfair method of  
13 competition for the purpose of applying the consumer protection act,  
14 chapter 19.86 RCW.

15 (2) The enforcement provisions of subsection (1) of this section  
16 relate to state law only and are not intended to create an alternative  
17 enforcement mechanism under the federal employee retirement income  
18 security act of 1974 or any other federal law.

19 NEW SECTION. **Sec. 6.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 7.** CAPTIONS NOT LAW. Captions used in this act  
24 are not any part of the law.

25 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute  
26 a new chapter in Title 19 RCW.

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