
ENGROSSED SUBSTITUTE SENATE BILL 6137

State of Washington

63rd Legislature

2014 Regular Session

By Senate Health Care (originally sponsored by Senators Conway, Pearson, Parlette, and Keiser)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to pharmacy benefit managers regarding
2 registration, audits, and maximum allowable cost standards; adding a
3 new section to chapter 19.02 RCW; and adding a new chapter to Title 19
4 RCW.

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

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

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

11 (2) "Insurer" has the same meaning as in RCW 48.01.050.

12 (3) "Pharmacist" has the same meaning as in RCW 18.64.011.

13 (4) "Pharmacy" has the same meaning as in RCW 18.64.011.

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

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

1 (ii) Pay pharmacies or pharmacists for prescription drugs or
2 medical supplies; or

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

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

7 (6) "Third-party payor" means a person licensed under RCW
8 48.39.005.

9 NEW SECTION. **Sec. 2.** (1) To conduct business in this state, a
10 pharmacy benefit manager must register with the department of revenue
11 and annually renew the registration.

12 (2) To register under this section, a pharmacy benefit manager
13 must:

14 (a) Submit an application requiring only the following information:

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

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

18 (iii) Where applicable, the federal tax employer identification
19 number for the entity;

20 (b) Pay a registration fee, not to exceed two hundred dollars,
21 adopted by the department by rule.

22 (3) To renew a registration under this section, a pharmacy benefit
23 manager must pay a renewal fee, not to exceed two hundred dollars,
24 adopted by the department by rule.

25 (4) All receipts from registrations and renewals collected by the
26 department must be deposited into the business license account created
27 in RCW 19.02.210.

28 NEW SECTION. **Sec. 3.** As used in sections 3 through 9 of this act:

29 (1) "Audit" means an on-site or remote review of the records of a
30 pharmacy by or on behalf of an entity.

31 (2) "Clerical error" means a minor error:

32 (a) In the keeping, recording, or transcribing of records or
33 documents or in the handling of electronic or hard copies of
34 correspondence;

35 (b) That does not result in financial harm to an entity; and

1 (c) That does not involve dispensing an incorrect dose, amount or
2 type of medication, or dispensing a prescription drug to the wrong
3 person.

4 (3) "Entity" includes:

5 (a) A pharmacy benefit manager;

6 (b) An insurer;

7 (c) A third-party payor;

8 (d) A state agency; or

9 (e) A person that represents or is employed by one of the entities
10 described in this subsection.

11 (4) "Fraud" means knowingly and willfully executing or attempting
12 to execute a scheme, in connection with the delivery of or payment for
13 health care benefits, items, or services, that uses false or misleading
14 pretenses, representations, or promises to obtain any money or property
15 owned by or under the custody or control of any person.

16 NEW SECTION. **Sec. 4.** An entity that audits claims or an
17 independent third party that contracts with an entity to audit claims:

18 (1) Must establish, in writing, a procedure for a pharmacy to
19 appeal the entity's findings with respect to a claim and must provide
20 a pharmacy with a notice regarding the procedure, in writing or
21 electronically, prior to conducting an audit of the pharmacy's claims;

22 (2) May not conduct an audit of a claim more than twenty-four
23 months after the date the claim was adjudicated by the entity;

24 (3) Must give at least fifteen days' advance written notice of an
25 on-site audit to the pharmacy or corporate headquarters of the
26 pharmacy;

27 (4) May not conduct an on-site audit during the first five days of
28 any month without the pharmacy's consent;

29 (5) Must conduct the audit in consultation with a pharmacist who is
30 licensed by this or another state if the audit involves clinical or
31 professional judgment;

32 (6) May not conduct an on-site audit of more than two hundred fifty
33 unique prescriptions of a pharmacy in any twelve-month period except in
34 cases of alleged fraud;

35 (7) May not conduct more than one on-site audit of a pharmacy in
36 any twelve-month period;

1 (8) Must audit each pharmacy under the same standards and
2 parameters that the entity uses to audit other similarly situated
3 pharmacies;

4 (9) Must pay any outstanding claims of a pharmacy no more than
5 forty-five days after the earlier of the date all appeals are concluded
6 or the date a final report is issued under section 8(3) of this act;

7 (10) May not include dispensing fees or interest in the amount of
8 any overpayment assessed on a claim unless the overpaid claim was for
9 a prescription that was not filled correctly;

10 (11) May not recoup costs associated with:

11 (a) Clerical errors; or

12 (b) Other errors that do not result in financial harm to the entity
13 or a consumer; and

14 (12) May not charge a pharmacy for a denied or disputed claim until
15 the audit and the appeals procedure established under subsection (1) of
16 this section are final.

17 NEW SECTION. **Sec. 5.** An entity's finding that a claim was
18 incorrectly presented or paid must be based on identified transactions
19 and not based on probability sampling, extrapolation, or other means
20 that project an error using the number of patients served who have a
21 similar diagnosis or the number of similar prescriptions or refills for
22 similar drugs.

23 NEW SECTION. **Sec. 6.** An entity that contracts with an independent
24 third party to conduct audits may not:

25 (1) Agree to compensate the independent third party based on a
26 percentage of the amount of overpayments recovered; or

27 (2) Disclose information obtained during an audit except to the
28 contracting entity, the pharmacy subject to the audit, or the holder of
29 the policy or certificate of insurance that paid the claim.

30 NEW SECTION. **Sec. 7.** For purposes of sections 3 through 9 of this
31 act, an entity, or an independent third party that contracts with an
32 entity to conduct audits, must allow as evidence of validation of a
33 claim:

34 (1) An electronic or physical copy of a valid prescription if the
35 prescribed drug was, within fourteen days of the dispensing date:

- 1 (a) Picked up by the patient or the patient's designee;
- 2 (b) Delivered by the pharmacy to the patient; or
- 3 (c) Sent by the pharmacy to the patient using the United States
- 4 postal service or other common carrier;
- 5 (2) Point of sale electronic register data showing purchase of the
- 6 prescribed drug, medical supply, or service by the patient or the
- 7 patient's designee; or
- 8 (3) Electronic records, including electronic beneficiary signature
- 9 logs, electronically scanned and stored patient records maintained at
- 10 or accessible to the audited pharmacy's central operations, and any
- 11 other reasonably clear and accurate electronic documentation that
- 12 corresponds to a claim.

13 NEW SECTION. **Sec. 8.** (1)(a) After conducting an audit, an entity
14 must provide the pharmacy that is the subject of the audit with a
15 preliminary report of the audit. The preliminary report must be
16 received by the pharmacy no later than forty-five days after the date
17 on which the audit was completed and must be sent:

- 18 (i) By mail or common carrier with a return receipt requested; or
- 19 (ii) Electronically with electronic receipt confirmation.
- 20 (b) An entity shall provide a pharmacy receiving a preliminary
- 21 report under this subsection no fewer than forty-five days after
- 22 receiving the report to contest the report or any findings in the
- 23 report in accordance with the appeals procedure established under
- 24 section 4(1) of this act and to provide additional documentation in
- 25 support of the claim. The entity shall consider a reasonable request
- 26 for an extension of time to submit documentation to contest the report
- 27 or any findings in the report.

28 (2) If an audit results in the dispute or denial of a claim, the
29 entity conducting the audit shall allow the pharmacy to resubmit the
30 claim using any commercially reasonable method, including facsimile,
31 mail, or electronic mail.

32 (3) An entity must provide a pharmacy that is the subject of an
33 audit with a final report of the audit no later than sixty days after
34 the later of the date the preliminary report was received or the date
35 the pharmacy contested the report using the appeals procedure
36 established under section 4(1) of this act. The final report must
37 include a final accounting of all moneys to be recovered by the entity.

1 (4) Recoupment of disputed funds from a pharmacy by an entity or
2 repayment of funds to an entity by a pharmacy, unless otherwise agreed
3 to by the entity and the pharmacy, shall occur after the audit and the
4 appeals procedure established under section 4(1) of this act are final.
5 If the identified discrepancy for an individual audit exceeds forty
6 thousand dollars, any future payments to the pharmacy may be withheld
7 by the entity until the audit and the appeals procedure established
8 under section 4(1) of this act are final.

9 NEW SECTION. **Sec. 9.** Sections 3 through 9 of this act do not:

10 (1) Preclude an entity from instituting an action for fraud against
11 a pharmacy;

12 (2) Apply to an audit of pharmacy records when fraud or other
13 intentional and willful misrepresentation is indicated by physical
14 review, review of claims data or statements, or other investigative
15 methods; or

16 (3) Apply to a state agency that is conducting audits or a person
17 that has contracted with a state agency to conduct audits of pharmacy
18 records for prescription drugs paid for by the state medical assistance
19 program.

20 NEW SECTION. **Sec. 10.** (1) As used in this section:

21 (a) "List" means the list of drugs for which maximum allowable
22 costs have been established.

23 (b) "Maximum allowable cost" means the maximum amount that a
24 pharmacy benefit manager will reimburse a pharmacy for the cost of a
25 drug.

26 (c) "Multiple source drug" means a therapeutically equivalent drug
27 that is available from at least two manufacturers.

28 (d) "Network pharmacy" means a retail drug outlet licensed as a
29 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit
30 manager.

31 (e) "Therapeutically equivalent" has the same meaning as in RCW
32 69.41.110.

33 (2) A pharmacy benefit manager:

34 (a) May not place a drug on a list unless are is at least two
35 therapeutically equivalent multiple source drugs, or at least one

1 generic drug available from only one manufacturer, generally available
2 for purchase by network pharmacies from national or regional
3 wholesalers;

4 (b) Shall ensure that all drugs on a list are generally available
5 for purchase by pharmacies in this state from national or regional
6 wholesalers;

7 (c) Shall ensure that all drugs on a list are not obsolete;

8 (d) Shall make available to each network pharmacy at the beginning
9 of the term of a contract, and upon renewal of a contract, the sources
10 utilized to determine the maximum allowable cost pricing of the
11 pharmacy benefit manager;

12 (e) Shall make a list available to a network pharmacy upon request
13 in a format that is readily accessible to and usable by the network
14 pharmacy;

15 (f) Shall update each list maintained by the pharmacy benefit
16 manager every seven business days and make the updated lists, including
17 all changes in the price of drugs, available to network pharmacies in
18 a readily accessible and usable format;

19 (g) Shall ensure that dispensing fees are not included in the
20 calculation of maximum allowable cost.

21 (3) A pharmacy benefit manager must establish a process by which a
22 network pharmacy may appeal its reimbursement for a drug subject to
23 maximum allowable cost pricing. A network pharmacy may appeal a
24 maximum allowable cost if the reimbursement for the drug is less than
25 the net amount that the network pharmacy paid to the supplier of the
26 drug. An appeal requested under this section must be completed within
27 thirty calendar days of the pharmacy making the claim for which an
28 appeal has been requested.

29 (4) A pharmacy benefit manager must provide as part of the appeals
30 process established under subsection (3) of this section:

31 (a) A telephone number at which a network pharmacy may contact the
32 pharmacy benefit manager and speak with an individual who is
33 responsible for processing appeals;

34 (b) A final response to an appeal of a maximum allowable cost
35 within seven business days; and

36 (c) If the appeal is denied, the reason for the denial and the
37 national drug code of a drug that may be purchased by similarly

1 situated pharmacies at a price that is equal to or less than the
2 maximum allowable cost.

3 (5)(a) If an appeal is upheld under this section, the pharmacy
4 benefit manager shall make an adjustment on a date no later than one
5 day after the date of determination. The pharmacy benefit manager
6 shall make the adjustment effective for all similarly situated
7 pharmacies in this state that are within the network.

8 (b) If the request for an adjustment has come from a critical
9 access pharmacy, as defined by the state health care authority by rule
10 for purposes related to the prescription drug purchasing consortium
11 established under RCW 70.14.060, the adjustment approved under (a) of
12 this subsection shall apply only to critical access pharmacies.

13 (6) This section does not apply to the state medical assistance
14 program.

15 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.02 RCW
16 to read as follows:

17 The department may adopt rules for the registration fee established
18 in section 2 of this act.

19 NEW__SECTION. **Sec. 12.** Sections 1 through 10 of this act
20 constitute a new chapter in Title 19 RCW.

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