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**FIFTH ENGROSSED SUBSTITUTE SENATE BILL 5857**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Parlette, Conway, Becker, and Pearson)

AN ACT Relating to registration and regulation of pharmacy benefit managers; amending RCW 19.340.030, 19.340.010, and 19.340.100; adding a new chapter to Title 48 RCW; creating a new section; recodifying RCW 19.340.010, 19.340.020, 19.340.030, 19.340.040, 19.340.050, 19.340.060, 19.340.070, 19.340.080, 19.340.090, and 19.340.100; prescribing penalties; and providing an effective date.

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

**Sec.**  RCW 19.340.030 and 2014 c 213 s 2 are each amended to read as follows:

(1) To conduct business in this state, a pharmacy benefit manager must register with the ((~~department of revenue's business licensing service~~)) office of the insurance commissioner and annually renew the registration.

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

(a) Submit an application requiring the following information:

(i) The identity of the pharmacy benefit manager;

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

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

(b) Pay a registration fee ((~~of two hundred dollars~~)) established in rule by the commissioner. The registration fee must be set to allow the registration and oversight activities to be self-supporting.

(3) To renew a registration under this section, a pharmacy benefit manager must pay a renewal fee ((~~of two hundred dollars~~)) established in rule by the commissioner. The renewal fee must be set to allow the renewal and oversight activities to be self-supporting.

(4) All receipts from registrations and renewals collected by the ((~~department~~)) commissioner must be deposited into the ((~~business license account created in RCW 19.02.210~~)) insurance commissioner's regulatory account created in RCW 48.02.190.

NEW SECTION. **Sec.**  (1) The commissioner shall have enforcement authority over this chapter and shall have authority to render a binding decision in any dispute between a pharmacy benefit manager, or third-party administrator of prescription drug benefits, and a pharmacy or pharmacy services administrative organization, arising out of an appeal regarding drug pricing and reimbursement.

(2) Any person, corporation, or third-party administrator of prescription drug benefits, pharmacy benefit manager, or business entity which violates any provision of this chapter shall be subject to a civil penalty in the amount of one thousand dollars for each act in violation of this chapter or, if the violation was knowing and willful, a civil penalty of five thousand dollars for each violation of this chapter.

**Sec.**  RCW 19.340.010 and 2014 c 213 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Commissioner" means the insurance commissioner established in chapter 48.02 RCW.

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

((~~(3)~~)) (4) "Pharmacist" has the same meaning as in RCW 18.64.011.

((~~(4)~~)) (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

((~~(5)~~)) (6)(a) "Pharmacy benefit manager" means a person that contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 to:

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

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

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

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

((~~(6)~~)) (7) "Third-party payor" means a person licensed under RCW 48.39.005.

**Sec.**  RCW 19.340.100 and 2014 c 213 s 10 are each amended to read as follows:

(1) As used in this section:

(a) "List" means the list of drugs for which ((~~maximum allowable~~)) predetermined reimbursement costs have been established, such as a maximum allowable cost or maximum allowable cost list or any other benchmark prices utilized by the pharmacy benefit manager and must include the basis of the methodology and sources utilized to determine multisource generic drug reimbursement amounts.

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

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

~~(d)~~)) "Multisource generic drug" means any covered outpatient prescription drug for which there is at least one other drug product that is rated as therapeutically equivalent under the food and drug administration's most recent publication of "Approved Drug Products with Therapeutic Equivalence Evaluations;" is pharmaceutically equivalent or bioequivalent, as determined by the food and drug administration; and is sold or marketed in the state during the period.

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

(d) "Pharmacy acquisition cost" means the amount that a pharmaceutical wholesaler or distributor charges for a pharmaceutical product as listed on the pharmacy's invoice.

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

(2) A pharmacy benefit manager:

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

(b) Shall utilize the most up-to-date pricing data to calculate reimbursement to pharmacies for drugs subject to multisource generic drug prices within one business day of any price update or modification;

(c) Shall ensure that all drugs on a list are ((~~generally~~)) readily available, meaning at least one product with a current national drug code, for purchase by network pharmacies in this state from national or regional wholesalers that serve pharmacies in Washington;

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

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

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

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

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

(3) A pharmacy benefit manager must establish a process by which a network pharmacy, or their contracting agent such as a pharmacy services administrative organization, may appeal its reimbursement for a ((~~drug subject to maximum allowable cost pricing~~)) multisource generic drug. A network pharmacy, or their contracting agent, may appeal ((~~a maximum allowable cost~~)) its reimbursement for a multisource generic drug if the reimbursement for the drug is less than the ((~~net~~)) amount that the network pharmacy paid to the supplier of the drug. ((~~An appeal requested under this section must be completed within thirty calendar days of the pharmacy making the claim for which an appeal has been requested.~~)) Upon receipt of an appeal, the pharmacy benefit manager shall supply the network pharmacy the national drug code for a product available to the network pharmacy from a national or regional wholesaler operating in Washington at a price less than or equal to the reimbursed amount. An appeal requested under this section must be completed within ten calendar days of the network pharmacy, or their contracting agent, submitting the appeal.

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

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

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

~~(c)~~)) If the appeal is denied, the reason for the denial and the national drug code ((~~of a drug that may be~~)) of an equivalent multisource generic drug that has been purchased by ((~~similarly situated pharmacies~~)) another network pharmacy located in Washington state at a price that is equal to or less than the ((~~maximum allowable cost.~~

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

~~(b)~~)) pharmacy benefit manager's list price within seven days of the appealed claim, and provide the name of a pharmaceutical wholesaler who operates in Washington state at which the drug can be acquired by the challenging network pharmacy.

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

(6) Beginning January 1, 2017, if a network pharmacy appeal to the pharmacy benefit manager is denied, or if the network pharmacy is unsatisfied with the outcome of the appeal, the pharmacy or pharmacist may dispute the decision and request review by the commissioner within thirty calendar days of receiving the decision.

(a) All relevant information from the parties may be presented to the commissioner, and the commissioner may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, deny the pharmacy appeal, or take other actions deemed fair and equitable. An appeal requested under this section must be completed within thirty calendar days of the request.

(b) Upon resolution of the dispute, the commissioner shall provide a copy of the decision to both parties within seven calendar days.

(c) Appeals under this subsection (6) are subject to chapter 34.05 RCW. The commissioner may authorize the office of administrative hearings, as provided in chapter 34.12 RCW, to conduct appeals under this subsection (6).

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

NEW SECTION. **Sec.**  (1) The pharmacy benefit manager shall disclose to each plan sponsor in all contracts between the pharmacy benefit manager and a plan sponsor providing prescription drug coverage in the state a written explanation of the methodology and sources utilized by the pharmacy benefit manager to determine multisource generic drug prices.

(2) Multisource generic drug prices shall be updated and transmitted in writing to every plan sponsor providing prescription drug coverage in this state within seven business days whenever there is a pricing change under any contract it utilizes in this state.

(3) If a pharmacy benefit manager utilizes multisource generic drug prices for drugs dispensed by network pharmacies in this state but does not utilize the same multisource generic drug prices for drugs dispensed in this state through a mail order or other nonretail pharmacy, the pharmacy benefit manager must disclose the difference between the multisource generic drug pricing of drugs dispensed between network retail pharmacies and other nonretail pharmacies, in writing to each plan sponsor no later than five business days from the utilization of the multisource generic drug pricing.

NEW SECTION. **Sec.**  (1) The commissioner shall accept registration of pharmacy benefit managers as established in RCW 19.340.030 and receipts shall be deposited in the insurance commissioner's regulatory account.

(2) The commissioner shall have enforcement authority over chapter 19.340 RCW consistent with requirements established in section 2 of this act.

(3) The commissioner may write rules to implement chapter 19.340 RCW and to establish registration and renewal fees that ensure the registration, renewal, and oversight activities are self-supporting.

NEW SECTION. **Sec.**  The insurance commissioner must review the potential to use the independent review organizations, established in RCW 48.43.535, as an alternative to the appeal process for pharmacy and pharmacy benefit manager disputes, and other disputes between providers and insurance carriers. By December 1, 2016, the commissioner must submit recommendations to the health care committees of the legislature.

NEW SECTION. **Sec.**  Section 1 of this act takes effect January 1, 2017.

NEW SECTION. **Sec.**  RCW 19.340.010, 19.340.020, 19.340.030, 19.340.040, 19.340.050, 19.340.060, 19.340.070, 19.340.080, 19.340.090, and 19.340.100 are each recodified as a new chapter in Title 48 RCW.

NEW SECTION. **Sec.**  Sections 2, 5, and 6 of this act are each added to chapter 48.--- RCW (the new chapter created in section 9 of this act).

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