SENATE BILL REPORT
SB 5213

As of February 20, 2023

Title: An act relating to pharmacy benefit managers.

Brief Description: Concerning pharmacy benefit managers. [**Revised for 1st Substitute:** Concerning pharmacy benefit managers' utilizations of nonresident pharmacies.]

Sponsors: Senators Kuderer, Short, Cleveland, Conway, Dhingra, Rolfes, Wellman and Wilson, C..

Brief History:
Committee Activity: Health & Long Term Care: 2/03/23, 2/17/23 [DPS-WM, w/oRec]. Ways & Means: 2/21/23.

Brief Summary of First Substitute Bill

- Imposes certain requirements on pharmacy benefit managers related to the use of nonresident pharmacies.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5213 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Muzzall, Assistant Ranking Member; Conway, Dhingra, Randall and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers, Ranking Member; Holy and Padden.

Staff: Greg Attanasio (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

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

Staff: Sandy Stith (786-7710)

Background: Health Care Benefit Managers. All health care benefit managers (HCBMs), including pharmacy benefit managers (PBMs), must be registered by the Office of the Insurance Commissioner (OIC). Applications for registration must include the identity of the HCBM and the individuals and entities with a controlling interest in the HCBM, and whether the HCBM does business as a PBM or a different type of benefit manager, in addition to other required information. Registered HCBMs must pay licensing and renewal fees. The fees must be set at an amount that ensures the registration, renewal, and oversight activities of the OIC are self-supporting.

Prior to approving an application, the OIC must find that the HCBM has not committed any act that resulted in the denial, suspension, or revocation of a registration, has the capacity to comply with state and federal laws, and has designated a person responsible for such compliance.

A HCBM may not provide services to a health carrier or an employee benefits program without a written agreement describing the rights and responsibilities of the parties. The HCBM must file with the OIC every benefit management contract and contract amendment between the HCBM and a provider, pharmacy, pharmacy services administration organization, or other HCBM.

Pharmacy Benefit Manager Regulation. A PBM is a person that contracts with pharmacies on behalf of an insurer, third party payer, or the prescription drug purchasing consortium to:

- process claims;
- provide retail network management;
- pay pharmacies or pharmacists;
- negotiate rebates;
- manage pharmacy networks; or
- make credentialing determinations.

A PBM may not:

- cause or knowingly permit to be used any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;
- charge a pharmacist or pharmacy a fee related to the adjudication of a claim, credentialing, participation, certification, accreditation, or enrollment in a network, including a fee for the receipt and processing of a pharmacy claim, for the development or management of claims processing services in a PBM network, or for participating in a PBM network;
- require accreditation standards inconsistent with or more stringent than accreditation standards established by a national accreditation organization;
- reimburse a pharmacy or pharmacist an amount less than the amount the PBM reimburses an affiliate for providing the same services; or

- retroactively deny or reduce a claim or aggregate of claims after the claim or aggregate of claims has been adjudicated, unless the original claim was submitted fraudulently or the denial or reduction is the result of a pharmacy audit.

Summary of Bill (First Substitute): A PBM must receive affirmative authorization before filling a prescription for a covered person through a nonresident pharmacy. If a covered person uses a nonresident pharmacy, the PBM must allow for dispensing at a local network pharmacy if the mail-order is delayed by more than one day, or if the order arrives in a unusable condition. The PBM must also ensure that covered persons using a nonresident pharmacy have easy and timely access to prescription counseling by a pharmacist.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Removes the bill original language and requires that PBMs receive affirmative authorization to fill a prescription through a nonresident pharmacy, provide access to pharmacy counseling for those using a nonresident pharmacy, and allow for a prescription to be filled at a local pharmacy if the nonresident pharmacy order is more than one day late or arrives in unusable condition.
- Changes the title.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: Prohibiting spread pricing has the potential to save millions of dollars. PBMs control all aspects of obtaining drugs including price, who fills the prescription, and what drugs are available to patients. This bill builds on existing regulations and adds additional accountability and transparency. PBMs continue to charge fees to pharmacy because the currently law only applies to state regulated plans. PBM practices are forcing community pharmacies to close. State laws should apply to all PBMs regardless of who they contract with. Patients should have the ability to choose where and when they obtain their prescriptions. Mail order pharmacies do not offer the same services that community pharmacies do.

CON: PBMs are essential to keeping drug prices affordable. Independent pharmacies make more money from higher drug costs. Requiring an opt-in for mail order pharmacy services is confusing for current customers. Plans must be able to manage costs for provider-

administered drugs. This bill limits the ability for plans to design affordable networks.

OTHER: Under the bill, pharmacies can refuse to fill a prescription if the reimbursement is too low. This puts consumer in the middle of dispute between the pharmacy and the PBM.

Persons Testifying (Health & Long Term Care): PRO: Senator Patty Kuderer, Prime Sponsor; Jenny Arnold, Washington State Pharmacy Association; Ryan Oftebro, Kelley-Ross Pharmacy; Jack Holt, Hi-School Pharmacy Services; Kaitlynn Johnson, Tick Klock Drug; Nathan Johnson, Tick Klock Drug; Erin Callahan, Diabetes Patient Advocacy Coalition; Jim Freeburg, Patient Coalition of Washington.

CON: Angela Henderson; Lua Pritchard Pritchard, Executive Director of the Wa State Asia Pacific Alliance Center; Janine Terrano, CEO and Owner of Topia Technology; LuGina Mendez Harper, Prime Therapeutics; Timothy O'Donnell Sr., I.B.E.W. Local 76 Business Manager/Chairman; Jennifer Ziegler, Association of Washington Health Care Plans; Chris Bandoli, America's Health Insurance Plans; Tirhas Gebru; Jonathan Edelheit, Global Health Resources.

OTHER: Jane Beyer, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): PRO: Laura Boudreau, AIDS Healthcare Foundation; Lisa Nelson, Washington Association for Community Health; Rob Geddes, Albertsons Companies, Inc.; Rachel Wittenauer.

CON: Fred Brown, National Labor Alliance of Healthcare Coalitions.