

**ESSB 5857** - H COMM AMD

By Committee on Health Care & Wellness

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

3 "Sec. 1. RCW 19.340.030 and 2014 c 213 s 2 are each amended to  
4 read as follows:

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

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

11 (a) Submit an application requiring the following information:

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

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

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

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

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

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

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.340  
30 RCW to read as follows:

31 (1) The commissioner shall have enforcement authority over this  
32 chapter and shall have authority to render a binding decision in any  
33 dispute between a pharmacy benefit manager, or third-party

1 administrator of prescription drug benefits, and a pharmacy arising  
2 out of an appeal regarding drug pricing and reimbursement.

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

10 **Sec. 3.** RCW 19.340.010 and 2014 c 213 s 1 are each amended to  
11 read as follows:

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

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

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

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

20 ~~((+3))~~ (4) "Pharmacist" has the same meaning as in RCW  
21 18.64.011.

22 ~~((+4))~~ (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

23 ~~((+5))~~ (6)(a) "Pharmacy benefit manager" means a person that  
24 contracts with pharmacies on behalf of an insurer, a third-party  
25 payor, or the prescription drug purchasing consortium established  
26 under RCW 70.14.060 to:

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

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

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

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

35 ~~((+6))~~ (7) "Third-party payor" means a person licensed under RCW  
36 48.39.005.

37 **Sec. 4.** RCW 19.340.100 and 2014 c 213 s 10 are each amended to  
38 read as follows:

1 (1) As used in this section:

2 (a) "Denial" of an appeal includes failing to reimburse a  
3 pharmacy or pharmacist and reimbursing a pharmacy or pharmacist for  
4 less than the amount that the pharmacy or pharmacist paid to the  
5 supplier of the drug.

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

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

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

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

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

18 (2) A pharmacy benefit manager:

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

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

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

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

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

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

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

3 (3) A pharmacy benefit manager must establish a process by which  
4 a network pharmacy may appeal its reimbursement for a drug subject to  
5 maximum allowable cost pricing. A network pharmacy may appeal a  
6 maximum allowable cost if the reimbursement for the drug is less than  
7 the net amount that the network pharmacy paid to the supplier of the  
8 drug. The pharmacy benefit manager shall reimburse the pharmacy or  
9 pharmacist the amount that the pharmacy or pharmacist paid to the  
10 supplier of the drug if the pharmacy or pharmacist can demonstrate  
11 that it is unable to purchase a therapeutically equivalent  
12 interchangeable product from its supplier at the pharmacy benefit  
13 manager's list price. An appeal requested under this section must be  
14 completed within thirty calendar days of the pharmacy making the  
15 claim for which an appeal has been requested.

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

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

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

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

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

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

38 (6) If a pharmacy appeal to the pharmacy benefit manager is  
39 denied, the pharmacy or pharmacist may dispute the denial and request  
40 review by the commissioner.

1       (a) All relevant information from the parties may be presented to  
2 the commissioner, and the commissioner may enter an order directing  
3 the pharmacy benefit manager to make an adjustment, deny the pharmacy  
4 appeal, or take other actions deemed fair and equitable.

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

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

10       NEW SECTION. Sec. 5. A new section is added to chapter 48.02  
11 RCW to read as follows:

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

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

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

21       NEW SECTION. Sec. 6. The joint select committee on health care  
22 oversight must convene a stakeholder work group comprised of  
23 participants in the prescription drug delivery chain, including  
24 pharmacy benefit managers, drug manufacturers, wholesalers, pharmacy  
25 service administrative organizations, pharmacies, health plans, and  
26 other payors. The work group assignments may include, but are not  
27 limited to the following:

28       (1) Review the entire drug supply chain including plan and  
29 pharmacy benefit manager reimbursements to independent pharmacies,  
30 wholesaler or pharmacy service administrative organization price to  
31 independent pharmacies, and drug manufacturer prices to independent  
32 pharmacies;

33       (2) Discuss suggestions that recognize the unique nature of small  
34 retail pharmacies and possible options that support a viable business  
35 model that do not increase the cost of pharmacy products;

36       (3) Review the availability of all drugs on the list and list  
37 prices for community retail pharmacies;

- 1 (4) Review the phone contacts and standards for response times  
2 and availability;
- 3 (5) Review the pharmacy acquisition cost from national or  
4 regional wholesalers that serve community retail pharmacies in  
5 Washington, and consider when or whether to make an adjustment and  
6 under what standards. The review may assess the timing of pharmacy  
7 purchases of products and the relative risk of list price changes  
8 related to the timing of dispensing the products; and
- 9 (6) The work group must provide periodic updates to the joint  
10 select committee on health care oversight.

11 NEW SECTION. **Sec. 7.** Section 1 of this act takes effect January  
12 1, 2016."

13 Correct the title.

EFFECT: Requires as part of the appeals process that a pharmacy benefit manager (PBM) reimburse the amount that the pharmacy or pharmacist paid to the supplier if the pharmacy or pharmacist can demonstrate that it is unable to purchase a therapeutically equivalent interchangeable product from its supplier at the PBM's maximum allowable cost.

Defines "denial" of an appeal to include failing to reimburse a pharmacy or pharmacist and reimbursing a pharmacy or pharmacist for less than the amount the pharmacy or pharmacist paid to the supplier.

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