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FOURTH ENGROSSED SUBSTITUTE SENATE BILL 5857

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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; providing an effective date; and providing an expiration  
6 date.

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

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

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

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

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

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

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

20 (iii) Where applicable, the federal tax employer identification  
21 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 Washington state suppliers at the pharmacy benefit manager's list  
33 price.

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

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

39 (b) (~~A final response to an appeal of a maximum allowable cost~~  
40 ~~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) Beginning January 1, 2017, if a network pharmacy appeal to  
19 the pharmacy benefit manager is denied, or if the network pharmacy is  
20 unsatisfied with the outcome of the appeal, the pharmacy or  
21 pharmacist may dispute the decision and request review by the  
22 commissioner within thirty calendar days of 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       (c) Appeals under this subsection (6) are subject to chapter  
33 34.05 RCW. The commissioner may authorize the office of  
34 administrative hearings, as provided in chapter 34.12 RCW, to conduct  
35 appeals under this subsection (6).

36       (7) This section does not apply to the state medical assistance  
37 program.

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

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

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

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

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

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

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

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

27 (4) Review the phone contacts and standards for response times  
28 and availability;

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

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

37 NEW SECTION. **Sec. 7.** The insurance commissioner, in  
38 collaboration with the department of health, must review the

1 potential to use the independent review organizations, established in  
2 RCW 48.43.535, as an alternative to the appeal process for pharmacy  
3 and pharmacy benefit manager disputes. By December 1, 2015, the  
4 agencies must submit recommendations for use of the independent  
5 review organizations including detailed suggestions for modifications  
6 to the process, and the possible transition of the process from the  
7 department of health, established in RCW 43.70.235, to the office of  
8 the insurance commissioner.

9       NEW SECTION.   **Sec. 8.**   Section 1 of this act takes effect January  
10 1, 2016.

11       NEW SECTION.   **Sec. 9.**   This act expires effective December 31,  
12 2021.

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