
HOUSE BILL 2473

State of Washington 59th Legislature 2006 Regular Session

By Representatives Schual-Berke, Appleton, Moeller, Morrell and Cody

Prefiled 1/6/2006. Read first time 01/09/2006. Referred to
Committee on Health Care.

1 AN ACT Relating to protection against unfair prescription drug
2 practices by pharmacy benefit managers; and adding a new chapter to
3 Title 18 RCW.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter, unless the context clearly
7 requires otherwise.

8 (1) "Covered entity" means a health plan as defined in RCW
9 48.43.005(19), a state purchased health care program as defined in RCW
10 41.05.011(2), the Washington state health insurance pool as established
11 in RCW 48.41.040, or an employer, labor union, or other group of
12 persons organized in the state, that provides health coverage to
13 covered individuals who are employed or reside in the state.

14 (2) "Covered individual" means a member, participant, enrollee,
15 contract holder, or policyholder or beneficiary of a covered entity,
16 who is provided health coverage by the covered entity. "Covered
17 individual" includes a dependent or other person provided health
18 coverage through a contract or health plan for a covered individual.

1 (3) "Generic drug" means a chemically equivalent copy of a brand-
2 name drug with an expired patent.

3 (4) "Labeler" means an entity or person that receives prescription
4 drugs from a manufacturer or wholesaler and repackages those drugs for
5 later retail sale and that has a labeler code from the federal Food and
6 Drug Administration under 21 C.F.R. Sec. 270.20 (1999).

7 (5) "Pharmacy benefits management" means the procurement of
8 prescription drugs at a negotiated rate for dispensation within
9 Washington state to covered individuals, the administration or
10 management of prescription drug benefits provided by a covered entity
11 for the benefit of covered individuals, or any of the following
12 services provided with regard to the administration of pharmacy
13 benefits:

14 (a) Mail order pharmacy;

15 (b) Claims processing, retail network management, and payment of
16 claims to pharmacies for prescription drugs dispensed to covered
17 individuals;

18 (c) Clinical formulary development and management services;

19 (d) Rebate contracting and administration;

20 (e) Certain patient compliance, therapeutic intervention, and
21 generic substitution programs; and

22 (f) Disease management programs.

23 (6) "Pharmacy benefits manager" means an entity that performs
24 pharmacy benefits management. "Pharmacy benefits manager" includes a
25 person or entity acting for a pharmacy benefits manager in a
26 contractual or employment relationship in the performance of pharmacy
27 benefits management for a covered entity and includes mail order
28 pharmacy.

29 NEW SECTION. **Sec. 2.** PRESCRIPTION DRUG PRACTICES. All pharmacy
30 benefit managers, and any contract for pharmacy benefits management
31 entered into in this state or by a covered entity in this state, must
32 comply with this chapter.

33 NEW SECTION. **Sec. 3.** REQUIRED PRACTICES. (1) A pharmacy benefits
34 manager owes a fiduciary duty to a covered entity and must discharge
35 that duty in accordance with state and federal law.

1 (2) A pharmacy benefits manager shall perform its duties with care,
2 skill, prudence, and diligence and in accordance with the standards of
3 conduct applicable to a fiduciary in an enterprise of a like character
4 and with like aims.

5 (3) A pharmacy benefits manager shall discharge its duties with
6 respect to the covered entity for the primary purpose of providing
7 benefits to covered individuals and defraying reasonable expenses of
8 administering health plans.

9 (4) A pharmacy benefits manager shall notify the covered entity in
10 writing of any activity, policy, or practice of the pharmacy benefits
11 manager that directly or indirectly presents any conflict of interest
12 with the duties imposed by this section.

13 (5) A pharmacy benefits manager shall provide to a covered entity
14 all financial and utilization information requested by the covered
15 entity relating to providing benefits to covered individuals through
16 that covered entity and all financial and utilization information
17 relating to services to that covered entity. A pharmacy benefits
18 manager providing information under this section may designate that
19 material as confidential. Information designated as confidential by a
20 pharmacy benefits manager and provided to a covered entity under this
21 section may not be disclosed by the covered entity to any person
22 without the consent of the pharmacy benefits manager, except that
23 disclosure may be made in a court filing under the consumer protection
24 act, chapter 19.86 RCW, or when authorized by chapter 19.86 RCW or
25 ordered by a court for good cause shown.

26 (6) With regard to the dispensation of a substitute prescription
27 drug for a prescribed drug to a covered individual, the provisions in
28 this subsection apply when a pharmacy benefits manager derives any
29 payment or benefit related to the price or cost of a drug dispensed
30 through a pharmacy benefits management contract.

31 (a) The pharmacy benefits manager may substitute a lower-priced
32 generic and therapeutically equivalent drug for a higher-priced
33 prescribed drug as authorized in chapter 69.41 RCW.

34 (b) The pharmacy benefits manager may substitute a higher-priced
35 drug for a lower-priced prescribed drug on behalf of a person enrolled
36 in a state-purchased health care program, as defined in RCW 41.05.011,
37 when the drug substituted for the prescribed drug is a preferred drug

1 on the Washington state preferred drug list established under RCW
2 70.14.050.

3 (c) With regard to substitutions other than those authorized in (b)
4 of this subsection in which the substitute drug costs more than the
5 prescribed drug, the substitution must be made for medical reasons that
6 benefit the covered individual. If a substitution is being made under
7 this subsection, the pharmacy benefits manager shall obtain the
8 approval of the prescribing health professional or that person's
9 authorized representative after disclosing to the covered individual
10 and the covered entity the cost of both drugs and any benefit or
11 payment directly or indirectly accruing to the pharmacy benefits
12 manager as a result of the substitution.

13 (d) The pharmacy benefits manager shall transfer in full to the
14 covered entity any benefit or payment received in any form by the
15 pharmacy benefits manager as a result of a prescription drug
16 substitution under this subsection.

17 (7) A pharmacy benefits manager who derives any payment or benefit
18 for the dispensation of prescription drugs within the state based on
19 volume of sales for certain prescription drugs or classes or brands of
20 drugs within the state must pass that payment or benefit on in full to
21 the covered entity.

22 (8) A pharmacy benefits manager shall disclose to the covered
23 entity all financial terms and arrangements for remuneration of any
24 kind that apply between the pharmacy benefits manager and any
25 prescription drug manufacturer or labeler, including, without
26 limitation, formulary management and drug-switch programs, educational
27 support, claims processing and pharmacy network fees that are charged
28 from retail pharmacies, and data sales fees.

29 (9) The agreement between a pharmacy benefits manager and a covered
30 entity must include a provision allowing the covered entity to have
31 audited the pharmacy benefits manager's books, accounts, and records,
32 including deidentified utilization information, as necessary to confirm
33 that the benefit of a payment received by the pharmacy benefits manager
34 is being shared as required by the contract.

35 NEW SECTION. **Sec. 4.** WAIVERS. Any waiver by a covered entity of
36 the provisions of this act is contrary to public policy and shall be
37 unenforceable and void.

1 NEW SECTION. **Sec. 5.** ENFORCEMENT. (1) The legislature finds that
2 the practices covered by this chapter are matters vitally affecting the
3 public interest for the purpose of applying the consumer protection
4 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
5 in relation to the development and preservation of business and is an
6 unfair or deceptive act in trade or commerce and an unfair method of
7 competition for the purpose of applying the consumer protection act,
8 chapter 19.86 RCW.

9 (2) The enforcement provisions of subsection (1) of this section
10 relate to state law only and are not intended to create an alternative
11 enforcement mechanism under the federal employee retirement income
12 security act of 1974 or any other federal law.

13 NEW SECTION. **Sec. 6.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 7.** CAPTIONS NOT LAW. Captions used in this act
18 are not any part of the law.

19 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
20 a new chapter in Title 18 RCW.

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