

**ESSB 6137** - H COMM AMD

By Committee on Health Care & Wellness

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

3 NEW SECTION. **Sec. 1.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires otherwise.

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

8 (2) "Insurer" has the same meaning as in RCW 48.01.050.

9 (3) "Pharmacist" has the same meaning as in RCW 18.64.011.

10 (4) "Pharmacy" has the same meaning as in RCW 18.64.011.

11 (5)(a) "Pharmacy benefit manager" means a person that contracts  
12 with pharmacies on behalf of an insurer, a third-party payor, or the  
13 prescription drug purchasing consortium established under RCW 70.14.060  
14 to:

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

17 (ii) Pay pharmacies or pharmacists for prescription drugs or  
18 medical supplies; or

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

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

23 (6) "Third-party payor" means a person licensed under RCW  
24 48.39.005.

25 NEW SECTION. **Sec. 2.** (1) To conduct business in this state, a  
26 pharmacy benefit manager must register with the department of revenue's  
27 business licensing service and annually renew the registration.

28 (2) To register under this section, a pharmacy benefit manager  
29 must:

1 (a) Submit an application requiring the following information:  
2 (i) The identity of the pharmacy benefit manager;  
3 (ii) The name, business address, phone number, and contact person  
4 for the pharmacy benefit manager; and  
5 (iii) Where applicable, the federal tax employer identification  
6 number for the entity; and  
7 (b) Pay a registration fee of two hundred dollars.  
8 (3) To renew a registration under this section, a pharmacy benefit  
9 manager must pay a renewal fee of two hundred dollars.  
10 (4) All receipts from registrations and renewals collected by the  
11 department must be deposited into the business license account created  
12 in RCW 19.02.210.

13 NEW SECTION. **Sec. 3.** As used in sections 3 through 9 of this act:

14 (1) "Audit" means an on-site or remote review of the records of a  
15 pharmacy by or on behalf of an entity.

16 (2) "Clerical error" means a minor error:

17 (a) In the keeping, recording, or transcribing of records or  
18 documents or in the handling of electronic or hard copies of  
19 correspondence;

20 (b) That does not result in financial harm to an entity; and

21 (c) That does not involve dispensing an incorrect dose, amount or  
22 type of medication, or dispensing a prescription drug to the wrong  
23 person.

24 (3) "Entity" includes:

25 (a) A pharmacy benefit manager;

26 (b) An insurer;

27 (c) A third-party payor;

28 (d) A state agency; or

29 (e) A person that represents or is employed by one of the entities  
30 described in this subsection.

31 (4) "Fraud" means knowingly and willfully executing or attempting  
32 to execute a scheme, in connection with the delivery of or payment for  
33 health care benefits, items, or services, that uses false or misleading  
34 pretenses, representations, or promises to obtain any money or property  
35 owned by or under the custody or control of any person.

1        NEW SECTION.

2        **Sec. 4.**

3        An entity that audits claims or an  
4 independent third party that contracts with an entity to audit claims:

5        (1) Must establish, in writing, a procedure for a pharmacy to  
6 appeal the entity's findings with respect to a claim and must provide  
7 a pharmacy with a notice regarding the procedure, in writing or  
8 electronically, prior to conducting an audit of the pharmacy's claims;

9        (2) May not conduct an audit of a claim more than twenty-four  
10 months after the date the claim was adjudicated by the entity;

11        (3) Must give at least fifteen days' advance written notice of an  
12 on-site audit to the pharmacy or corporate headquarters of the  
13 pharmacy;

14        (4) May not conduct an on-site audit during the first five days of  
15 any month without the pharmacy's consent;

16        (5) Must conduct the audit in consultation with a pharmacist who is  
17 licensed by this or another state if the audit involves clinical or  
18 professional judgment;

19        (6) May not conduct an on-site audit of more than two hundred fifty  
20 unique prescriptions of a pharmacy in any twelve-month period except in  
21 cases of alleged fraud;

22        (7) May not conduct more than one on-site audit of a pharmacy in  
23 any twelve-month period;

24        (8) Must audit each pharmacy under the same standards and  
25 parameters that the entity uses to audit other similarly situated  
26 pharmacies;

27        (9) Must pay any outstanding claims of a pharmacy no more than  
28 forty-five days after the earlier of the date all appeals are concluded  
29 or the date a final report is issued under section 8(3) of this act;

30        (10) May not include dispensing fees or interest in the amount of  
31 any overpayment assessed on a claim unless the overpaid claim was for  
32 a prescription that was not filled correctly;

33        (11) May not recoup costs associated with:

34        (a) Clerical errors; or

35        (b) Other errors that do not result in financial harm to the entity  
36 or a consumer; and

37        (12) May not charge a pharmacy for a denied or disputed claim until  
the audit and the appeals procedure established under subsection (1) of  
this section are final.



1 received by the pharmacy no later than forty-five days after the date  
2 on which the audit was completed and must be sent:

3 (i) By mail or common carrier with a return receipt requested; or

4 (ii) Electronically with electronic receipt confirmation.

5 (b) An entity shall provide a pharmacy receiving a preliminary  
6 report under this subsection no fewer than forty-five days after  
7 receiving the report to contest the report or any findings in the  
8 report in accordance with the appeals procedure established under  
9 section 4(1) of this act and to provide additional documentation in  
10 support of the claim. The entity shall consider a reasonable request  
11 for an extension of time to submit documentation to contest the report  
12 or any findings in the report.

13 (2) If an audit results in the dispute or denial of a claim, the  
14 entity conducting the audit shall allow the pharmacy to resubmit the  
15 claim using any commercially reasonable method, including facsimile,  
16 mail, or electronic mail.

17 (3) An entity must provide a pharmacy that is the subject of an  
18 audit with a final report of the audit no later than sixty days after  
19 the later of the date the preliminary report was received or the date  
20 the pharmacy contested the report using the appeals procedure  
21 established under section 4(1) of this act. The final report must  
22 include a final accounting of all moneys to be recovered by the entity.

23 (4) Recoupment of disputed funds from a pharmacy by an entity or  
24 repayment of funds to an entity by a pharmacy, unless otherwise agreed  
25 to by the entity and the pharmacy, shall occur after the audit and the  
26 appeals procedure established under section 4(1) of this act are final.  
27 If the identified discrepancy for an individual audit exceeds forty  
28 thousand dollars, any future payments to the pharmacy may be withheld  
29 by the entity until the audit and the appeals procedure established  
30 under section 4(1) of this act are final.

31 NEW SECTION. **Sec. 9.** Sections 3 through 9 of this act do not:

32 (1) Preclude an entity from instituting an action for fraud against  
33 a pharmacy;

34 (2) Apply to an audit of pharmacy records when fraud or other  
35 intentional and willful misrepresentation is indicated by physical  
36 review, review of claims data or statements, or other investigative  
37 methods; or

1 (3) Apply to a state agency that is conducting audits or a person  
2 that has contracted with a state agency to conduct audits of pharmacy  
3 records for prescription drugs paid for by the state medical assistance  
4 program.

5 NEW SECTION. **Sec. 10.** (1) As used in this section:

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

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

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

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

16 (e) "Therapeutically equivalent" has the same meaning as in RCW  
17 69.41.110.

18 (2) A pharmacy benefit manager:

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

24 (b) Shall ensure that all drugs on a list are generally available  
25 for purchase by pharmacies in this state from national or regional  
26 wholesalers;

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

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

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

35 (f) Shall update each list maintained by the pharmacy benefit  
36 manager every seven business days and make the updated lists, including

1 all changes in the price of drugs, available to network pharmacies in  
2 a readily accessible and usable format;

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

5 (3) A pharmacy benefit manager must establish a process by which a  
6 network pharmacy may appeal its reimbursement for a drug subject to  
7 maximum allowable cost pricing. A network pharmacy may appeal a  
8 maximum allowable cost if the reimbursement for the drug is less than  
9 the net amount that the network pharmacy paid to the supplier of the  
10 drug. An appeal requested under this section must be completed within  
11 thirty calendar days of the pharmacy making the claim for which an  
12 appeal has been requested.

13 (4) A pharmacy benefit manager must provide as part of the appeals  
14 process established under subsection (3) of this section:

15 (a) A telephone number at which a network pharmacy may contact the  
16 pharmacy benefit manager and speak with an individual who is  
17 responsible for processing appeals;

18 (b) A final response to an appeal of a maximum allowable cost  
19 within seven business days; and

20 (c) If the appeal is denied, the reason for the denial and the  
21 national drug code of a drug that may be purchased by similarly  
22 situated pharmacies at a price that is equal to or less than the  
23 maximum allowable cost.

24 (5)(a) If an appeal is upheld under this section, the pharmacy  
25 benefit manager shall make an adjustment on a date no later than one  
26 day after the date of determination. The pharmacy benefit manager  
27 shall make the adjustment effective for all similarly situated  
28 pharmacies in this state that are within the network.

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

34 (6) This section does not apply to the state medical assistance  
35 program.

36 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
37 constitute a new chapter in Title 19 RCW."

1 Correct the title.

EFFECT: Establishes the registration fee for pharmacy benefit managers at \$200 rather than an amount up to \$200 as established by the Department of Revenue. Specifies that pharmacy benefit managers must register with the Department of Revenue's Business Licensing Service. Removes the limitation on the types of information that must be submitted on an application.

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