
FIFTH ENGROSSED SUBSTITUTE SENATE BILL 5857

State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Parlette, Conway, Becker, and Pearson)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to registration and regulation of pharmacy
2 benefit managers; amending RCW 19.340.030, 19.340.010, and
3 19.340.100; adding a new chapter to Title 48 RCW; creating a new
4 section; recodifying RCW 19.340.010, 19.340.020, 19.340.030,
5 19.340.040, 19.340.050, 19.340.060, 19.340.070, 19.340.080,
6 19.340.090, and 19.340.100; prescribing penalties; and providing an
7 effective date.

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

9 **Sec. 1.** RCW 19.340.030 and 2014 c 213 s 2 are each amended to
10 read as follows:

11 (1) To conduct business in this state, a pharmacy benefit manager
12 must register with the (~~department of revenue's business licensing~~
13 ~~service~~) office of the insurance commissioner and annually renew the
14 registration.

15 (2) To register under this section, a pharmacy benefit manager
16 must:

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

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

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

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

3 (b) Pay a registration fee (~~(of two hundred dollars)~~) established
4 in rule by the commissioner. The registration fee must be set to
5 allow the registration and oversight activities to be self-
6 supporting.

7 (3) To renew a registration under this section, a pharmacy
8 benefit manager must pay a renewal fee (~~(of two hundred dollars)~~)
9 established in rule by the commissioner. The renewal fee must be set
10 to allow the renewal and oversight activities to be self-supporting.

11 (4) All receipts from registrations and renewals collected by the
12 (~~(department)~~) commissioner must be deposited into the (~~(business~~
13 ~~license account created in RCW 19.02.210)~~) insurance commissioner's
14 regulatory account created in RCW 48.02.190.

15 NEW SECTION. Sec. 2. (1) The commissioner shall have
16 enforcement authority over this chapter and shall have authority to
17 render a binding decision in any dispute between a pharmacy benefit
18 manager, or third-party administrator of prescription drug benefits,
19 and a pharmacy or pharmacy services administrative organization,
20 arising out of an appeal regarding drug pricing and reimbursement.

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

28 **Sec. 3.** RCW 19.340.010 and 2014 c 213 s 1 are each amended to
29 read as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

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

35 (2) "Commissioner" means the insurance commissioner established
36 in chapter 48.02 RCW.

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

1 ~~((3))~~ (4) "Pharmacist" has the same meaning as in RCW
2 18.64.011.

3 ~~((4))~~ (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

4 ~~((5))~~ (6)(a) "Pharmacy benefit manager" means a person that
5 contracts with pharmacies on behalf of an insurer, a third-party
6 payor, or the prescription drug purchasing consortium established
7 under RCW 70.14.060 to:

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

10 (ii) Pay pharmacies or pharmacists for prescription drugs or
11 medical supplies; or

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

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

16 ~~((6))~~ (7) "Third-party payor" means a person licensed under RCW
17 48.39.005.

18 **Sec. 4.** RCW 19.340.100 and 2014 c 213 s 10 are each amended to
19 read as follows:

20 (1) As used in this section:

21 (a) "List" means the list of drugs for which ~~((maximum~~
22 ~~allowable))~~ predetermined reimbursement costs have been established,
23 such as a maximum allowable cost or maximum allowable cost list or
24 any other benchmark prices utilized by the pharmacy benefit manager
25 and must include the basis of the methodology and sources utilized to
26 determine multisource generic drug reimbursement amounts.

27 ~~(b) ("Maximum allowable cost" means the maximum amount that a~~
28 ~~pharmacy benefit manager will reimburse a pharmacy for the cost of a~~
29 ~~drug.~~

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

32 ~~(d))~~ "Multisource generic drug" means any covered outpatient
33 prescription drug for which there is at least one other drug product
34 that is rated as therapeutically equivalent under the food and drug
35 administration's most recent publication of "Approved Drug Products
36 with Therapeutic Equivalence Evaluations;" is pharmaceutically
37 equivalent or bioequivalent, as determined by the food and drug
38 administration; and is sold or marketed in the state during the
39 period.

1 (c) "Network pharmacy" means a retail drug outlet licensed as a
2 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit
3 manager.

4 (d) "Pharmacy acquisition cost" means the amount that a
5 pharmaceutical wholesaler or distributor charges for a pharmaceutical
6 product as listed on the pharmacy's invoice.

7 (e) "Therapeutically equivalent" has the same meaning as in RCW
8 69.41.110.

9 (2) A pharmacy benefit manager:

10 (a) May not place a drug on a list unless (~~are is~~ ~~there are~~)
11 there are at least two therapeutically equivalent multiple source
12 drugs, or at least one generic drug available from only one
13 manufacturer, generally available for purchase by network pharmacies
14 from national or regional wholesalers;

15 (b) Shall utilize the most up-to-date pricing data to calculate
16 reimbursement to pharmacies for drugs subject to multisource generic
17 drug prices within one business day of any price update or
18 modification;

19 (c) Shall ensure that all drugs on a list are (~~generally~~)
20 readily available, meaning at least one product with a current
21 national drug code, for purchase by network pharmacies in this state
22 from national or regional wholesalers that serve pharmacies in
23 Washington;

24 (~~e~~) (d) Shall ensure that all drugs on a list are not
25 obsolete;

26 (~~d~~) (e) Shall make available to each network pharmacy at the
27 beginning of the term of a contract, and upon renewal of a contract,
28 the sources utilized to determine the maximum allowable cost pricing
29 of the pharmacy benefit manager;

30 (~~e~~) (f) Shall make (~~a~~) any list available to a network
31 pharmacy upon request in a format that is readily accessible to and
32 usable by the network pharmacy;

33 (~~f~~) (g) Shall update each list maintained by the pharmacy
34 benefit manager every seven business days and make the updated lists,
35 including all changes in the price of drugs, available to network
36 pharmacies in a readily accessible and usable format;

37 (~~g~~) (h) Shall ensure that dispensing fees are not included in
38 the calculation of maximum allowable cost.

39 (3) A pharmacy benefit manager must establish a process by which
40 a network pharmacy, or their contracting agent such as a pharmacy

1 services administrative organization, may appeal its reimbursement
2 for a ((drug subject to maximum allowable cost pricing)) multisource
3 generic drug. A network pharmacy, or their contracting agent, may
4 appeal ((a maximum allowable cost)) its reimbursement for a
5 multisource generic drug if the reimbursement for the drug is less
6 than the ((net)) amount that the network pharmacy paid to the
7 supplier of the drug. ((An appeal requested under this section must
8 be completed within thirty calendar days of the pharmacy making the
9 claim for which an appeal has been requested.)) Upon receipt of an
10 appeal, the pharmacy benefit manager shall supply the network
11 pharmacy the national drug code for a product available to the
12 network pharmacy from a national or regional wholesaler operating in
13 Washington at a price less than or equal to the reimbursed amount. An
14 appeal requested under this section must be completed within ten
15 calendar days of the network pharmacy, or their contracting agent,
16 submitting the appeal.

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

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

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

24 ~~(c))~~ If the appeal is denied, the reason for the denial and the
25 national drug code ~~((of a drug that may be))~~ of an equivalent
26 multisource generic drug that has been purchased by ((similarly
27 situated pharmacies)) another network pharmacy located in Washington
28 state at a price that is equal to or less than the ((maximum
29 allowable cost.

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

35 ~~(b))~~ pharmacy benefit manager's list price within seven days of
36 the appealed claim, and provide the name of a pharmaceutical
37 wholesaler who operates in Washington state at which the drug can be
38 acquired by the challenging network pharmacy.

39 (5) If the request for an adjustment has come from a critical
40 access pharmacy, as defined by the state health care authority by

1 rule for purposes related to the prescription drug purchasing
2 consortium established under RCW 70.14.060, the adjustment (~~approved~~
3 ~~under (a) of this subsection~~) shall apply only to critical access
4 pharmacies.

5 (6) Beginning January 1, 2017, if a network pharmacy appeal to
6 the pharmacy benefit manager is denied, or if the network pharmacy is
7 unsatisfied with the outcome of the appeal, the pharmacy or
8 pharmacist may dispute the decision and request review by the
9 commissioner within thirty calendar days of receiving the decision.

10 (a) All relevant information from the parties may be presented to
11 the commissioner, and the commissioner may enter an order directing
12 the pharmacy benefit manager to make an adjustment to the disputed
13 claim, deny the pharmacy appeal, or take other actions deemed fair
14 and equitable. An appeal requested under this section must be
15 completed within thirty calendar days of the request.

16 (b) Upon resolution of the dispute, the commissioner shall
17 provide a copy of the decision to both parties within seven calendar
18 days.

19 (c) Appeals under this subsection (6) are subject to chapter
20 34.05 RCW. The commissioner may authorize the office of
21 administrative hearings, as provided in chapter 34.12 RCW, to conduct
22 appeals under this subsection (6).

23 (7) This section does not apply to the state medical assistance
24 program.

25 NEW SECTION. Sec. 5. (1) The pharmacy benefit manager shall
26 disclose to each plan sponsor in all contracts between the pharmacy
27 benefit manager and a plan sponsor providing prescription drug
28 coverage in the state a written explanation of the methodology and
29 sources utilized by the pharmacy benefit manager to determine
30 multisource generic drug prices.

31 (2) Multisource generic drug prices shall be updated and
32 transmitted in writing to every plan sponsor providing prescription
33 drug coverage in this state within seven business days whenever there
34 is a pricing change under any contract it utilizes in this state.

35 (3) If a pharmacy benefit manager utilizes multisource generic
36 drug prices for drugs dispensed by network pharmacies in this state
37 but does not utilize the same multisource generic drug prices for
38 drugs dispensed in this state through a mail order or other nonretail
39 pharmacy, the pharmacy benefit manager must disclose the difference

1 between the multisource generic drug pricing of drugs dispensed
2 between network retail pharmacies and other nonretail pharmacies, in
3 writing to each plan sponsor no later than five business days from
4 the utilization of the multisource generic drug pricing.

5 NEW SECTION. **Sec. 6.** (1) The commissioner shall accept
6 registration of pharmacy benefit managers as established in RCW
7 19.340.030 and receipts shall be deposited in the insurance
8 commissioner's regulatory account.

9 (2) The commissioner shall have enforcement authority over
10 chapter 19.340 RCW consistent with requirements established in
11 section 2 of this act.

12 (3) The commissioner may write rules to implement chapter 19.340
13 RCW and to establish registration and renewal fees that ensure the
14 registration, renewal, and oversight activities are self-supporting.

15 NEW SECTION. **Sec. 7.** The insurance commissioner must review the
16 potential to use the independent review organizations, established in
17 RCW 48.43.535, as an alternative to the appeal process for pharmacy
18 and pharmacy benefit manager disputes, and other disputes between
19 providers and insurance carriers. By December 1, 2016, the
20 commissioner must submit recommendations to the health care
21 committees of the legislature.

22 NEW SECTION. **Sec. 8.** Section 1 of this act takes effect January
23 1, 2017.

24 NEW SECTION. **Sec. 9.** RCW 19.340.010, 19.340.020, 19.340.030,
25 19.340.040, 19.340.050, 19.340.060, 19.340.070, 19.340.080,
26 19.340.090, and 19.340.100 are each recodified as a new chapter in
27 Title 48 RCW.

28 NEW SECTION. **Sec. 10.** Sections 2, 5, and 6 of this act are each
29 added to chapter 48.--- RCW (the new chapter created in section 9 of
30 this act).

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