

SENATE BILL REPORT

SB 6096

As of January 25, 2012

Title: An act relating to protection against unfair prescription drug practices by pharmacy benefits managers.

Brief Description: Regulating the practices of pharmacy benefits managers.

Sponsors: Senators Conway, Parlette and Keiser.

Brief History:

Committee Activity: Health & Long-Term Care: 1/25/12.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Mich'l Needham (786-7442)

Background: Pharmacy benefits managers acquire prescription drugs for public and private entities and perform administrative services related to pharmacy benefits. These services may include mail order pharmacy, claims processing, payment of claims, formulary development, rebate contracting, and disease management activities.

Summary of Bill: The business practices of pharmacy benefit managers are added to businesses regulated under Title 19 RCW. Pharmacy benefits management means the procurement of prescription drugs at a negotiated rate for dispensing to Washington individuals, the administration of prescription drug benefits, or administration of any of the following services: mail order pharmacy; claims processing, retail network management, and payment of claims; clinical formulary development; rebate contracting and administration; certain patient compliance, therapeutic intervention, and generic substitution programs; and disease management programs. Pharmacy benefits managers are defined as organizations that performs pharmacy benefit management through employment or a contractual relationship. It does not include a health carrier if the carrier provides or administers pharmacy benefits management, nor does it include the activities of retail, community, long-term care, or hospital pharmacies. Covered entity means a health plan or health carrier; a state purchased health care program; the Washington State Health Insurance Pool; or an employer, labor union, or other group of persons organized in the state that provides health coverage.

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.

Pharmacy benefit managers are required to act in good faith, abstain from deception, and practice honesty and equity in all pharmacy benefits management matters. They must comply with several requirements in their relationships with covered entities. These requirements include notifying the covered entity of any conflict of interest; providing financial and utilization information requested by the covered entity; disclosing to the covered entity any benefit or payment received in any form as a result of a prescription drug substitution; disclosing to the covered entity all financial terms and arrangements between the pharmacy benefits manager and any drug manufacturer or labeler; disclosing payment or benefits based on volume of sales for certain prescription drugs and classes or brands of drugs; and the covered entity must be allowed to audit the pharmacy benefits manager's books, accounts and records to confirm payments are being disclosed.

Pharmacy benefits managers are limited in the ability to substitute drugs in cases in which they derive payments or benefits related to the price or cost of a drug dispensed through a pharmacy benefits management contract. A pharmacy benefits manager may substitute a lower-priced generic or therapeutically equivalent drug for a higher-priced drug. If the substitute drug costs more than the prescribed drug the substitution may only be made for medical reasons that benefit the covered individual. The pharmacy benefits manager must obtain the approval of the prescribing professional and must disclose to the individual and the covered entity the cost of both drugs and any benefit or payment that the pharmacy benefits manager may receive. Those requirements do not apply to the substitution of a higher-priced drug for a lower-priced drug if the individual is enrolled in a state-purchased health care program and the drug is on the Washington state preferred drug list.

Any waiver by a covered entity of the practice standards is unenforceable and void. A violation of the practice standards is an unfair or deceptive act in trade or commerce and an unfair method of competition under the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Requested on January 23, 2012.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: These pharmacy benefit managers (PBMs) are large national companies, and we need some state oversight of the business practices. This is an important dialogue on what role the state should take in regulating this business. This bill would create some transparency for the pricing of drugs and the contracts the PBMs have with manufacturers that result in agreements which harm patients and increase the cost of health care. The big three PBMs – Express Scripts, Medco, and Caremark – control over 80 percent of the business, and we are forced to do business with them. Their contracts force the use of some more expensive brand name drugs and force the use of mail-order services out of state. The National Pharmacy Association has been trying to tackle this issue for 15 years to get some regulation – only a few areas are regulated now. These PBMs routinely force the use of higher-cost brand name drugs, and we believe there needs to be exposure and transparency to display why and what agreements have been made. The contract terms are

not accommodating or flexible, and leave no room for negotiation. The contracts force the maximum allowable cost that is defined – solely at the discretion of PBM—and do not accommodate coverage differences for the patient. PBM practices do increase the overall cost of health care. They insert a number of processes and practices into the system that just add cost and add time for the providers and pharmacists. They drive patients to mail-order services that may have restrictions which impact the patient's access to their products and the pharmacists' access to the medical record, and which may impact the patient's health. This bill will allow plan sponsors and others the opportunity to confirm that PBM is working to provide the lowest costs. It adds important oversight on business practices that are being unfairly conducted now.

CON: Our contracts are mostly with large insurance carriers and large employers, and our clients have the opportunity to insert different requirements in their bids for contracts. Large employers do ask for some disclosure, and we provide that with protections of proprietary information. This approach does not protect our proprietary information. There was discussion of the approach during the development of the Affordable Care Act (ACA), but it was rejected. ACA includes release of some aggregated information that must be provided to the federal Health and Human Services (HHS) and plans. We are regulated by many entities as third-party administrators: by the Board of Pharmacy, by HHS, and by the Department of Labor. PBMs use common market tools to manage prices. Nothing in this bill protects the information that would be disclosed to public entities from further public disclosure. It is an anti-competitive measure that may work against the efforts to control costs. These private business contracts with other businesses should not include language that allows one business to audit the other. Placing the business practices under the Consumer Protection Act isn't appropriate, since these are not typical consumer transactions.

Persons Testifying: PRO: Senator Conway, prime sponsor; Holly Henry, Rxtra Care, Inc.; Stephanie Kornechuck, Genoa Healthcare; Nik Seifter, Haggen, Inc; Jennifer Arnold, WA State Pharmacy Assn.; Cory Dustein, Arlington Pharmacy; Billy Chow, Bartell Drugs.

CON: Eric Douglas, CVS Caremark; Cindy Laubacker, Medco Health; Mel Sorensen, Express Scripts, Assn. of Health Insurance Plans; Cliff Webster, Pharmaceutical Research and Manufacturers of America; Donna Steward, Assn. of WA Business.