

# SENATE BILL REPORT

## SB 5744

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As of February 13, 2017

**Title:** An act relating to prescription coverage and the use of mail order service.

**Brief Description:** Addressing prescription coverage and the use of mail order service.

**Sponsors:** Senators Kuderer and Keiser.

**Brief History:**

**Committee Activity:** Health Care: 2/13/17.

**Brief Summary of Bill**

- Requires health insurance carriers to include provisions in the contract with a pharmacy benefit manager on prescription mail order services.

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### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Mich'l Needham (786-7442)

**Background:** Many health insurance carriers contract with a pharmacy benefit manager (PBM) to manage the pharmacy benefit, including network development with pharmacies, processing claims, maintaining a formulary, negotiating with manufacturers for rebates, and managing mail order services.

**Summary of Bill:** Beginning January 1, 2018, regulated health insurance carriers that offer health plans that include prescription drug coverage must modify any contract with a PBM to include a requirement that the PBM or its agents obtain affirmative authorization, in writing or electronically, from a health plan enrollee prior to filling an enrollee's prescription through a mail order service. Each individual prescription must be authorized by the enrollee.

Each mail order drug shipment must include a notice to the enrollee describing the actions the enrollee can take to terminate use of the mail order service.

The health plan enrollee booklet must include an explanation about the requirement to obtain an affirmative authorization prior to filling a prescription through a mail order service.

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*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.*

**Appropriation:** None.

**Fiscal Note:** Requested on February 8, 2017.

**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:** PRO: I had a personal experience with a mail order prescription arriving at my house that I did not order, and my doctor did not order, but the Express Scripts mail order service demanded payment even while they couldn't provide proof that I had ordered the drug. I have been hearing of similar forced mail order services and know that my experience is not a one-off experience. I want to protect the consumer from this forced mail order service. Individuals have the right to maintain their relationship with their pharmacist and should not be enrolled in mail order without the proactive effort of the patient. The patient should retain the right to choose retail or mail order. The best care is provided by one pharmacist that can oversee all the prescriptions and possible interactions. Some patients are getting sent to mail order services in part through the benefit design. Mail order can produce waste in the system if a script is stopped but the mail order refills continue.

CON: Generally, the health plan decides if they want to use mail order services and they design a benefit differential to incentivize the use. Very few mandatory mail order agreements exist and to my knowledge there are none in Washington. Mail order is typically used only after the third fill to ensure the drug is working and to avoid the waste that was mentioned earlier. Health plans design their prescription benefit to ensure drugs are available in the most cost effective way possible. Plans allow enrollees to choose the method of delivery they prefer. We are concerned with the requirement for an individual election for each prescription since that will create a significant administrative burden and drive up costs. Plans want to maintain the flexibility to make the best use of mail order services and we do want consumers to have information on how to make changes or corrections. Our business model includes brick and mortar pharmacies as well as mail order services and we believe mail order is a good option for some customers. Many employers rely on mail order services to save money on their benefits and we should allow businesses or insurers to make the decision that is best to control prices.

OTHER: We are pleased with the amendment that was mentioned today that could protect consumers while mitigating the cost impact with the administrative burden. Consumers should have the information upfront in their plan booklets and they do need to know how to make changes. Consumers need choices since mail order services are not for every need.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Jeff Rochon, WA State Pharmacy Association; Holly Chisa, NW Grocery Assn.

CON: Cindy Laubacher, Express Scripts; Mel Sorensen, America's Health Insurance Plans; David Knutson, Association of Washington Healthcare Plans; Michael Temple, Pharmaceutical Care Management Association; Carrie Tellefson, CVS Health.

OTHER: Lonnie Johns-Brown, OIC.

**Persons Signed In To Testify But Not Testifying:** No one.