SENATE BILL REPORT
ESSB 6137

As Passed Senate, February 14, 2014

Title: An act relating to pharmacy benefit managers regarding registration, audits, and maximum allowable cost standards.

Brief Description: Regulating pharmacy benefit managers and pharmacy audits.

Sponsors: Senate Committee on Health Care (originally sponsored by Senators Conway, Pearson, Parlette and Keiser).

Brief History:
Committee Activity: Health Care: 1/30/14, 2/06/14 [DPS].
Passed Senate: 2/14/14, 49-0.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 6137 be substituted therefor, and the substitute bill do pass.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Pedersen, Ranking Member; Angel, Bailey, Cleveland, Keiser and Parlette.

Staff: Mich'l Needham (786-7442)

Background: A Pharmacy Benefit Manager (PBM) is a third-party administrator of prescription drug programs. PBMs are often responsible for developing and maintaining the formulary, contracting with pharmacies, negotiating discounts and rebates with drug manufacturers, and processing and paying prescription drug claims. There are a number of PBMs, but two companies, Express Scripts Inc. and CVS Caremark Corporation, have the highest market share of the business.

Some states are beginning to regulate PBMs: approximately one-half dozen states require PBMs to register with or get licensed by the insurance department, and another handful of states have adopted fair audit provisions that establish requirements for auditing pharmacy services.

Summary of Engrossed Substitute Bill: PBMs must register with the Department of Revenue and annually renew their registration in order to do business in Washington. To register, a PBM must submit an application and pay a registration fee, and submit the

---

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

following information: the identity of the pharmacy benefit manager; name, address, phone number, and contact person for the pharmacy benefit manager; and the tax identification number. The fee must not exceed $200.

A PBM is defined to mean contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium to:

- process claims for prescription drugs or medical supplies, or provide retail network management for pharmacies or pharmacists;
- pay pharmacies or pharmacists for prescription drugs or medical supplies; or
- negotiate rebates with manufacturers for prescription drugs.

A PBM does not include a health care service contractor.

Pharmacy audit standards are created for PBMs conducting on-site audits. Standards include the following: notification requirements, advance written notification of an audit, limitations on the timing of audits, limitations on the number of unique prescriptions that can be audited, audit standards that apply to all similarly situated pharmacies, and the requirement that the audit involve a licensed pharmacist if the audit involves clinical or professional judgment.

Additional requirements are outlined for the payment of outstanding claims related to the audit, accounting of fees or overpayments, and limitations on recouping costs associated with clerical errors or other errors that do not result in financial harm to the entity or the consumer. An audit must be based on identified transactions and not probability sampling, extrapolation, or other means. Contracts for entities that conduct audits must not be based on a percentage of the amount of overpayment recovered. A preliminary report of the audit must be available within 45 days after the audit is completed, and the pharmacy has 45 days to contest the report. A final report must be provided within 60 days after the preliminary report or the date the pharmacy contested the report, whichever is later. Recoupment of disputed funds must occur after the audit and any appeals procedure.

The pharmacy audit standards do not apply to a state agency conducting audits for the state medical assistance program; do not preclude an action for fraud; and do not apply when fraud or intentional and willful misrepresentation is indicated.

Reimbursement standards are created. Maximum allowable cost is the maximum amount a PBM reimburses a pharmacy for the cost of a drug; the maximum allowable costs that have been established for a list of drugs must be available to the pharmacy and updated every seven business days with all changes in the prices of drugs; requirements for the drugs on the list are outlined; the sources used to determine the maximum allowable cost pricing must be provided with the contract; and there must be a process to allow a pharmacy to appeal the reimbursement for a drug relative to the maximum allowable cost.

Appropriation: None.

Fiscal Note: Available.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: For years we have explored options for providing more transparency into the PBMs. Last year, Oregon passed this legislation and it renewed my interest and the interests of the retail pharmacists in seeking some resolution. Pharmacies come to you in a desperate state. We are not able to cover our costs of the drugs we are providing. PBMs are not regulated now and this would allow us to register them, and set some better standards on the auditing practices. They cherry-pick some of the more expensive claims to audit now. The notification with seven days' timeframe for the price changes would help us tremendously. Now, prices may change every day with no notification. Retail pharmacies are facing very difficult times and may not be able to stay in business because they are consistently reimbursed less they paid for the drugs. The PBMs are exerting more and more control over the pharmacy business. It is not possible to run a business when you cannot set prices and control operating costs. We have cared for our neighbors and continue to dispense life-saving medications to them even when we take huge financial losses on some drugs.

CON: Past discussions have focused on audit standards and we have gotten close to agreement on those standards in the past. This approach is more controversial and sweeping. It would impair the discipline brought to the cost controls. The Office of Insurance Commissioner is not the appropriate entity to have registration and regulation. The expertise is in a different area, and they should not regulate PBMs. There are a lot of difficulties with the implementation of this in Oregon. There is too broad a regulatory framework, and there are significant concerns with the limitation of the numbers of claims we can audit. The definition of fraud is too high of a bar, using a legal standard. Prices are not controlled by the PBMs but by the manufacturers.

Persons Testifying: PRO: Senator Conway, prime sponsor; Kirk Heinz, Kirk's Pharmacy Inc.; Kari VanderHowen, Duvall Family Drugs; Bridgett Edgar, Pharm A Save; Holly Whitcomb-Henry, RXTRACARE Pharmacy; Jeff Rochon, WA State Pharmacy Assn.

CON: Mel Sorensen, Express Scripts, America's Health Insurance Plans; Cindy Laubacher, Express Scripts; Carrie Tellefson, CVS/Caremark.