
THIRD ENGROSSED SUBSTITUTE SENATE BILL 5857

State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Parlette, Conway, Becker, and Pearson)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to registration and regulation of pharmacy
2 benefit managers; amending RCW 19.340.030, 19.340.010, and
3 19.340.100; adding a new section to chapter 19.340 RCW; adding a new
4 section to chapter 48.02 RCW; creating new sections; prescribing
5 penalties; and providing an effective date.

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

7 **Sec. 1.** RCW 19.340.030 and 2014 c 213 s 2 are each amended to
8 read as follows:

9 (1) To conduct business in this state, a pharmacy benefit manager
10 must register with the (~~department of revenue's business licensing~~
11 ~~service~~) office of the insurance commissioner and annually renew the
12 registration.

13 (2) To register under this section, a pharmacy benefit manager
14 must:

15 (a) Submit an application requiring the following information:

16 (i) The identity of the pharmacy benefit manager;

17 (ii) The name, business address, phone number, and contact person
18 for the pharmacy benefit manager; and

19 (iii) Where applicable, the federal tax employer identification
20 number for the entity; and

1 (b) Pay a registration fee (~~(of two hundred dollars)~~) established
2 in rule by the commissioner. The registration fee must be set to
3 allow the registration and oversight activities to be self-
4 supporting.

5 (3) To renew a registration under this section, a pharmacy
6 benefit manager must pay a renewal fee (~~(of two hundred dollars)~~)
7 established in rule by the commissioner. The renewal fee must be set
8 to allow the renewal and oversight activities to be self-supporting.

9 (4) All receipts from registrations and renewals collected by the
10 (~~(department)~~) commissioner must be deposited into the (~~(business~~
11 ~~license account created in RCW 19.02.210)~~) insurance commissioner's
12 regulatory account created in RCW 48.02.190.

13 NEW SECTION. Sec. 2. A new section is added to chapter 19.340
14 RCW to read as follows:

15 (1) The commissioner shall have enforcement authority over this
16 chapter and shall have authority to render a binding decision in any
17 dispute between a pharmacy benefit manager, or third-party
18 administrator of prescription drug benefits, and a pharmacy arising
19 out of an appeal regarding drug pricing and reimbursement.

20 (2) Any person, corporation, or third-party administrator of
21 prescription drug benefits, pharmacy benefit manager, or business
22 entity which violates any provision of this chapter shall be subject
23 to a civil penalty in the amount of one thousand dollars for each act
24 in violation of this chapter or, if the violation was knowing and
25 willful, a civil penalty of five thousand dollars for each violation
26 of this chapter.

27 **Sec. 3.** RCW 19.340.010 and 2014 c 213 s 1 are each amended to
28 read as follows:

29 The definitions in this section apply throughout this chapter
30 unless the context clearly requires otherwise.

31 (1) "Claim" means a request from a pharmacy or pharmacist to be
32 reimbursed for the cost of filling or refilling a prescription for a
33 drug or for providing a medical supply or service.

34 (2) "Commissioner" means the insurance commissioner established
35 in chapter 48.02 RCW.

36 (3) "Insurer" has the same meaning as in RCW 48.01.050.

37 (~~(+3)~~) (4) "Pharmacist" has the same meaning as in RCW
38 18.64.011.

1 (~~(4)~~) (5) "Pharmacy" has the same meaning as in RCW 18.64.011.
2 (~~(5)~~) (6)(a) "Pharmacy benefit manager" means a person that
3 contracts with pharmacies on behalf of an insurer, a third-party
4 payor, or the prescription drug purchasing consortium established
5 under RCW 70.14.060 to:
6 (i) Process claims for prescription drugs or medical supplies or
7 provide retail network management for pharmacies or pharmacists;
8 (ii) Pay pharmacies or pharmacists for prescription drugs or
9 medical supplies; or
10 (iii) Negotiate rebates with manufacturers for drugs paid for or
11 procured as described in this subsection.
12 (b) "Pharmacy benefit manager" does not include a health care
13 service contractor as defined in RCW 48.44.010.
14 (~~(6)~~) (7) "Third-party payor" means a person licensed under RCW
15 48.39.005.

16 **Sec. 4.** RCW 19.340.100 and 2014 c 213 s 10 are each amended to
17 read as follows:

18 (1) As used in this section:
19 (a) "List" means the list of drugs for which maximum allowable
20 costs have been established.
21 (b) "Maximum allowable cost" means the maximum amount that a
22 pharmacy benefit manager will reimburse a pharmacy for the cost of a
23 drug.
24 (c) "Multiple source drug" means a therapeutically equivalent
25 drug that is available from at least two manufacturers.
26 (d) "Network pharmacy" means a retail drug outlet licensed as a
27 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit
28 manager.
29 (e) "Therapeutically equivalent" has the same meaning as in RCW
30 69.41.110.
31 (2) A pharmacy benefit manager:
32 (a) May not place a drug on a list unless (~~are is [there are]~~)
33 there are at least two therapeutically equivalent multiple source
34 drugs, or at least one generic drug available from only one
35 manufacturer, generally available for purchase by network pharmacies
36 from national or regional wholesalers;
37 (b) Shall ensure that all drugs on a list are (~~generally~~)
38 readily available for purchase by network pharmacies in this state

1 from national or regional wholesalers that serve pharmacies in
2 Washington;

3 (c) Shall ensure that all drugs on a list are not obsolete;

4 (d) Shall make available to each network pharmacy at the
5 beginning of the term of a contract, and upon renewal of a contract,
6 the sources utilized to determine the maximum allowable cost pricing
7 of the pharmacy benefit manager;

8 (e) Shall make a list available to a network pharmacy upon
9 request in a format that is readily accessible to and usable by the
10 network pharmacy;

11 (f) Shall update each list maintained by the pharmacy benefit
12 manager every seven business days and make the updated lists,
13 including all changes in the price of drugs, available to network
14 pharmacies in a readily accessible and usable format;

15 (g) Shall ensure that dispensing fees are not included in the
16 calculation of maximum allowable cost.

17 (3) A pharmacy benefit manager must establish a process by which
18 a network pharmacy may appeal its reimbursement for a drug subject to
19 maximum allowable cost pricing. A network pharmacy may appeal a
20 maximum allowable cost if the reimbursement for the drug is less than
21 the net amount that the network pharmacy paid to the supplier of the
22 drug. (~~An appeal requested under this section must be completed~~
23 ~~within thirty calendar days of the pharmacy making the claim for~~
24 ~~which an appeal has been requested.~~) An appeal requested under this
25 section must be completed within thirty calendar days of the pharmacy
26 submitting the appeal. If after thirty days the network pharmacy has
27 not received the decision on the appeal from the pharmacy benefit
28 manager, then the appeal is considered denied.

29 The pharmacy benefit manager shall uphold the appeal if the
30 pharmacy or pharmacist can demonstrate that it is unable to purchase
31 a therapeutically equivalent interchangeable product from its
32 supplier at the pharmacy benefit manager's list price.

33 (4) A pharmacy benefit manager must provide as part of the
34 appeals process established under subsection (3) of this section:

35 (a) A telephone number at which a network pharmacy may contact
36 the pharmacy benefit manager and speak with an individual who is
37 responsible for processing appeals; and

38 (~~A final response to an appeal of a maximum allowable cost~~
39 ~~within seven business days; and~~

1 ~~(e))~~ If the appeal is denied, the reason for the denial and the
2 national drug code of a drug that ~~((may be))~~ has been purchased by
3 ~~((similarly situated))~~ other network pharmacies located in Washington
4 at a price that is equal to or less than the maximum allowable cost.

5 (5)(a) If an appeal is upheld under this section, the pharmacy
6 benefit manager shall ~~((make an adjustment))~~ reimburse the network
7 pharmacy or pharmacist the amount that the network pharmacy or
8 pharmacist paid to the supplier of the drug on a date no later than
9 one day after the date of determination. ~~((The pharmacy benefit~~
10 ~~manager shall make the adjustment effective for all similarly~~
11 ~~situated pharmacies in this state that are within the network.))~~

12 (b) If the request for an adjustment has come from a critical
13 access pharmacy, as defined by the state health care authority by
14 rule for purposes related to the prescription drug purchasing
15 consortium established under RCW 70.14.060, the adjustment approved
16 under (a) of this subsection shall apply only to critical access
17 pharmacies.

18 (6) If a network pharmacy appeal to the pharmacy benefit manager
19 is denied, or if the network pharmacy is unsatisfied with the outcome
20 of the appeal, the pharmacy or pharmacist may dispute the decision
21 and request review by the commissioner within thirty calendar days of
22 receiving the decision.

23 (a) All relevant information from the parties may be presented to
24 the commissioner, and the commissioner may enter an order directing
25 the pharmacy benefit manager to make an adjustment to the disputed
26 claim, deny the pharmacy appeal, or take other actions deemed fair
27 and equitable. An appeal requested under this section must be
28 completed within thirty calendar days of the request.

29 (b) Upon resolution of the dispute, the commissioner shall
30 provide a copy of the decision to both parties within seven calendar
31 days.

32 (7) This section does not apply to the state medical assistance
33 program.

34 NEW SECTION. Sec. 5. A new section is added to chapter 48.02
35 RCW to read as follows:

36 (1) The commissioner shall accept registration of pharmacy
37 benefit managers as established in RCW 19.340.030 and receipts shall
38 be deposited in the insurance commissioner's regulatory account.

1 (2) The commissioner shall have enforcement authority over
2 chapter 19.340 RCW consistent with requirements established in
3 section 2 of this act.

4 (3) The commissioner may write rules to implement chapter 19.340
5 RCW and to establish registration and renewal fees that ensure the
6 registration, renewal, and oversight activities are self-supporting.

7 NEW SECTION. **Sec. 6.** The joint select committee on health care
8 oversight must convene a stakeholder work group comprised of
9 participants in the prescription drug delivery chain, including
10 pharmacy benefit managers, drug manufacturers, wholesalers, pharmacy
11 service administrative organizations, pharmacies, health plans, and
12 other payors. The work group assignments may include, but are not
13 limited to the following:

14 (1) Review the entire drug supply chain including plan and
15 pharmacy benefit manager reimbursements to network pharmacies,
16 wholesaler or pharmacy service administrative organization prices to
17 network pharmacies, and drug manufacturer prices to network
18 pharmacies;

19 (2) Discuss suggestions that recognize the unique nature of small
20 pharmacies and possible options that support a viable business model
21 that do not increase the cost of pharmacy products;

22 (3) Review the availability of all drugs on the list and list
23 prices for pharmacies;

24 (4) Review the phone contacts and standards for response times
25 and availability;

26 (5) Review the pharmacy acquisition cost from national or
27 regional wholesalers that serve pharmacies in Washington, and
28 consider when or whether to make an adjustment and under what
29 standards. The review may assess the timing of pharmacy purchases of
30 products and the relative risk of list price changes related to the
31 timing of dispensing the products; and

32 (6) The work group must provide periodic updates to the joint
33 select committee on health care oversight.

34 NEW SECTION. **Sec. 7.** The insurance commissioner, in
35 collaboration with the department of health, must review the
36 potential to use the independent review organizations, established in
37 RCW 48.43.535, as an alternative to the appeal process for pharmacy
38 and pharmacy benefit manager disputes. By December 1, 2015, the

1 agencies must submit recommendations for use of the independent
2 review organizations including detailed suggestions for modifications
3 to the process, and the possible transition of the process from the
4 department of health, established in RCW 43.70.235, to the office of
5 the insurance commissioner.

6 NEW SECTION. **Sec. 8.** Section 1 of this act takes effect January
7 1, 2016.

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