

SENATE BILL REPORT

SB 5857

As Reported by Senate Committee On:
Health Care, February 19, 2015

Title: An act relating to registration and regulation of pharmacy benefit managers.

Brief Description: Addressing registration and regulation of pharmacy benefit managers.

Sponsors: Senators Parlette, Conway, Becker and Pearson.

Brief History:

Committee Activity: Health Care: 2/12/15, 2/19/15 [DP-WM].

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Angel, Bailey, Brown, Cleveland, Conway, Jayapal, Keiser, Parlette and Rivers.

Staff: Mich'l Needham (786-7442)

Background: The 2014 Legislature passed ESSB 6137 requiring pharmacy benefit managers to register with the Department of Revenue to conduct business in this state. Pharmacy benefit managers process claims for prescription drugs or medical supplies, provide retail network management for pharmacies, pay pharmacies for prescription drugs or medical supplies, and negotiate rebates with manufacturers for drugs.

Standards are established for auditing pharmacy claims, and for pharmacy benefit managers to use when developing lists of drugs with associated maximum allowable costs, including standards related to the availability of drugs, distribution of the lists, and updates to the list every seven business days. Pharmacy benefit managers must establish an appeals process to allow pharmacies to appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount that the pharmacy paid to the supplier of the drug.

The 2014 legislation did not provide regulatory authority.

Summary of Bill: Pharmacy benefit manager registration is moved from the Department of Revenue to the Office of the Insurance Commissioner, and the Commissioner has

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enforcement authority over the pharmacy benefit managers and the statutory provisions created in 2014.

The Commissioner has authority to render a binding decision in any dispute between a pharmacy benefit manager, or third-party administrator of prescription drug benefits, and a pharmacy arising out of an appeal on drug pricing and reimbursement. The Commissioner is not bound by any arbitration agreements between the pharmacy benefit manager and the pharmacy, nor any mediation or arbitration decisions.

Any entity that violates the chapter is subject to a civil penalty of \$1,000 for each violation. If the violation was knowing and willful, the civil penalty is \$5,000 for each violation.

Any pharmacy or pharmacist must not be billed or paid at or below the cost of the drug to the pharmacy. A pharmacy or pharmacist injured as a result of a violation of this chapter may bring action against the party for recovery of all actual damages plus attorneys' fees.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Section 1 takes effect on January 1, 2016.

Staff Summary of Public Testimony: PRO: We passed a bill last year and it hasn't solved the problems. I hope both sides can sit down and work together. We are very happy with the audit standards that were put in place last year but we are still struggling with the maximum allowable costs list and reimbursement for the cost of the drugs. The reimbursements are below our costs while the big companies reap hundreds of billions in profits. Despite the law, we continue to be paid below costs for the product and we cannot sustain the business this way. The pharmacy benefit managers (PBMs) are not following the law with the appeals process or listing of market prices. They continue to deny requests for reimbursement of the cost of the drugs. The PBMs are not updating the costs of the drugs to reflect the market prices we must pay. They are making special arrangements with big chain stores to serve as their preferred stores; they reimburse the chains twice as much as they pay the small retail pharmacies for the same product. Customers of the local pharmacies appreciate the extra services they have where someone treats us as a person, where the pharmacist knows us and delivers our medications if needed, and allows payments over time for high-cost medications. We appreciate our local pharmacy and want to ensure they stay in business. We rely on the services they provide.

CON: We negotiated last year's bill and it has only been in effect since mid-June. The proponents did not call and discuss their concerns. The regulatory oversight is not appropriate with the the Office of the Insurance Commissioner. They do not have the appropriate experts in drug pricing. They are funded by insurers and they would not appreciate paying to regulate the PBM issues. We are concerned this could have an adverse impact on the cost of prescription drug benefits. Any limitation on the carriers' ability to manage care is ill advised. We negotiated last year's bill for several years and we would love

to sit and talk through what is not working. It is premature to make a change until we know more about how it is working.

Persons Testifying: PRO: Senator Parlette, prime sponsor; Kirk Heinz, Kirks Pharmacy; Kari Vanderhowen, Duvall Family Drugs; Bridgett Edgar, PharmASave Pharmacy; Don Zimmerman, Ian Warren, Costless Pharmacy; David Arnold, Cavallinies Pharmacy; Carolyn Logue, WA Food Industry Assn.; Mary McIamore, Doris Mandville, Wanda Fredericks, Ebba Jacobson, Maxine Parker, Johnny Miller, Hugh McMillan; Mary Workman, Berrick Bushnell, Ken Baines, citizens.

CON: Mel Sorensen, America's Health Insurance Plans, Express Scripts; Sydney Zvara, Assn. of WA Healthcare Plans; Carrie Tellefson, CVS Health, Regence Blue Shield.