SENATE BILL REPORT
SB 5982

As of March 27, 2019

Title: An act relating to the licensing of pharmacy benefit managers and creating a new fee.

Brief Description: Concerning the licensing of pharmacy benefit managers and creating a new fee.

Sponsors: Senators Short, Kuderer, Rolfes, Warnick, Keiser and Conway.

Brief History:
Committee Activity: Health & Long Term Care: 3/27/19.

Brief Summary of Bill

- Requires anyone practicing as a pharmacy benefit manager (PBM) in Washington to obtain a license.
- Prohibits PBMs from certain practices and requires PBMs to maintain adequate and accessible networks.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Evan Klein (786-7483)

Background: A PBM is any person that contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium to:
- process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;
- pay pharmacies or pharmacists for prescription drugs or medical supplies; or
- negotiate rebates with manufacturers for drugs paid for or procured.

To conduct business in Washington, a PBM is required to register with the insurance commissioner (commissioner), to develop an appeals process for pharmacies, and to follow specified standards for auditing pharmacy claims.

Summary of Bill: A PBM is defined as any person, business, or entity, including a wholly or partially owned or controlled subsidiary of a PBM, that contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium to:

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.

- process claims for prescription drugs or medical supplies, other prescription drug or device services, or both;
- pay pharmacies for prescription drugs or medical supplies; or
- negotiate rebates with manufacturers for drugs paid for or procured.

To conduct business in Washington, a PBM is required to be licensed by the insurance commissioner.

A PBM has a fiduciary duty to a health carrier client and must discharge the duty in accordance with state and federal law. A PBM must also notify a health carrier client in writing of any activity, policy, or practice of the PBM that presents any conflict of interest with the duties imposed on it.

PBMs are prohibited from:

- using any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;
- charging a pharmacist or pharmacy a fee related to the adjudication of a claim;
- requiring pharmacy accreditation standards or certification requirements inconsistent with, more stringent than, or in addition to requirements of the Pharmacy Quality Assurance Commission (PQAC), unless approved by PQAC;
- reimbursing a pharmacy an amount less than the amount that the PBM reimburses a PBM affiliate for the same services; or
- denying, reducing, or recouping payment to a pharmacy for services after adjudication of the claim, unless: (1) the claim was submitted fraudulently; (2) the claim was incorrect because the pharmacy had already been paid; or (3) the pharmacy services were not properly rendered.

A PBM must provide:

- a reasonably adequate and accessible PBM network for the provision of prescriptions for a health plan, including convenient access to pharmacies within a reasonable distance from a patient's residence; and
- a PBM network adequacy report describing the PBM's network and network accessibility, in a time and manner required in rule by the commissioner.

Mail-order pharmacies may not be included in calculations for determining PBM network adequacy.

Termination of a pharmacy from a PBM network does not release the PBM from its obligation to pay the pharmacy for services properly rendered.

The commissioner may issue a rule establishing prohibited practices, and may examine or audit the books and records of a PBM to determine if the PBM is in compliance with state law. Information the commissioner acquires in an examination is proprietary and confidential, and is not subject to public disclosure.

Any contracts existing on the date of licensure of a PBM must comply with the requirements of state law as a condition of licensure.

The provisions of this act do not apply to self-funded health benefit plans.

Appropriation: None.

Fiscal Note: Requested on March 11, 2019.

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

Effective Date: The bill takes effect on July 1, 2020.

Staff Summary of Public Testimony: PRO: The way PBMs have conducted business has impacted local pharmacy businesses. Patients rely on pharmacists for whole person care. PBMs are charging arbitrary fees to pharmacists which are driving them out of business. The Direct and Indirect Remuneration (DIR) fees that are charged to pharmacies are constantly changing, and are costing pharmacies. Pharmacies are losing money on these DIR fees, due to being reimbursed at or below the cost of purely dispensing the drugs, and not knowing the reimbursement rates until months after providing the prescriptions. PBMs also utilize spread pricing models, which lead to losses for managed care plans. Pharmacies are already closing down due to the unjust business practices of PBMs. Within 3 to 5 years, over 50 percent of the pharmacies in rural communities will be gone, without regulation of PBMs. Patients are limited in what prescriptions they can have filled by the PBM their insurance uses. Pharmacy Services Administration Organizations (PSAO) are helpful in trying to negotiate prices down, but they are unable to control costs, since PBMs tend to dictate prices and refuse to negotiate. Every year, the PBM problem gets worse. If a pharmacy is dispensing the same prescription as another pharmacy, it should be paid the same. Many PBMs utilize the mandatory use of their own out of state mail-order pharmacies, driving up costs and reducing reimbursements to pharmacies. Many small independent grocery stores around the state are the only community pharmacy in an area. Even with the current registration requirements, these chains are still hearing problems from patients. More transparency, and stronger oversight by the OIC makes a lot of sense in Washington. Pharmacies are also being charged by PBMs to access PBM networks. There are significant issues with steering patients to mail-order prescription. PBMs simply pass money, have no risk, have no transparency, and currently have no accountability. The current claims adjudication process in place is time consuming and difficult to use, and is an inadequate remedy to this problem.

CON: PBMs are very much regulated by the office of the insurance commissioner. To provide services in Washington, PBMs must currently register in the state. Express scripts had to pay $118,000 one year in Washington. There a number of problems with this bill. The fiduciary status in this bill is inappropriate and would make this state an outlier. It would require PBMs to control plan assets, which PBMs do not currently do in their operation. PBMs help ensure that pharmacy standards are applied across the health care sector. This bill does not do anything other than switch the name from registration to licensure, and therefore it is not necessary to implement the budget. It is unclear how many of the issues discussed about PBMs relate to PBMs that the state could regulate. There are also technical issues with the definitions of a PBM, of a PSAO, and of third-party payers.

Persons Testifying: PRO: Senator Shelly Short, Prime Sponsor; Holly Chisa, NW Grocery Association; Carolyn Logue, Washington Food Industry Association; David Green, Director

of Pharmacy Operations Albertsons Companies; Stephanie Steinman, Lakeside Pharmacy, Tonasket Pharmacy; Robert Slagle, Republic Drug Sstore; Ryan Oftebro, Kelley-Ross Pharmacy Group; Greg Gibbons, Gibbons Pharmacies, LLC; Joe Cammack, Jim's Pharmacy; Richard McCoy, Washington State Pharmacist Association; Jeff Harrell, Pharmacy Owner; Debbie Akers, Akers United Drug; Michael Donohue, Bob Johnson's Pharmacy; Clinton Knight, Whole Health Pharmacy.

CON: Meg Jones, Association of Washington Healthcare Plans; Cindy Laubacher, Cigna; Carrie Tellefson, PCMA.

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