

# FINAL BILL REPORT

## ESSB 6137

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Synopsis as Enacted

**Brief Description:** Regulating pharmacy benefit managers and pharmacy audits.

**Sponsors:** Senate Committee on Health Care (originally sponsored by Senators Conway, Pearson, Parlette and Keiser).

**Senate Committee on Health Care**  
**House Committee on Health Care & Wellness**

**Background:** A Pharmacy Benefit Manager (PBM) is a third-party administrator of prescription drug programs. PBMs are often responsible for developing and maintaining the formulary, contracting with pharmacies, negotiating discounts and rebates with drug manufacturers, and processing and paying prescription drug claims. There are a number of PBMs, but two companies, Express Scripts Inc. and CVS Caremark Corporation, have the highest market share of the business.

Some states are beginning to regulate PBMs: approximately one-half dozen states require PBMs to register with or get licensed by the insurance department, and another handful of states have adopted fair audit provisions that establish requirements for auditing pharmacy services.

**Summary:** PBMs must register with the Department of Revenue's business licensing service and annually renew their registration in order to do business in Washington. To register, a PBM must submit an application and pay a \$200 registration fee, and submit the following information: the identity of the pharmacy benefit manager; name, address, phone number, and contact person for the pharmacy benefit manager; and the tax identification number.

A PBM is defined to mean 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 prescription drugs.

A PBM does not include a health care service contractor.

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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.*

Pharmacy audit standards are created for PBMs conducting on-site audits. Standards include the following: notification requirements, advance written notification of an audit, limitations on the timing of audits, limitations on the number of unique prescriptions that can be audited, audit standards that apply to all similarly situated pharmacies, and the requirement that the audit involve a licensed pharmacist if the audit involves clinical or professional judgment.

Additional requirements are outlined for the payment of outstanding claims related to the audit, accounting of fees or overpayments, and limitations on recouping costs associated with clerical errors or other errors that do not result in financial harm to the entity or the consumer. An audit must be based on identified transactions and not probability sampling, extrapolation, or other means. Contracts for entities that conduct audits must not be based on a percentage of the amount of overpayment recovered. A preliminary report of the audit must be available within 45 days after the audit is completed, and the pharmacy has 45 days to contest the report. A final report must be provided within 60 days after the preliminary report or the date the pharmacy contested the report, whichever is later. Recoupment of disputed funds must occur after the audit and any appeals procedure.

The pharmacy audit standards do not apply to a state agency conducting audits for the state medical assistance program; do not preclude an action for fraud; and do not apply when fraud or intentional and willful misrepresentation is indicated.

Reimbursement standards are created. Maximum allowable cost is the maximum amount a PBM reimburses a pharmacy for the cost of a drug; the maximum allowable costs that have been established for a list of drugs must be available to the pharmacy and updated every seven business days with all changes in the prices of drugs; requirements for the drugs on the list are outlined; the sources used to determine the maximum allowable cost pricing must be provided with the contract; and there must be a process to allow a pharmacy to appeal the reimbursement for a drug relative to the maximum allowable cost.

**Votes on Final Passage:**

Senate	49	0	
House	93	4	(House amended)
Senate	49	0	(Senate concurred)

**Effective:** June 12, 2014