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**SUBSTITUTE SENATE BILL 6137**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Conway, Pearson, Parlette, and Keiser)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to pharmacies; and adding a new chapter to Title 48  
2 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 2.** (1) To conduct business in this state, a  
8 pharmacy benefit manager must register with the department of licensing  
9 and annually renew the registration.

10 (2) To register under this section, a pharmacy benefit manager  
11 must:

12 (a) Submit an application requiring only the following information:

13 (i) The identity of the pharmacy benefit manager;

14 (ii) The name, business address, and contact person for the  
15 pharmacy benefit manager; and

16 (iii) Where applicable, the federal tax employer identification  
17 number for the entity;

18 (b) Pay a registration fee, not to exceed two hundred dollars,  
19 adopted by the department by rule.

20 (3) To renew a registration under this section, a pharmacy benefit  
21 manager must pay a renewal fee, not to exceed two hundred dollars,  
22 adopted by the department by rule.

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

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

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

27 (a) In the keeping, recording, or transcribing of records or  
28 documents or in the handling of electronic or hard copies of  
29 correspondence;

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

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

34 (3) "Entity" includes:

35 (a) A pharmacy benefit manager;

36 (b) An insurer;

1 (c) A third-party payor;  
2 (d) A state agency; or  
3 (e) A person that represents or is employed by one of the entities  
4 described in this subsection.

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

10 NEW SECTION. **Sec. 4.** An entity that audits claims or an  
11 independent third party that contracts with an entity to audit claims:

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

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

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

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

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

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

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

31 (8) Must audit each pharmacy under the same standards and  
32 parameters that the entity uses to audit other similarly situated  
33 pharmacies;

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

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

4 (11) May not recoup costs associated with:

5 (a) Clerical errors; or

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

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

11 NEW SECTION. **Sec. 5.** An entity's finding that a claim was  
12 incorrectly presented or paid must be based on identified transactions  
13 and not based on probability sampling, extrapolation, or other means  
14 that project an error using the number of patients served who have a  
15 similar diagnosis or the number of similar prescriptions or refills for  
16 similar drugs.

17 NEW SECTION. **Sec. 6.** An entity that contracts with an independent  
18 third party to conduct audits may not:

19 (1) Agree to compensate the independent third party based on a  
20 percentage of the amount of overpayments recovered; or

21 (2) Disclose information obtained during an audit except to the  
22 contracting entity, the pharmacy subject to the audit, or the holder of  
23 the policy or certificate of insurance that paid the claim.

24 NEW SECTION. **Sec. 7.** For purposes of sections 3 through 9 of this  
25 act, an entity, or an independent third party that contracts with an  
26 entity to conduct audits, must allow as evidence of validation of a  
27 claim:

28 (1) An electronic or physical copy of a valid prescription if the  
29 prescribed drug was, within fourteen days of the dispensing date:

30 (a) Picked up by the patient or the patient's designee;

31 (b) Delivered by the pharmacy to the patient; or

32 (c) Sent by the pharmacy to the patient using the United States  
33 postal service or other common carrier;

34 (2) Point of sale electronic register data showing purchase of the

1 prescribed drug, medical supply, or service by the patient or the  
2 patient's designee; or

3 (3) Electronic records, including electronic beneficiary signature  
4 logs, electronically scanned and stored patient records maintained at  
5 or accessible to the audited pharmacy's central operations, and any  
6 other reasonably clear and accurate electronic documentation that  
7 corresponds to a claim.

8 NEW SECTION. **Sec. 8.** (1)(a) After conducting an audit, an entity  
9 must provide the pharmacy that is the subject of the audit with a  
10 preliminary report of the audit. The preliminary report must be  
11 received by the pharmacy no later than forty-five days after the date  
12 on which the audit was completed and must be sent:

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

14 (ii) Electronically with electronic receipt confirmation.

15 (b) An entity shall provide a pharmacy receiving a preliminary  
16 report under this subsection no fewer than forty-five days after  
17 receiving the report to contest the report or any findings in the  
18 report in accordance with the appeals procedure established under  
19 section 4(1) of this act and to provide additional documentation in  
20 support of the claim. The entity shall consider a reasonable request  
21 for an extension of time to submit documentation to contest the report  
22 or any findings in the report.

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

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

33 (4) Recoupment of disputed funds from a pharmacy by an entity or  
34 repayment of funds to an entity by a pharmacy, unless otherwise agreed  
35 to by the entity and the pharmacy, shall occur after the audit and the  
36 appeals procedure established under section 4(1) of this act are final.  
37 If the identified discrepancy for an individual audit exceeds forty

1 thousand dollars, any future payments to the pharmacy may be withheld  
2 by the entity until the audit and the appeals procedure established  
3 under section 4(1) of this act are final.

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

5 (1) Preclude an entity from instituting an action for fraud against  
6 a pharmacy;

7 (2) Apply to an audit of pharmacy records when fraud or other  
8 intentional and willful misrepresentation is identified by physical  
9 review, review of claims data or statements, or other investigative  
10 methods; or

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

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

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

18 (b) "Maximum allowable cost" means the maximum amount that a  
19 pharmacy benefit manager will reimburse a pharmacy for the cost of a  
20 drug.

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

23 (d) "Network pharmacy" means a retail drug outlet licensed as a  
24 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit  
25 manager.

26 (e) "Therapeutically equivalent" has the same meaning as in RCW  
27 69.41.110.

28 (2) A pharmacy benefit manager:

29 (a) May not place a drug on a list unless there is at least one  
30 therapeutically equivalent multiple source drug generally available for  
31 purchase by network pharmacies from national or regional wholesalers;

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

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

1 (d) Shall make available to each network pharmacy at the beginning  
2 of the term of a contract, and upon renewal of a contract, the sources  
3 utilized to determine the maximum allowable cost pricing of the  
4 pharmacy benefit manager;

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

8 (f) Shall update each list maintained by the pharmacy benefit  
9 manager every seven business days and make the updated lists, including  
10 all changes in the price of drugs, available to network pharmacies in  
11 a readily accessible and usable format;

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

14 (3) A pharmacy benefit manager must establish a process by which a  
15 network pharmacy may appeal its reimbursement for a drug subject to  
16 maximum allowable cost pricing. A network pharmacy may appeal a  
17 maximum allowable cost if the reimbursement for the drug is less than  
18 the net amount that the network pharmacy paid to the supplier of the  
19 drug. An appeal requested under this section must be completed within  
20 thirty calendar days of the pharmacy making the claim for which an  
21 appeal has been requested.

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
9 constitute a new chapter in Title 48 RCW.

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