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## Health Care & Wellness Committee

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### ESSB 5857

**Brief Description:** Addressing registration and regulation of pharmacy benefit managers.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Parlette, Conway, Becker and Pearson).

#### Brief Summary of Engrossed Substitute Bill

- Grants the Office of the Insurance Commissioner (OIC) enforcement authority over pharmacy benefit managers, and permits the OIC to issue binding decisions in disputes between pharmacy benefit managers and pharmacies.
- Requires a pharmacy benefit manager to ensure that all drugs for which a maximum allowable cost has been established are readily available for purchase by community retail pharmacies.
- Requires the Joint Select Committee on Health Care Oversight to convene a stakeholder work group to review the drug supply chain.

**Hearing Date:** 3/24/15

**Staff:** Alexa Silver (786-7190).

#### Background:

Pharmacy benefit managers act as an intermediary between the entities they contract with and pharmaceutical manufacturers to administer the drug benefit portion of a health plan. They process and pay prescription drug claims, develop and maintain the formulary, contract with pharmacies, and negotiate discounts and rebates with manufacturers.

Legislation enacted in 2014 requires pharmacy benefit managers to register with the Department of Revenue, establishes requirements related to audits of pharmacies, regulates actions related to lists of drugs for which a maximum allowable cost has been established, and requires pharmacy benefit managers to establish an appeals process.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

With respect to a list of drugs for which maximum allowable costs have been established, a pharmacy benefit manager must ensure that all drugs on the list are generally available for purchase by pharmacies in the state from national or regional wholesalers.

With respect to appeals, a pharmacy benefit manager is required to establish a process for a network pharmacy to appeal its reimbursement for a drug subject to maximum allowable cost pricing. A pharmacy may file an appeal if reimbursement is less than the net amount the pharmacy paid to the supplier for the drug. A pharmacy benefit manager must provide a final response to an appeal within seven business days. If the appeal is denied, the pharmacy benefit manager must provide a reason for the denial and the national drug code of a drug that may be purchased by similarly situated pharmacies at a price that is equal to or less than the maximum allowable cost. If the appeal is upheld, the pharmacy benefit manager must make an adjustment within one day of the determination, and the adjustment must be effective for all similarly situated network pharmacies in the state.

### **Summary of Bill:**

#### Regulation of Pharmacy Benefit Managers.

A pharmacy benefit manager must ensure that all drugs on a list establishing maximum allowable costs are readily available for purchase by community retail pharmacies in Washington from national or regional wholesalers that service community retail pharmacies in Washington.

To conduct business in Washington, pharmacy benefit managers are required to register with the Office of the Insurance Commissioner (OIC) instead of the Department of Revenue. The OIC must establish registration and renewal fees at a level that allows the registration, renewal, and oversight activities to be self-supporting, and the fees must be deposited into the OIC's regulatory account.

The OIC has enforcement authority over the pharmacy benefit manager law and has authority to render a binding decision in a dispute between a pharmacy benefit manager or third-party administrator of prescription drug benefits and a pharmacy that arises out of an appeal regarding drug pricing and reimbursement. If a pharmacy appeal to a pharmacy benefit manager is denied, the pharmacy or pharmacist may dispute the denial and request review by the OIC. All relevant information from the parties must be presented to the OIC, and the OIC may enter an order directing the pharmacy benefit manager to make an adjustment, deny the pharmacy appeal, or take other actions deemed fair and equitable. Upon resolution of the dispute, the OIC must provide a copy of the decision to both parties within seven calendar days.

A person, corporation, third-party administrator of prescription drug benefits, pharmacy benefit manager, or business entity that violates the pharmacy benefit manager law is subject to a civil penalty of \$1,000 per violation or \$5,000 per violation if the violation was knowing and willful.

The OIC may adopt rules to implement the pharmacy benefit manager law and establish registration and renewal fees.

#### Stakeholder Work Group.

The Joint Select Committee on Health Care Oversight (Joint Select Committee) must convene a stakeholder work group comprised of participants in the prescription drug delivery chain, including pharmacy benefit managers, drug manufacturers, wholesalers, pharmacy service administrative organizations, pharmacies, health plans, and other payors. The work group must provide periodic updates to the Joint Select Committee.

The work group assignments may include, but are not limited to:

- reviewing the entire drug supply chain, including plan and pharmacy benefit manager reimbursements to independent pharmacies, wholesaler or pharmacy service administrative organization prices to independent pharmacies, and drug manufacturer prices to independent pharmacies;
- discussing suggestions that recognize the unique nature of small retail pharmacies and possible options that support a viable business model without increasing the cost of pharmacy products;
- reviewing the availability of all drugs on a list establishing maximum allowable costs and list prices for community retail pharmacies;
- reviewing the phone contacts and standards for response times and availability; and
- reviewing the pharmacy acquisition cost from national or regional wholesalers that serve community retail pharmacies in Washington and considering when or whether to make an adjustment and under what standards. The review may assess the timing of pharmacy purchases of products and the relative risk of list price changes related to the timing of dispensing the products.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1 relating to registration with the Office of the Insurance Commissioner, which takes effect January 1, 2016.