
SENATE BILL 5888

State of Washington

67th Legislature

2022 Regular Session

By Senators Rivers, Cleveland, Hasegawa, and Nobles

Read first time 01/18/22. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to cost-sharing fairness; adding a new section to
2 chapter 48.43 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) Citizens of Washington frequently rely on state-regulated
6 commercial carriers to secure access to the prescription medicines
7 needed to protect their health;

8 (b) Commercial insurance benefit designs increasingly require
9 patients to bear significant out-of-pocket costs for their
10 prescription medicines;

11 (c) High out-of-pocket costs on prescription medicines impact the
12 ability of patients to start new and necessary medicines and to stay
13 adherent to their current medicines;

14 (d) High or unpredictable deductible and coinsurance cost-sharing
15 requirements are a main driver of elevated patient out-of-pocket
16 costs;

17 (e) The burdens of high or unpredictable deductibles and
18 coinsurance are borne disproportionately by patients with chronic or
19 debilitating conditions;

20 (f) Pharmaceutical manufacturers may offer sizeable rebates,
21 discounts, and price concessions in connection with the dispensing or

1 administration of a therapy, but patients do not necessarily
2 financially benefit from these amounts at the point of sale, and,
3 instead, carriers or other intermediaries may retain the value of
4 rebates, discounts, and price concessions;

5 (g) Restrictions are needed on the ability of carriers and their
6 intermediaries to retain rebates, discounts, and price concessions
7 that instead should be directly passed on to patients as cost
8 savings; and

9 (h) Patients need equitable and accessible health coverage that
10 does not impose unfair cost-sharing burdens upon them.

11 (2) Therefore, the legislature of the state of Washington intends
12 to add a new section to the Washington insurance code to ensure that,
13 to the full extent permissible and consistent with applicable law,
14 patients directly receive at the pharmacy counter their full and fair
15 share of the benefit of rebates and discounts for prescription
16 medicines that accrue directly or indirectly to state-regulated
17 carriers. It is the intent of the legislature that these amendments
18 be interpreted to pass on meaningful, direct, and durable cost
19 savings to patients in Washington at the point of sale such that
20 patients directly benefit from rebates and other price concessions
21 that pharmaceutical manufacturers offer in connection with the
22 dispensing or administration of a particular therapy.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43
24 RCW to read as follows:

25 (1) An enrollee's defined cost sharing for each prescription drug
26 shall be calculated at the point of sale based on a price that is
27 reduced by an amount equal to at least 80 percent of all rebates
28 received, or to be received, in connection with the dispensing or
29 administration of the prescription drug.

30 (2) The commissioner shall have enforcement authority over this
31 section. Among other enforcement mechanisms, the commissioner may,
32 after a hearing, suspend or revoke a carrier's license for failure to
33 comply with the requirements of this section.

34 (3) Nothing in this section shall preclude a carrier from
35 decreasing an enrollee's defined cost sharing by an amount greater
36 than that required under subsection (2) of this section.

37 (4) In implementing the requirements of this section, the state
38 shall only regulate a carrier to the extent permissible under
39 applicable law.

1 (5) In complying with the provisions of this section, a carrier
2 or its agents may not publish or otherwise reveal information
3 regarding the amount of rebates or price protection rebates it
4 receives on a product, manufacturer, or pharmacy-specific basis. Such
5 information is a trade secret, is not a public record as defined in
6 the public records act, RCW 42.56.010, and shall not be disclosed
7 directly or indirectly. A carrier shall impose the confidentiality
8 protections of this subsection on any third parties or vendors with
9 which it contracts that may receive or have access to rebate or price
10 protection rebate information.

11 (6) For the purposes of this section:

12 (a) "Defined cost sharing" means a deductible payment or
13 coinsurance amount imposed on an enrollee for a covered prescription
14 drug under the enrollee's health plan.

15 (b) "Price protection rebate" means a negotiated price concession
16 that accrues directly or indirectly to the carrier, or other party on
17 behalf of the carrier, in the event of an increase in the wholesale
18 acquisition cost of a drug above a specified threshold.

19 (c) "Rebate" means:

20 (i) Negotiated price concessions including but not limited to
21 base price concessions, whether described as a rebate or otherwise,
22 and reasonable estimates of any price protection rebates and
23 performance-based price concessions that may accrue directly or
24 indirectly to the carrier during the coverage year from a
25 manufacturer, dispensing pharmacy, or other party in connection with
26 the dispensing or administration of a prescription drug; and

27 (ii) Reasonable estimates of any negotiated price concessions,
28 fees, and other administrative costs that are passed through, or are
29 reasonably anticipated to be passed through, to the carrier and serve
30 to reduce the carrier's liabilities for a prescription drug.

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