

ESSB 5857 - S AMD 467

By Senator Parlette

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

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

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

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

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

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

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

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

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

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

26 (4) All receipts from registrations and renewals collected by
27 the (~~department~~) commissioner must be deposited into the

1 (~~business license account created in RCW 19.02.210~~) insurance
2 commissioner's regulatory account created in RCW 48.02.190.

3

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

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

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

18

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

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

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

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

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

29 ~~((+3))~~ (4) "Pharmacist" has the same meaning as in RCW
30 18.64.011.

31 ~~((+4))~~ (5) "Pharmacy" has the same meaning as in RCW 18.64.011.

32 ~~((+5))~~ (6)(a) "Pharmacy benefit manager" means a person that
33 contracts with pharmacies on behalf of an insurer, a third-party

34

1 payor, or the prescription drug purchasing consortium established
2 under RCW 70.14.060 to:

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

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

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

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

11 ~~((+6+))~~ (7) "Third-party payor" means a person licensed under
12 RCW 48.39.005.

13

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

16 (1) As used in this section:

17 (a) "Denial" of an appeal includes failing to reimburse a
18 pharmacy or pharmacist and reimbursing a pharmacy or pharmacist for
19 less than the amount that the pharmacy or pharmacist paid to the
20 supplier of the drug.

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

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

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

28 ~~((+d+))~~ (e) "Network pharmacy" means a retail drug outlet
29 licensed as a pharmacy under RCW 18.64.043 that contracts with a
30 pharmacy benefit manager.

31 ~~((+e+))~~ (f) "Therapeutically equivalent" has the same meaning as
32 in RCW 69.41.110.

33 (2) A pharmacy benefit manager:

34

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

6 (b) Shall ensure that all drugs on a list are (~~generally~~)
7 readily available for purchase by network pharmacies in this state
8 from national or regional wholesalers that serve community
9 pharmacies in Washington;

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

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

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

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

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

24 (3) A pharmacy benefit manager must establish a process by which
25 a network pharmacy may appeal its reimbursement for a drug subject
26 to maximum allowable cost pricing. A network pharmacy may appeal a
27 maximum allowable cost if the reimbursement for the drug is less
28 than the net amount that the network pharmacy paid to the supplier
29 of the drug. The pharmacy benefit manager shall reimburse the
30 network pharmacy or pharmacist the amount that the network pharmacy
31 or pharmacist paid to the supplier of the drug if the network
32 pharmacy or pharmacist can demonstrate that it is unable to purchase
33 a therapeutically equivalent interchangeable product from its
34 supplier at the pharmacy benefit manager's list price. An appeal

1 requested under this section must be completed within thirty
2 calendar days of the pharmacy making the claim for which an appeal
3 has been requested. If after thirty days the network pharmacy has
4 not received the decision on the appeal from the pharmacy benefit
5 manager, then the appeal is considered denied.

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

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

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

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

17 (5)(a) If an appeal is upheld under this section, the pharmacy
18 benefit manager shall make an adjustment on a date no later than one
19 day after the date of determination. The pharmacy benefit manager
20 shall make the adjustment effective for all network pharmacies in
21 this state.

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

28 (6) If a network pharmacy appeal to the pharmacy benefit manager
29 is denied or if the network pharmacy is unsatisfied with the outcome
30 of the appeal, the pharmacy or pharmacist may dispute the denial and
31 request review by the commissioner.

32 (a) All relevant information from the parties may be presented
33 to the commissioner, and the commissioner may enter an order
34 directing the pharmacy benefit manager to make an adjustment to the

1 disputed claim, deny the network pharmacy appeal, or take other
2 actions deemed fair and equitable. An appeal requested under this
3 section must be completed within thirty calendar days of the
4 pharmacy making the claim for which an appeal has been requested.

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.

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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.

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

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

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

4 (3) Review the availability of all drugs on the list and list
5 prices for retail pharmacies;

6 (4) Review the phone contacts and standards for response times
7 and availability;

8 (5) Review the pharmacy acquisition cost from national or
9 regional wholesalers that serve retail pharmacies in Washington, and
10 consider when or whether to make an adjustment and under what
11 standards. The review may assess the timing of pharmacy purchases of
12 products and the relative risk of list price changes related to the
13 timing of dispensing the products; and

14 (6) The work group must provide periodic updates to the joint
15 select committee on health care oversight.

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

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21 ESSB 5857 S AMD

22 By Senator Parlette

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24 On page 1, line 2 of the title, after "managers;" strike the
25 remainder of the title and insert "amending RCW 19.340.030,
26 19.340.010, and 19.340.100; adding a new section to chapter 19.340
27 RCW; adding a new section to chapter 48.02 RCW; creating a new
28 section; prescribing penalties; and providing an effective date."

29

EFFECT:

- 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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- Modifies references to community pharmacies to network pharmacies
- Requires as part of the appeals process that a pharmacy benefit manager (PBM) reimburse the amount that the network pharmacy or pharmacist paid to the supplier if the network 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. If after thirty days the network pharmacy has not received the decision on the appeal from the PBM, then the appeal is considered denied.
- If the network pharmacy appeal is denied or the network pharmacy is unsatisfied with the outcome of the appeal, the network pharmacy may request review of the dispute by the Commissioner.
- The Commissioner may enter an order directing the PBM to make an adjustment to the disputed claim (not all MAC prices)... An appeal must be completed within thirty calendar days.

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