
HOUSE BILL 1911

State of Washington

66th Legislature

2019 Regular Session

By Representatives Schmick, DeBolt, Cody, Thai, Appleton, Pollet, Slatter, and Tharinger

Read first time 02/06/19. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to pharmacy benefit managers; amending RCW
2 19.340.010, 19.340.030, 48.02.220, and 19.340.110; adding new
3 sections to chapter 19.340 RCW; adding a new section to chapter 42.56
4 RCW; creating new sections; and providing an effective date.

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

6 **Sec. 1.** RCW 19.340.010 and 2016 c 210 s 3 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Claim" means a request from a pharmacy (~~or pharmacist~~) to
11 be reimbursed for the cost of filling or refilling a prescription for
12 a drug or for providing a medical supply or service related to the
13 provision of these products.

14 (2) "Claims processing services" means the administrative
15 services performed in connection with the processing and adjudicating
16 of claims relating to pharmacy services that include:

17 (a) Receiving payments for pharmacy services;

18 (b) Making payments to pharmacies for pharmacy services; or

19 (c) Both (a) and (b) of this subsection.

20 (3) "Commissioner" means the insurance commissioner established
21 in chapter 48.02 RCW.

1 ~~((3))~~ (4) "Insurer" has the same meaning as in RCW 48.01.050.

2 ~~((4))~~ (5) "Other prescription drug or device services" means
3 services other than claims processing services, provided directly or
4 indirectly, whether in connection with or separate from claims
5 processing services including, but not limited to:

6 (a) Negotiating rebates, discounts, or other financial incentives
7 and arrangements with drug companies;

8 (b) Disbursing or distributing rebates;

9 (c) Managing or participating in incentive programs or
10 arrangements for pharmacy services;

11 (d) Negotiating or entering into contractual arrangements with
12 pharmacies, pharmacy services administrative organizations on behalf
13 of pharmacies, or both;

14 (e) Developing formularies or covered drug lists;

15 (f) Designing prescription benefit programs; or

16 (g) Advertising or promoting services.

17 (6) "Pharmacist" has the same meaning as in RCW 18.64.011.

18 ~~((5))~~ (7) "Pharmacy" has the same meaning as in RCW 18.64.011.

19 ~~((6))~~ (8) (a) "Pharmacy benefit manager" means a person,
20 business, or entity, including a wholly or partially owned or
21 controlled subsidiary of a pharmacy benefit manager, that contracts
22 with pharmacies on behalf of an insurer, a third-party payor, or the
23 prescription drug purchasing consortium established under RCW
24 70.14.060 to:

25 (i) Process claims for prescription drugs or medical supplies
26 (~~or provide retail network management for pharmacies or~~
27 pharmacists)), other prescription drug or device services, or both;

28 (ii) Pay pharmacies (~~or pharmacists~~) for prescription drugs or
29 medical supplies; or

30 (iii) Negotiate rebates with manufacturers for drugs paid for or
31 procured as described in this subsection.

32 (b) "Pharmacy benefit manager" does not include a health care
33 service contractor as defined in RCW 48.44.010.

34 ~~((7))~~ (9) "Pharmacy benefit manager affiliate" means a pharmacy
35 or pharmacist that directly or indirectly, through one or more
36 intermediaries, owns or controls, is owned or controlled by, or is
37 under common ownership or control with, a pharmacy benefit manager.

38 (10) "Pharmacy benefit manager network" means a network of
39 pharmacies that are offered by an agreement or insurance contract to
40 provide pharmacist services for health benefit plans.

1 (11) "Pharmacy benefit plan or program" means a plan or program
2 that pays for, reimburses, covers the costs of, or otherwise provides
3 for pharmacy services under a health benefit plan.

4 (12) "Pharmacy services" means products, goods, and services, or
5 any combination of products, goods, or services, provided to a
6 patient within the scope of pharmacy practice and covered in the
7 pharmacy benefit plan or program.

8 (13) "Pharmacy services administrative organization" means an
9 organization that helps pharmacies and pharmacy benefit managers, or
10 third-party payors achieve administrative efficiencies, including
11 contracting and payment efficiencies.

12 (14) "Rebate" means a discount, or other price concession, based
13 on utilization of a prescription drug that is paid by a manufacturer
14 or third-party payor, directly or indirectly, to a pharmacy benefit
15 manager, pharmacy services administrative organization, or pharmacy
16 after a claim has been processed and paid at a pharmacy. "Rebate"
17 includes, without limitation, incentives, disbursements, and
18 reasonable estimates of a volume-based discount.

19 (15) "Third-party payor" means a person (~~licensed under RCW~~
20 48.39.005), business, or entity other than a pharmacy benefit
21 manager that is not an enrollee or insured in a health benefit plan.

22 **Sec. 2.** RCW 19.340.030 and 2016 c 210 s 1 are each amended to
23 read as follows:

24 (1) To conduct business in this state, a pharmacy benefit manager
25 must (~~register with~~) be licensed by the office of the insurance
26 commissioner and annually renew the (~~registration~~) license.

27 (2) To (~~register~~) be licensed under this section, a pharmacy
28 benefit manager must:

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

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

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

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

35 (b) Pay a (~~registration~~) licensing fee established in rule by
36 the commissioner. The (~~registration~~) licensing fee must be set to
37 allow the (~~registration~~) licensing and oversight activities to be
38 self-supporting.

1 (3) To renew a (~~registration~~) license under this section, a
2 pharmacy benefit manager must pay a renewal fee established in rule
3 by the commissioner. The renewal fee must be set to allow the renewal
4 and oversight activities to be self-supporting.

5 (4) All receipts from (~~registrations~~) licenses and renewals
6 collected by the commissioner must be deposited into the insurance
7 commissioner's regulatory account created in RCW 48.02.190.

8 **Sec. 3.** RCW 48.02.220 and 2016 c 210 s 5 are each amended to
9 read as follows:

10 (1) The commissioner shall accept (~~registration~~) licensing of
11 pharmacy benefit managers as established in RCW 19.340.030 and
12 receipts shall be deposited in the insurance commissioner's
13 regulatory account.

14 (2) The commissioner shall have enforcement authority over
15 chapter 19.340 RCW consistent with requirements established in RCW
16 19.340.110.

17 (3) The commissioner may adopt rules to implement chapter 19.340
18 RCW and to establish (~~registration~~) licensing and renewal fees that
19 ensure the (~~registration~~) licensing, renewal, and oversight
20 activities are self-supporting.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.340
22 RCW to read as follows:

23 (1) A pharmacy benefit manager has a fiduciary duty to a health
24 carrier client and shall discharge that duty in accordance with the
25 provisions of state and federal law.

26 (2) A pharmacy benefit manager must notify a health carrier
27 client in writing of any activity, policy, or practice of the
28 pharmacy benefit manager that directly or indirectly presents any
29 conflict of interest with the duties imposed in this chapter.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 19.340
31 RCW to read as follows:

32 A pharmacy benefit manager may not:

33 (1) Cause or knowingly permit the use of any advertisement,
34 promotion, solicitation, representation, proposal, or offer that is
35 untrue, deceptive, or misleading;

36 (2) Charge a pharmacist or pharmacy a fee related to the
37 adjudication of a claim including, without limitation, a fee for:

- 1 (a) The receipt and processing of a pharmacy claim;
- 2 (b) The development or management of claims processing services
3 in a pharmacy benefit manager network; or
- 4 (c) Participation in a pharmacy benefit manager network;
- 5 (3) Unless approved by the pharmacy quality assurance commission,
6 require pharmacy accreditation standards or certification
7 requirements inconsistent with, more stringent than, or in addition
8 to requirements of the commission;
- 9 (4) Reimburse a pharmacy in the state an amount less than the
10 amount that the pharmacy benefit manager reimburses a pharmacy
11 benefit manager affiliate for providing the same pharmacy services;
12 or
- 13 (5) Deny, reduce, or recoup payment to a pharmacy for pharmacy
14 services after adjudication of the claim unless:
- 15 (a) The original claim was submitted fraudulently;
- 16 (b) The original claim payment was incorrect because the pharmacy
17 had already been paid for the pharmacy services; or
- 18 (c) The pharmacy services were not properly rendered by the
19 pharmacy or pharmacist.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.340
21 RCW to read as follows:

- 22 (1) A pharmacy benefit manager shall provide:
- 23 (a) A reasonably adequate and accessible pharmacy benefit manager
24 network for the provision of prescription drugs for a health benefit
25 plan that must provide for convenient patient access to pharmacies
26 within a reasonable distance from a patient's residence; and
- 27 (b) A pharmacy benefit manager network adequacy report describing
28 the pharmacy benefit manager network and the pharmacy benefit manager
29 network's accessibility in the state in the time and manner required
30 by rules adopted by the commissioner.
- 31 (2) Termination of a pharmacy from a pharmacy benefit manager
32 network does not release the pharmacy benefit manager from the
33 obligation to make any payment due to the pharmacy for pharmacy
34 services properly rendered.
- 35 (3) The commissioner may issue a rule establishing prohibited
36 practices of pharmacy benefit managers providing claims processing
37 services or other prescription drug or device services for health
38 benefit plans.

1 (4) A mail-order pharmacy must not be included in the
2 calculations determining pharmacy benefit manager network adequacy.

3 **Sec. 7.** RCW 19.340.110 and 2016 c 210 s 2 are each amended to
4 read as follows:

5 (1) The commissioner shall have enforcement authority over this
6 chapter and shall have authority to:

7 (a) Render a binding decision in any dispute between a pharmacy
8 benefit manager, or third-party administrator of prescription drug
9 benefits, and a pharmacy arising out of an appeal under RCW
10 19.340.100(6) regarding drug pricing and reimbursement; or

11 (b) Examine or audit the books and records of a pharmacy benefit
12 manager providing claims processing services or other prescription
13 drug or device services for a health plan to determine if the
14 pharmacy benefit manager is in compliance with this chapter.
15 Information the commissioner acquires in an examination is
16 proprietary and confidential.

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

24 NEW SECTION. **Sec. 8.** A new section is added to chapter 42.56
25 RCW to read as follows:

26 Information acquired by the insurance commissioner under RCW
27 19.340.110(1)(b) is not subject to public disclosure under this
28 chapter.

29 NEW SECTION. **Sec. 9.** The insurance commissioner may adopt any
30 rules necessary to implement this act.

31 NEW SECTION. **Sec. 10.** (1) This act applies to all contracts or
32 health benefit plans issued, renewed, recredentialled, amended, or
33 extended on or after July 1, 2020.

34 (2) A contract existing on the date of licensure of a pharmacy
35 benefit manager must comply with the requirements of this act as a
36 condition of licensure for the pharmacy benefit manager.

1 (3) This act is not applicable to self-funded health benefit
2 plans, as they do not constitute the business of insurance; thus, the
3 regulation of such self-funded plans is not specifically reserved to
4 this state and the several states by the McCarran-Ferguson act of
5 1945, 15 U.S.C. Sec. 1011-1015.

6 NEW SECTION. **Sec. 11.** This act takes effect July 1, 2020.

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