

5ESSB 5857 - H COMM AMD

By Committee on General Government & Information Technology

ADOPTED AND ENGROSSED 3/4/2016

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:

1 (1) The commissioner shall have enforcement authority over this
2 chapter and shall have authority to render a binding decision in any
3 dispute between a pharmacy benefit manager, or third-party
4 administrator of prescription drug benefits, and a pharmacy arising
5 out of an appeal under RCW 19.340.100(6) regarding drug pricing and
6 reimbursement.

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

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

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

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

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

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

24 ~~((+3))~~ (4) "Pharmacist" has the same meaning as in RCW
25 18.64.011.

26 ~~((+4))~~ (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

27 ~~((+5))~~ (6)(a) "Pharmacy benefit manager" means a person that
28 contracts with pharmacies on behalf of an insurer, a third-party
29 payor, or the prescription drug purchasing consortium established
30 under RCW 70.14.060 to:

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

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

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

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

1 (~~(6)~~) (7) "Third-party payor" means a person licensed under RCW
2 48.39.005.

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

5 (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)~~ predetermined reimbursement costs have been established,
12 such as a maximum allowable cost or maximum allowable cost list or
13 any other benchmark prices utilized by the pharmacy benefit manager
14 and must include the basis of the methodology and sources utilized to
15 determine multisource generic drug reimbursement amounts.

16 (b) "Multiple source drug" means a therapeutically equivalent
17 drug that is available from at least two manufacturers.

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

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

29 (e) "Therapeutically equivalent" has the same meaning as in RCW
30 69.41.110.

31 (2) A pharmacy benefit manager:

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

37 (b) Shall ensure that all drugs on a list are (~~generally~~)
38 readily available for purchase by pharmacies in this state from
39 national or regional wholesalers that serve pharmacies in Washington;

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

2 (d) Shall make available to each network pharmacy at the
3 beginning of the term of a contract, and upon renewal of a contract,
4 the sources utilized to determine the ~~((maximum allowable cost
5 pricing))~~ predetermined reimbursement costs for multisource generic
6 drugs of the pharmacy benefit manager;

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

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

14 (g) Shall ensure that dispensing fees are not included in the
15 calculation of ~~((maximum allowable cost))~~ the predetermined
16 reimbursement costs for multisource generic drugs.

17 (3) A pharmacy benefit manager must establish a process by which
18 a network pharmacy may appeal its reimbursement for a drug subject to
19 ~~((maximum allowable cost pricing))~~ predetermined reimbursement costs
20 for multisource generic drugs. A network pharmacy may appeal a
21 ~~((maximum allowable cost))~~ predetermined reimbursement cost for a
22 multisource generic drug if the reimbursement for the drug is less
23 than the net amount that the network pharmacy paid to the supplier of
24 the drug. ~~((An appeal requested under this section must be completed
25 within thirty calendar days of the pharmacy making the claim for
26 which an appeal has been requested.))~~ An appeal requested under this
27 section must be completed within thirty calendar days of the pharmacy
28 submitting the appeal. If after thirty days the network pharmacy has
29 not received the decision on the appeal from the pharmacy benefit
30 manager, then the appeal is considered denied.

31 The pharmacy benefit manager shall uphold the appeal of a
32 pharmacy with fewer than fifteen retail outlets, within the state of
33 Washington, under its corporate umbrella if the pharmacy or
34 pharmacist can demonstrate that it is unable to purchase a
35 therapeutically equivalent interchangeable product from a supplier
36 doing business in Washington at the pharmacy benefit manager's list
37 price.

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

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

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

6 ~~(c))~~ If the appeal is denied, the reason for the denial and the
7 national drug code of a drug that ~~((may be))~~ has been purchased by
8 ~~((similarly situated))~~ other network pharmacies located in Washington
9 at a price that is equal to or less than the ~~((maximum allowable~~
10 ~~cost))~~ predetermined reimbursement cost for the multisource generic
11 drug. A pharmacy with fifteen or more retail outlets, within the
12 state of Washington, under its corporate umbrella may submit
13 information to the commissioner about an appeal under subsection (3)
14 of this section for purposes of information collection and analysis.

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

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

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

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

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

1 (c) The commissioner may authorize the office of administrative
2 hearings, as provided in chapter 34.12 RCW, to conduct appeals under
3 this subsection (6).

4 (d) A pharmacy benefit manager may not retaliate against a
5 pharmacy for pursuing an appeal under this subsection (6).

6 (e) This subsection (6) applies only to a pharmacy with fewer
7 than fifteen retail outlets, within the state of Washington, under
8 its corporate umbrella.

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

11 (8) A pharmacy benefit manager shall comply with any requests for
12 information from the commissioner for purposes of the study of the
13 pharmacy chain of supply conducted under section 7 of this act.

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

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

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

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

25 NEW SECTION. Sec. 6. The insurance commissioner, in
26 collaboration with the department of health, must review the
27 potential to use the independent review organizations, established in
28 RCW 48.43.535, as an alternative to the appeal process for pharmacy
29 and pharmacy benefit manager disputes. By December 1, 2016, the
30 agencies must submit recommendations for use of the independent
31 review organizations including detailed suggestions for modifications
32 to the process, and the possible transition of the process from the
33 department of health, established in RCW 43.70.235, to the office of
34 the insurance commissioner.

35 NEW SECTION. Sec. 7. (1) The office of the insurance
36 commissioner shall conduct a study of the pharmacy chain of supply.
37 The commissioner or his or her designee may convene one or more

1 stakeholder work groups to address the components of the study, which
2 must include but are not limited to the following:

3 (a) Review the entire drug supply chain including plan and
4 pharmacy benefit manager reimbursements to network pharmacies,
5 wholesaler or pharmacy service administrative organization prices to
6 network pharmacies, and drug manufacturer prices to network
7 pharmacies;

8 (b) Discuss suggestions that recognize the unique nature of small
9 and rural pharmacies and possible options that support a viable
10 business model that do not increase the cost of pharmacy products;

11 (c) Review the availability of all drugs on the maximum allowable
12 cost list or any similar list for pharmacies;

13 (d) Review data submitted under RCW 19.340.100(4)(b) for patterns
14 and trends in the denials of internal pharmacy benefit manager
15 appeals involving pharmacies with fifteen or more retail outlets,
16 within the state of Washington, under their corporate umbrellas;

17 (e) Review the telephone contacts and standards for response
18 times and availability; and

19 (f) Review the pharmacy acquisition cost from national or
20 regional wholesalers that serve pharmacies in Washington, and
21 consider when or whether to make an adjustment and under what
22 standards. The review may assess the timing of pharmacy purchases of
23 products and the relative risk of list price changes related to the
24 timing of dispensing the products.

25 (2) The study must be delivered to the legislature by November 1,
26 2016.

27 NEW SECTION. **Sec. 8.** Section 1 of this act takes effect January
28 1, 2017."

29 Correct the title.

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