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**SENATE BILL 5445**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Rivers, Cleveland, Hasegawa, Keiser, Kuderer, and Lovelett

AN ACT Relating to cost-sharing fairness; adding a new section to chapter 48.43 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 48.200 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Citizens of Washington frequently rely on state-regulated commercial carriers to secure access to the prescription medicines needed to protect their health;

(b) Commercial insurance benefit designs increasingly require patients to bear significant out-of-pocket costs for their prescription medicines;

(c) High out-of-pocket costs on prescription medicines impact the ability of patients to start new and necessary medicines and to stay adherent to their current medicines;

(d) High or unpredictable deductible and coinsurance cost-sharing requirements are a main driver of elevated patient out-of-pocket costs;

(e) The burdens of high or unpredictable deductibles and coinsurance are borne disproportionately by patients with chronic or debilitating conditions;

(f) Pharmaceutical manufacturers may offer sizeable rebates, discounts, and price concessions in connection with the dispensing or administration of a therapy, but patients do not necessarily financially benefit from these amounts at the point of sale, and, instead, carriers or other intermediaries may retain the value of rebates, discounts, and price concessions;

(g) Restrictions are needed on the ability of carriers and their intermediaries to retain rebates, discounts, and price concessions that instead should be directly passed on to patients as cost savings; and

(h) Patients need equitable and accessible health coverage that does not impose unfair cost-sharing burdens upon them.

(2) Therefore, the legislature of the state of Washington intends to add a new section to the Washington insurance code to ensure that, to the full extent permissible and consistent with applicable law, patients directly receive at the pharmacy counter their full and fair share of the benefit of rebates and discounts for prescription medicines that accrue directly or indirectly to state-regulated carriers. It is the intent of the legislature that these amendments be interpreted to pass on meaningful, direct, and durable cost savings to patients in Washington at the point of sale such that patients directly benefit from rebates and other price concessions that pharmaceutical manufacturers offer in connection with the dispensing or administration of a particular therapy.

NEW SECTION. **Sec.**  A new section is added to chapter 48.43 RCW to read as follows:

(1) For health plans issued or renewed on or after January 1, 2025, an enrollee's coinsurance or deductible payment for each prescription drug covered by a health plan shall be calculated at the point of sale based on a price that is reduced by an amount equal to 100 percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug.

(a) The carrier or subcontractor shall pass through to each enrollee at the point of sale a good faith estimate of the enrollee's decrease in cost sharing required pursuant to this subsection.

(b) In addition to the pass-through at the point of sale described in (a) of this subsection, the carrier shall provide the enrollee with an end-of-calendar-year reconciliation for any cost-sharing reductions owed to the enrollee pursuant to this subsection that were not passed on to the enrollee through the estimated amount at the point of sale.

(2) Nothing in this section shall preclude a carrier or subcontractor from decreasing an enrollee's coinsurance or deductible payment by an amount greater than that required under subsection (1) of this section.

(3) No pharmacy or pharmacist may be subject to any liability, penalty, or disciplinary action from a carrier or the commissioner for failure to comply with this section, if such pharmacy or pharmacist has not received sufficient information from the carrier or subcontractor to comply. A carrier or subcontractor may not impose any form of monetary penalty on, or withhold any payments to, a pharmacy that engaged in good faith efforts to comply with this section.

(4) The commissioner may adopt rules to implement and administer this section.

(5) The commissioner may take appropriate action against a carrier and its subcontractor to enforce this chapter by imposing a civil penalty not to exceed $1,000 per violation.

(6) A carrier shall disclose to the commissioner upon request information sufficient to show compliance with this section, including but not limited to wholesale acquisition cost and actual amounts of rebates. The commissioner may audit the information a health carrier provides under this section for accuracy.

(7) In complying with the provisions of this section, a carrier or its agents may not publish or otherwise reveal information regarding the amount of rebates or price protection rebates it receives on a product, manufacturer, or pharmacy-specific basis. Such information is a trade secret, is not a public record as defined in the public records act, RCW 42.56.010, and shall not be disclosed directly or indirectly. A carrier shall impose the confidentiality protections of this subsection on any third parties or vendors with which it contracts that may receive or have access to rebate or price protection rebate information.

(8) For the purposes of this section:

(a) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(b) "Rebate" means:

(i) Negotiated price concessions including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue directly or indirectly to the carrier during the coverage year from a manufacturer or other party in connection with the dispensing or administration of a prescription drug; and

(ii) Reasonable estimates of any negotiated price concessions, fees, and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier and serve to reduce the carrier's liabilities for a prescription drug.

NEW SECTION. **Sec.**  A new section is added to chapter 41.05 RCW to read as follows:

(1) For health plans issued or renewed on or after January 1, 2025, an enrollee's coinsurance or deductible payment for each prescription drug covered by a health plan shall be calculated at the point of sale based on a price that is reduced by an amount equal to 100 percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug.

(a) The carrier or subcontractor shall pass through to each enrollee at the point of sale a good faith estimate of the enrollee's decrease in cost sharing required pursuant to this subsection.

(b) In addition to the pass-through at the point of sale described in (a) of this subsection, the carrier shall provide the enrollee with an end-of-calendar-year reconciliation for any cost-sharing reductions owed to the enrollee pursuant to this subsection that were not passed on to the enrollee through the estimated amount at the point of sale.

(2) Nothing in this section shall preclude a carrier or subcontractor from decreasing an enrollee's coinsurance or deductible payment by an amount greater than that required under subsection (1) of this section.

(3) No pharmacy or pharmacist may be subject to any liability, penalty, or disciplinary action from a carrier or the commissioner for failure to comply with this section, if such pharmacy or pharmacist has not received sufficient information from the carrier or subcontractor to comply. A carrier or subcontractor may not impose any form of monetary penalty on, or withhold any payments to, a pharmacy that engaged in good faith efforts to comply with this section.

(4) The insurance commissioner may adopt rules to implement and administer this section.

(5) The insurance commissioner may take appropriate action against a carrier and its subcontractor to enforce this chapter by imposing a civil penalty not to exceed $1,000 per violation.

(6) A carrier shall disclose to the insurance commissioner upon request information sufficient to show compliance with this section, including but not limited to wholesale acquisition cost and actual amounts of rebates. The insurance commissioner may audit the information a health carrier provides under this section for accuracy.

(7) In complying with the provisions of this section, a carrier or its agents may not publish or otherwise reveal information regarding the amount of rebates or price protection rebates it receives on a product, manufacturer, or pharmacy-specific basis. Such information is a trade secret, is not a public record as defined in the public records act, RCW 42.56.010, and shall not be disclosed directly or indirectly. A carrier shall impose the confidentiality protections of this subsection on any third parties or vendors with which it contracts that may receive or have access to rebate or price protection rebate information.

(8) For the purposes of this section:

(a) "Price protection rebate" means a negotiated price concession that accrues directly or indirectly to the carrier, or other party on behalf of the carrier, in the event of an increase in the wholesale acquisition cost of a drug above a specified threshold.

(b) "Rebate" means:

(i) Negotiated price concessions including but not limited to base price concessions, whether described as a rebate or otherwise, and reasonable estimates of any price protection rebates and performance-based price concessions that may accrue directly or indirectly to the carrier during the coverage year from a manufacturer or other party in connection with the dispensing or administration of a prescription drug; and

(ii) Reasonable estimates of any negotiated price concessions, fees, and other administrative costs that are passed through, or are reasonably anticipated to be passed through, to the carrier and serve to reduce the carrier's liabilities for a prescription drug.

NEW SECTION. **Sec.**  A new section is added to chapter 48.200 RCW to read as follows:

(1) No pharmacy benefit manager may derive income from pharmacy benefit management services provided to a carrier in this state except for income derived from a pharmacy benefit management fee. The amount of any pharmacy benefit management fees must be set forth in the agreement between the pharmacy benefit manager and the carrier.

(2) The pharmacy benefit management fee charged by or paid to a pharmacy benefit manager from a carrier shall not be directly or indirectly based or contingent upon:

(a) The acquisition cost or any other price metric of a drug;

(b) The amount of savings, rebates, or other fees charged, realized, or collected by or generated based on the activity of the pharmacy benefit manager; or

(c) The amount of premiums, deductibles, or other cost sharing or fees charged, realized, or collected by the pharmacy benefit manager from patients or other persons on behalf of a patient.

(3) Annually by December 31st, each pharmacy benefit manager operating in the state shall certify to the commissioner that it has fully and completely complied with the requirements of this section throughout the prior calendar year. Such certification shall be signed by the chief executive officer or chief financial officer of the pharmacy benefit manager.

(4) A pharmacy benefit manager contract with a carrier entered into on or after the effective date of this section shall specify all forms of revenue, including pharmacy benefit management fees, to be paid by the carrier to the pharmacy benefit manager.

(5) In addition to any other civil or criminal penalty authorized by law, the commissioner may take appropriate action to enforce this chapter by imposing a civil penalty not to exceed $1,000 per violation.

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