

4ESSB 5857 - S AMD 652
By Senator Parlette

ADOPTED 02/17/2016

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.** (1) The commissioner shall have
30 enforcement authority over this chapter and shall have authority to
31 render a binding decision in any dispute between a pharmacy benefit

1 manager, or third-party administrator of prescription drug benefits,
2 and a pharmacy or pharmacy services administrative organization,
3 arising 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~~
5 ~~allowable))~~ predetermined reimbursement costs have been established,
6 such as a maximum allowable cost or maximum allowable cost list or
7 any other benchmark prices utilized by the pharmacy benefit manager
8 and must include the basis of the methodology and sources utilized to
9 determine multisource generic drug reimbursement amounts.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (4) A pharmacy benefit manager must provide as part of the
40 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))~~ of an equivalent
8 multisource generic drug that has been purchased by ~~((similarly~~
9 ~~situated pharmacies))~~ another network pharmacy located in Washington
10 state at a price that is equal to or less than the ~~((maximum~~
11 ~~allowable cost.~~

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

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

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

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

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

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

1 (c) Appeals under this subsection (6) are subject to chapter
2 34.05 RCW. The commissioner may authorize the office of
3 administrative hearings, as provided in chapter 34.12 RCW, to conduct
4 appeals under this subsection (6).

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

7 NEW SECTION. Sec. 5. (1) The pharmacy benefit manager shall
8 disclose to each plan sponsor in all contracts between the pharmacy
9 benefit manager and a plan sponsor providing prescription drug
10 coverage in the state a written explanation of the methodology and
11 sources utilized by the pharmacy benefit manager to determine
12 multisource generic drug prices.

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

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

26 NEW SECTION. Sec. 6. (1) The commissioner shall accept
27 registration of pharmacy benefit managers as established in RCW
28 19.340.030 and receipts shall be deposited in the insurance
29 commissioner's regulatory account.

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

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

36 NEW SECTION. Sec. 7. The insurance commissioner must review the
37 potential to use the independent review organizations, established in

1 RCW 48.43.535, as an alternative to the appeal process for pharmacy
2 and pharmacy benefit manager disputes, and other disputes between
3 providers and insurance carriers. By December 1, 2016, the
4 commissioner must submit recommendations to the health care
5 committees of the legislature.

6 NEW SECTION. **Sec. 8.** Section 1 of this act takes effect January
7 1, 2017.

8 NEW SECTION. **Sec. 9.** RCW 19.340.010, 19.340.020, 19.340.030,
9 19.340.040, 19.340.050, 19.340.060, 19.340.070, 19.340.080,
10 19.340.090, and 19.340.100 are each recodified as a new chapter in
11 Title 48 RCW.

12 NEW SECTION. **Sec. 10.** Sections 2, 5, and 6 of this act are each
13 added to chapter 48.--- RCW (the new chapter created in section 9 of
14 this act)."

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15 On page 1, line 2 of the title, after "managers;" strike the
16 remainder of the title and insert "amending RCW 19.340.030,
17 19.340.010, and 19.340.100; adding a new chapter to Title 48 RCW;
18 creating a new section; recodifying RCW 19.340.010, 19.340.020,
19 19.340.030, 19.340.040, 19.340.050, 19.340.060, 19.340.070,
20 19.340.080, 19.340.090, and 19.340.100; prescribing penalties; and
21 providing an effective date."

EFFECT: (1) Redefines the "list" from the MAC list to a list of
predetermined reimbursement costs that have been established by the
PBM with the methodology and sources utilized to determine the
multisource generic drug reimbursement amounts.

(2) A definition is added for multisource generic drug.

(3) A definition is added for pharmacy acquisition cost.

(4) A PBM must utilize the most up-to-date pricing data to
calculate reimbursement and must update the multisource generic drug
prices within one business day of any price update.

(5) The PBM appeal process must allow a pharmacy or their
contracting agent such as a pharmacy services administrative
organization to appeal if the reimbursement for a multisource generic
drug is less than the amount the pharmacy paid to the supplier.

(6) Upon receipt of the appeal, the PBM must provide the national drug code for a product available to the pharmacy from a wholesaler operating in Washington at a price less than or equal to the reimbursed amount.

(7) An appeal must be completed within 10 days rather than 30.

(8) If the appeal is denied, the PBM must provide the reason and the national drug code for the product purchased by another network pharmacy in Washington within 7 days and provide the name of the wholesaler at which the drug can be acquired.

(9) Transparency requirements are added: The PBM must disclose to each plan sponsor the methodology and sources utilized to determine multisource generic drug prices; the prices must be provided within seven business days whenever there is a pricing change; and the PBM must disclose the difference between the multisource generic drug pricing for network pharmacies and mail order or nonretail pharmacies.

(10) The stakeholder discussion group is removed.

(11) The OIC study of the use of independent review organizations for disputes between providers and carriers is modified.

(12) The effective date for section 1 is updated to 1/1/17.

(13) The expiration date is removed.

(14) The statutes with the PBM regulatory framework are recodified in Title 48 RCW.

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