

SSB 5857 - S AMD 275

By Senators Parlette, Conway, Becker, Keiser

ADOPTED AS AMENDED 3/11/2015

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

1 dispute between a pharmacy benefit manager, or third-party  
2 administrator of prescription drug benefits, and a pharmacy arising  
3 out of an appeal regarding drug pricing and reimbursement.

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

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

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

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

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

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

21 ~~((3))~~ (4) "Pharmacist" has the same meaning as in RCW  
22 18.64.011.

23 ~~((4))~~ (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

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

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

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

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

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

36 ~~((6))~~ (7) "Third-party payor" means a person licensed under RCW  
37 48.39.005.

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

3       (1) As used in this section:

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

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

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

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

14       (e) "Therapeutically equivalent" has the same meaning as in RCW  
15 69.41.110.

16       (2) A pharmacy benefit manager:

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

22       (b) Shall ensure that all drugs on a list are (~~generally~~)  
23 readily available for purchase at or below the list price by  
24 community retail pharmacies in this state from national or regional  
25 wholesalers that serve community retail pharmacies in Washington;

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

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

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

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

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

1 (3) A pharmacy benefit manager must establish a process by which  
2 a network pharmacy may appeal its reimbursement for a drug subject to  
3 maximum allowable cost pricing. A network pharmacy may appeal a  
4 maximum allowable cost if the reimbursement for the drug is less than  
5 the net amount that the network pharmacy paid to the supplier of the  
6 drug. An appeal requested under this section must be completed within  
7 thirty calendar days of the pharmacy making the claim for which an  
8 appeal has been requested.

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

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

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

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

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

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

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

34 (a) If the commissioner determines that the drug with the  
35 national drug code provided by the pharmacy benefit manager is not  
36 available below the pharmacy acquisition cost from national or  
37 regional wholesalers that serve community retail pharmacies in  
38 Washington when the pharmacy purchased the prescription drug for  
39 resale, then the pharmacy benefit manager shall make an adjustment on  
40 a date no later than one day after the date of determination. The

1 pharmacy benefit manager shall make the adjustment effective for all  
2 similarly situated pharmacies in this state that are within the  
3 network.

4 (b) If the commissioner denies the pharmacy's dispute, the  
5 pharmacy benefit manager's denial is upheld.

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

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

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

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

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

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

22 NEW SECTION. Sec. 6. The joint select committee on health care  
23 oversight must convene a stakeholder work group comprised of  
24 participants in the prescription drug delivery chain, including  
25 pharmacy benefit managers, drug manufacturers, wholesalers, pharmacy  
26 service administrative organizations, pharmacies, health plans, and  
27 other payors. The work group must:

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; and

36 (3) Provide periodic updates to the joint select committee on  
37 health care oversight.

1        NEW SECTION.    **Sec. 7.**    Section 1 of this act takes effect January  
2    1, 2016."

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3        On page 1, line 2 of the title, after "managers;" strike the  
4    remainder of the title and insert "amending RCW 19.340.030,  
5    19.340.010, and 19.340.100; adding a new section to chapter 19.340  
6    RCW; adding a new section to chapter 48.02 RCW; creating a new  
7    section; prescribing penalties; and providing an effective date."

EFFECT: (1) Retains regulatory oversight with the OIC.

(2) Removes the reference to arbitration agreements, removes the paragraph with reference to paying a pharmacy the cost of the drug, and removes ability for a pharmacy injured in violation of the chapter to recover actual damages plus attorneys' fees.

(3) Modifies the requirements for the MAC list so that drugs on the list must be readily available for purchase at or below the list price by community retail pharmacies in this state from national or regional wholesalers that serve community retail pharmacies in Washington.

(4) If a pharmacy appeal is denied, the pharmacy may dispute the denial and request review by the Commissioner.

(a) If the commissioner determines the drug is not available below the pharmacy acquisition cost from wholesalers, the PBM must make an adjustment one day later and the PBM must make the adjustment for all similarly situated pharmacies within the network.

(b) If the commissioner denies the dispute, the PBM denial is upheld.

(c) The commissioner must provide a copy of the decision to both parties within seven days of resolution of the dispute.

(5) A stakeholder work group must be convened by the Joint Select Committee on Health Care Oversight that includes all participants in the drug supply chain, including PBMs, drug manufacturers, wholesalers, pharmacy service administrative organizations, pharmacies, health plans, and other payors. The work group must review the entire supply chain including reimbursements to independent pharmacies, and wholesaler and manufacturer prices to independent pharmacies; discuss suggestions that recognize the unique nature of small retail pharmacies and possible options that support a viable business model that do not increase the cost of pharmacy products; and provide periodic updates to the Joint Select Committee on Health Care Oversight.

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