

**ESSB 5857 - S AMD 480**

By Senators Parlette, Becker

ADOPTED 6/25/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 19.340.030 and 2014 c 213 s 2 are each amended to  
4 read as follows:

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

9 (2) To register under this section, a pharmacy benefit manager  
10 must:

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

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

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

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

17 (b) Pay a registration fee (~~of two hundred dollars~~) established  
18 in rule by the commissioner. The registration fee must be set to  
19 allow the registration and oversight activities to be self-  
20 supporting.

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

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

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.340  
30 RCW to read as follows:

1 (1) The commissioner shall have enforcement authority over this  
2 chapter and shall have authority to render a binding decision in any  
3 dispute between a pharmacy benefit manager, or third-party  
4 administrator of prescription drug benefits, and a pharmacy arising  
5 out of an appeal regarding drug pricing and reimbursement.

6 (2) Any person, corporation, or third-party administrator of  
7 prescription drug benefits, pharmacy benefit manager, or business  
8 entity which violates any provision of this chapter shall be subject  
9 to a civil penalty in the amount of one thousand dollars for each act  
10 in violation of this chapter or, if the violation was knowing and  
11 willful, a civil penalty of five thousand dollars for each violation  
12 of this chapter.

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

15 The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

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

20 (2) "Commissioner" means the insurance commissioner established  
21 in chapter 48.02 RCW.

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

23 ~~((3))~~ (4) "Pharmacist" has the same meaning as in RCW  
24 18.64.011.

25 ~~((4))~~ (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

26 ~~((5))~~ (6)(a) "Pharmacy benefit manager" means a person that  
27 contracts with pharmacies on behalf of an insurer, a third-party  
28 payor, or the prescription drug purchasing consortium established  
29 under RCW 70.14.060 to:

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

32 (ii) Pay pharmacies or pharmacists for prescription drugs or  
33 medical supplies; or

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

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

38 ~~((6))~~ (7) "Third-party payor" means a person licensed under RCW  
39 48.39.005.

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

3       (1) As used in this section:

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

6       (b) "Maximum allowable cost" means the maximum amount that a  
7 pharmacy benefit manager will reimburse a pharmacy for the cost of a  
8 drug.

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

11       (d) "Network pharmacy" means a retail drug outlet licensed as a  
12 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit  
13 manager.

14       (e) "Therapeutically equivalent" has the same meaning as in RCW  
15 69.41.110.

16       (2) A pharmacy benefit manager:

17       (a) May not place a drug on a list unless (~~are is [there are]~~)  
18 there are at least two therapeutically equivalent multiple source  
19 drugs, or at least one generic drug available from only one  
20 manufacturer, generally available for purchase by network pharmacies  
21 from national or regional wholesalers;

22       (b) Shall ensure that all drugs on a list are (~~generally~~)  
23 readily available for purchase by network pharmacies in this state  
24 from national or regional wholesalers that serve pharmacies in  
25 Washington;

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

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

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

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

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

1 (3) A pharmacy benefit manager must establish a process by which  
2 a network pharmacy may appeal its reimbursement for a drug subject to  
3 maximum allowable cost pricing. A network pharmacy may appeal a  
4 maximum allowable cost if the reimbursement for the drug is less than  
5 the net amount that the network pharmacy paid to the supplier of the  
6 drug. (~~An appeal requested under this section must be completed~~  
7 ~~within thirty calendar days of the pharmacy making the claim for~~  
8 ~~which an appeal has been requested.~~) An appeal requested under this  
9 section must be completed within thirty calendar days of the pharmacy  
10 submitting the appeal. If after thirty days the network pharmacy has  
11 not received the decision on the appeal from the pharmacy benefit  
12 manager, then the appeal is considered denied.

13 The pharmacy benefit manager shall uphold the appeal if the  
14 pharmacy or pharmacist can demonstrate that it is unable to purchase  
15 a therapeutically equivalent interchangeable product from its  
16 supplier at the pharmacy benefit manager's list price.

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~~) has been purchased by  
26 (~~(similarly situated))~~ other network pharmacies located in Washington  
27 at a price that is equal to or less than the maximum allowable cost.

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

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

1       (6) If a network pharmacy appeal to the pharmacy benefit manager  
2 is denied, or if the network pharmacy is unsatisfied with the outcome  
3 of the appeal, the pharmacy or pharmacist may dispute the decision  
4 and request review by the commissioner within thirty calendar days of  
5 receiving the decision.

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

12       (b) Upon resolution of the dispute, the commissioner shall  
13 provide a copy of the decision to both parties within seven calendar  
14 days.

15       (7) This section does not apply to the state medical assistance  
16 program.

17       NEW SECTION. Sec. 5. A new section is added to chapter 48.02  
18 RCW to read as follows:

19       (1) The commissioner shall accept registration of pharmacy  
20 benefit managers as established in RCW 19.340.030 and receipts shall  
21 be deposited in the insurance commissioner's regulatory account.

22       (2) The commissioner shall have enforcement authority over  
23 chapter 19.340 RCW consistent with requirements established in  
24 section 2 of this act.

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

28       NEW SECTION. Sec. 6. The joint select committee on health care  
29 oversight must convene a stakeholder work group comprised of  
30 participants in the prescription drug delivery chain, including  
31 pharmacy benefit managers, drug manufacturers, wholesalers, pharmacy  
32 service administrative organizations, pharmacies, health plans, and  
33 other payors. The work group assignments may include, but are not  
34 limited to the following:

35       (1) Review the entire drug supply chain including plan and  
36 pharmacy benefit manager reimbursements to network pharmacies,  
37 wholesaler or pharmacy service administrative organization prices to

1 network pharmacies, and drug manufacturer prices to network  
2 pharmacies;

3 (2) Discuss suggestions that recognize the unique nature of small  
4 pharmacies and possible options that support a viable business model  
5 that do not increase the cost of pharmacy products;

6 (3) Review the availability of all drugs on the list and list  
7 prices for pharmacies;

8 (4) Review the phone contacts and standards for response times  
9 and availability;

10 (5) Review the pharmacy acquisition cost from national or  
11 regional wholesalers that serve pharmacies in Washington, and  
12 consider when or whether to make an adjustment and under what  
13 standards. The review may assess the timing of pharmacy purchases of  
14 products and the relative risk of list price changes related to the  
15 timing of dispensing the products; and

16 (6) The work group must provide periodic updates to the joint  
17 select committee on health care oversight.

18 NEW SECTION. **Sec. 7.** The insurance commissioner, in  
19 collaboration with the department of health, must review the  
20 potential to use the independent review organizations, established in  
21 RCW 48.43.535, as an alternative to the appeal process for pharmacy  
22 and pharmacy benefit manager disputes. By December 1, 2015, the  
23 agencies must submit recommendations for use of the independent  
24 review organizations including detailed suggestions for modifications  
25 to the process, and the possible transition of the process from the  
26 department of health, established in RCW 43.70.235, to the office of  
27 the insurance commissioner.

28 NEW SECTION. **Sec. 8.** Section 1 of this act takes effect January  
29 1, 2016."

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30 On page 1, line 2 of the title, after "managers;" strike the  
31 remainder of the title and insert "amending RCW 19.340.030,  
32 19.340.010, and 19.340.100; adding a new section to chapter 19.340

1 RCW; adding a new section to chapter 48.02 RCW; creating new  
2 sections; prescribing penalties; and providing an effective date."

EFFECT: (1) Modifies references to community pharmacies to network pharmacies.

(2) Requires as part of the appeals process that a pharmacy benefit manager (PBM) reimburse the amount that the pharmacy or pharmacist paid to the supplier if the pharmacy or pharmacist can demonstrate that it is unable to purchase a therapeutically equivalent interchangeable product from its supplier at the PBM's maximum allowable cost.

(3) If after thirty days, the network pharmacy has not received the decision on the appeal from the PBM, then the appeal is considered denied (and the second level appeal right is triggered).

(4) If the network pharmacy appeal is denied or the network pharmacy is unsatisfied with the outcome of the appeal to the PBM, the pharmacy may request review of the dispute by the Commissioner within thirty days of receiving the PBM's decision.

(5) The Commissioner may enter an order directing the PBM to make adjustment to the disputed claim (the order is limited to the disputed claim), and an appeal must be completed within thirty calendar days.

(6) The commissioner and the department of health must provide recommendations for the use of the independent review organizations as an alternative for the pharmacy and PBM appeals process.

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