
SENATE BILL 5982

State of Washington

66th Legislature

2019 Regular Session

By Senators Short, Kuderer, Rolfes, Warnick, Keiser, and Conway

Read first time 03/07/19. Referred to Committee on Health & Long Term Care.

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

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

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

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

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

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

18 (a) Receiving payments for pharmacy services;

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

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

1 (3) "Commissioner" means the insurance commissioner established
2 in chapter 48.02 RCW.

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

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

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

10 (b) Disbursing or distributing rebates;

11 (c) Managing or participating in incentive programs or
12 arrangements for pharmacy services;

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

16 (e) Developing formularies or covered drug lists;

17 (f) Designing prescription benefit programs; or

18 (g) Advertising or promoting services.

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

20 ~~((+5))~~ (7) "Pharmacy" has the same meaning as in RCW 18.64.011.

21 ~~((+6))~~ (8)(a) "Pharmacy benefit manager" means a person,
22 business, or entity, including a wholly or partially owned or
23 controlled subsidiary of a pharmacy benefit manager, that contracts
24 with pharmacies on behalf of an insurer, a third-party payor, or the
25 prescription drug purchasing consortium established under RCW
26 70.14.060 to:

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

30 (ii) Pay pharmacies ~~((or pharmacists))~~ for prescription drugs or
31 medical supplies; or

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

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

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

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

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

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

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

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

22 (15) "Third-party payor" means a person (~~(licensed under RCW~~
23 48.39.005)), ~~business, or entity other than a pharmacy benefit~~
24 manager that is not an enrollee or insured in a health benefit plan.

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

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

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

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

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

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

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

38 (b) Pay a (~~(registration))~~ licensing fee established in rule by
39 the commissioner. The (~~(registration))~~ licensing fee must be set to

1 allow the ((~~registration~~)) licensing and oversight activities to be
2 self-supporting.

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

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

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

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

16 (2) The commissioner shall have enforcement authority over
17 chapter 19.340 RCW consistent with requirements established in RCW
18 19.340.110.

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

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

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

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

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

34 A pharmacy benefit manager may not:

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

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

3 (a) The receipt and processing of a pharmacy claim;

4 (b) The development or management of claims processing services
5 in a pharmacy benefit manager network; or

6 (c) Participation in a pharmacy benefit manager network;

7 (3) Unless approved by the pharmacy quality assurance commission,
8 require pharmacy accreditation standards or certification
9 requirements inconsistent with, more stringent than, or in addition
10 to requirements of the commission;

11 (4) Reimburse a pharmacy in the state an amount less than the
12 amount that the pharmacy benefit manager reimburses a pharmacy
13 benefit manager affiliate for providing the same pharmacy services;
14 or

15 (5) Deny, reduce, or recoup payment to a pharmacy for pharmacy
16 services after adjudication of the claim unless:

17 (a) The original claim was submitted fraudulently;

18 (b) The original claim payment was incorrect because the pharmacy
19 had already been paid for the pharmacy services; or

20 (c) The pharmacy services were not properly rendered by the
21 pharmacy or pharmacist.

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

24 (1) A pharmacy benefit manager shall provide:

25 (a) A reasonably adequate and accessible pharmacy benefit manager
26 network for the provision of prescription drugs for a health benefit
27 plan that must provide for convenient patient access to pharmacies
28 within a reasonable distance from a patient's residence; and

29 (b) A pharmacy benefit manager network adequacy report describing
30 the pharmacy benefit manager network and the pharmacy benefit manager
31 network's accessibility in the state in the time and manner required
32 by rules adopted by the commissioner.

33 (2) Termination of a pharmacy from a pharmacy benefit manager
34 network does not release the pharmacy benefit manager from the
35 obligation to make any payment due to the pharmacy for pharmacy
36 services properly rendered.

37 (3) The commissioner may issue a rule establishing prohibited
38 practices of pharmacy benefit managers providing claims processing

1 services or other prescription drug or device services for health
2 benefit plans.

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

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

7 (1) The commissioner shall have enforcement authority over this
8 chapter and shall have authority to:

9 (a) Render a binding decision in any dispute between a pharmacy
10 benefit manager, or third-party administrator of prescription drug
11 benefits, and a pharmacy arising out of an appeal under RCW
12 19.340.100(6) regarding drug pricing and reimbursement; or

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

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

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

28 Information acquired by the insurance commissioner under RCW
29 19.340.110(1)(b) is not subject to public disclosure under this
30 chapter.

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

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

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

4 (3) This act is not applicable to self-funded health benefit
5 plans, as they do not constitute the business of insurance; thus, the
6 regulation of such self-funded plans is not specifically reserved to
7 this state and the several states by the McCarran-Ferguson act of
8 1945, 15 U.S.C. Sec. 1011-1015.

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

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