
SENATE BILL 5422

State of Washington

66th Legislature

2019 Regular Session

By Senators Kuderer, Short, Rivers, Keiser, Conway, Darneille, Hasegawa, and Saldaña

Read first time 01/21/19. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to pharmacy benefit manager regulation; amending
2 RCW 19.340.010; adding new sections to chapter 19.340 RCW; and
3 prescribing penalties.

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

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

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

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

12 (2) "Commissioner" means the insurance commissioner established
13 in chapter 48.02 RCW.

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

15 (4) "Pharmacist" has the same meaning as in RCW 18.64.011.

16 (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

17 (6)(a) "Pharmacy benefit manager" means a person that contracts
18 with pharmacies on behalf of an insurer, a third-party payor, or the
19 prescription drug purchasing consortium established under RCW
20 70.14.060 to:

1 (i) Process claims for prescription drugs or medical supplies or
2 provide retail network management for pharmacies or pharmacists;

3 (ii) Pay pharmacies or pharmacists for prescription drugs or
4 medical supplies; or

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

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

9 (7) "Third-party payor" means a person licensed under RCW
10 48.39.005.

11 (8) "Aggregate retained rebate" means the rebates received by the
12 pharmacy benefit manager from pharmaceutical manufacturers that are
13 not passed through to the health carrier.

14 (9) "Conflict of interest" includes any professional or financial
15 affiliation between a pharmacy benefit manager or an officer,
16 director, or management employee of a pharmacy benefit manager and a
17 third party that could influence the pharmacy benefit manager's
18 ability to fulfill its fiduciary, contractual, or other duty owed to
19 its health carrier client.

20 (10) "Covered person" or "enrollee" has the same meaning as in
21 RCW 48.43.005.

22 (11) "Health benefit plan" has the same meaning as in RCW
23 48.43.005.

24 (12) "Health carrier" has the same meaning as in RCW 48.43.005.

25 (13) "Network pharmacy" means a licensed pharmacy provider that
26 contracts with a pharmacy benefit manager.

27 (14) "Nonresident pharmacy" has the same meaning as in RCW
28 18.64.360.

29 (15) "Office" means the office of financial management.

30 (16) "Rebates" means all price concessions paid by a manufacturer
31 to a pharmacy benefit manager or health carrier, including rebates,
32 discounts, and other price concessions that are based on actual or
33 estimated utilization of a prescription drug. Rebates also include
34 price concessions based on the effectiveness a drug as in a value-
35 based or performance-based contract.

36 (17) "Retail pharmacy" means a pharmacy licensed under chapter
37 18.64 RCW, that is open to the public, dispenses prescription drugs
38 to the general public, and makes available face-to-face consultations
39 between licensed pharmacists and the general public to whom
40 prescription drugs are dispensed.

1 (18) "Trade secrets" has the same meaning as in RCW 19.108.010.

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

4 PHARMACY BENEFIT MANAGER BUSINESS PRACTICES. (1) A pharmacy
5 benefit manager has a fiduciary duty to a health carrier client and
6 shall discharge that duty in accordance with the provisions of state
7 and federal law.

8 (2) A pharmacy benefit manager must perform its duties with care,
9 skill, prudence, diligence, and professionalism.

10 (3) A pharmacy benefit manager must notify a health carrier
11 client in writing of any activity, policy, or practice of the
12 pharmacy benefit manager that directly or indirectly presents any
13 conflict of interest with the duties imposed in this section.

14 (4) A pharmacy benefit manager or health carrier shall not enter
15 into a contract with a pharmacy or pharmacist that restricts,
16 directly or indirectly, the pharmacy or pharmacist from informing, or
17 penalize the pharmacy or pharmacist for informing, an enrollee of:

18 (a) The cost of a prescription medication to the covered person;
19 or

20 (b) Any differential between the enrollee's out-of-pocket cost
21 under the plan or coverage with respect to acquisition of the drug
22 and the amount an individual would pay for acquisition of the drug
23 without using any health plan or health insurance coverage.

24 (5) A health carrier or pharmacy benefit manager may not require
25 an enrollee to make a payment at the point of sale for a covered
26 prescription medication in an amount greater than the lesser of:

27 (a) The applicable copayment for the prescription medication;

28 (b) The allowable claim amount for the prescription medication;

29 (c) The amount an individual would pay for the prescription
30 medication if the individual purchased the prescription medication
31 without using a health benefit plan or any other source of
32 prescription medication benefits or discounts; or

33 (d) The amount the pharmacy benefit manager or health carrier
34 will reimburse the pharmacy for the drug.

35 (6) For acceptance into its pharmacy network, a pharmacy benefit
36 manager shall not require a pharmacy to meet accreditation standards
37 or certification requirements inconsistent with, more stringent than,
38 or in addition to requirements of the pharmacy quality assurance
39 commission or other state or federal entity.

1 (7) A health carrier or pharmacy benefit manager is prohibited
2 from penalizing, requiring, or providing financial incentives,
3 including variations in premiums, deductibles, copayments, or
4 coinsurance, to enrollees as incentives to use specific retail
5 pharmacy, nonresident pharmacy, or other network pharmacy provider in
6 which a pharmacy benefit manager has an ownership interest or that
7 has an ownership interest in a pharmacy benefit manager.

8 NEW SECTION. **Sec. 3.** A new section is added to chapter 19.340
9 RCW to read as follows:

10 PHARMACY BENEFIT MANAGER TRANSPARENCY. (1) Beginning June 1,
11 2020, and annually thereafter, each pharmacy benefit manager
12 operating in Washington state shall submit a transparency report
13 containing data from the prior calendar year to the office. The
14 report must contain the following information:

15 (a) The aggregate amount of all rebates that the pharmacy benefit
16 manager received from all pharmaceutical manufacturers for all health
17 carrier clients and for each health carrier client;

18 (b) The aggregate administrative fees that the pharmacy benefit
19 manager received from all manufacturers for all health carrier
20 clients and for each health carrier client; and

21 (c) The aggregate retained rebate for each health carrier client:

22 (i) Expressed as a total dollar amount; and

23 (ii) Expressed as a percentage of the total rebates received by
24 the pharmacy benefit manager for that carrier.

25 (2) A pharmacy benefit manager providing information under this
26 section may designate material as a trade secret. Disclosure;
27 however, may be ordered by a court of Washington state for good cause
28 shown or made in a court filing.

29 (3) Within sixty days of receipt, the office shall publish the
30 transparency report of each pharmacy benefit manager on the office's
31 web site in a way that does not violate state trade secrets law.

32 (4) The office may assess a fine of up to one thousand dollars
33 per day for failure to comply with the requirements of this section.
34 The assessment of a fine under this section is subject to review
35 under the administrative procedure act, chapter 34.05 RCW. Fines
36 collected under this section must be deposited in the medicaid fraud
37 penalty account created in RCW 74.09.215.

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