FINAL BILL REPORT
5ESSB 5857

C 210 L 16
Synopsis as Enacted

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).

Senate Committee on Health Care
Senate Committee on Ways & Means
House Committee on Health Care & Wellness
House Committee on Appropriations
House Committee on General Government & Information Technology

Background: The 2014 Legislature passed ESSB 6137 requiring pharmacy benefit managers (PBMs) to register with the Department of Revenue to conduct business in this state. PBMs process claims for prescription drugs or medical supplies, provide retail network management for pharmacies, pay pharmacies for prescription drugs or medical supplies, and negotiate rebates with manufacturers for drugs.

Standards are established for auditing pharmacy claims, and for PBMs to use when developing lists of drugs with associated maximum allowable costs, including standards related to the availability of drugs, distribution of the lists, and updates to the list every seven business days. PBMs must establish an appeals process to allow pharmacies to appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount that the pharmacy paid to the supplier of the drug.

The 2014 legislation did not provide regulatory authority.

Summary: PBM registration is moved from the Department of Revenue to the Office of the Insurance Commissioner (OIC). The PBM must pay registration and renewal fees that are established in rule by OIC. These fees must be set at a level which allows the registration, renewal, and oversight activities to be self-supporting.

The Commissioner has enforcement authority over the PBMs and the statutory provisions created in 2014. Any entity that violates the chapter is subject to a civil penalty of $1,000 for each violation. If the violation was knowing and willful, the civil penalty is $5,000 for each violation. The Commissioner may write rules to implement Chapter 19.340 RCW and to establish registration and renewal fees.

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.

References to the maximum allowable cost (MAC) list are modified to the list of predetermined reimbursement costs for multisource generic drug reimbursement. All drugs on the list must be readily available for purchase by network pharmacies from national or regional wholesalers that serve pharmacies in Washington.

A pharmacy may appeal its reimbursement for a drug to the PBM for a multisource generic drug if the reimbursement is less than the net amount the pharmacy paid to the supplier of the drug. An appeal must be complete within 30 calendar days. The PBM must uphold the appeal of a pharmacy with fewer than 15 retail outlets within the state of Washington if the pharmacy can demonstrate that it is unable to purchase a therapeutically equivalent interchangeable product from a supplier doing business in Washington at the PBM's list price. If the pharmacy appeal to the PBM is denied, the PBM must provide the reason for the denial and the national drug code of a drug that has been purchased by another network pharmacy located in Washington at a price that is equal to or less than the PBM's list price.

If the appeal to the PBM is denied or the pharmacy is unsatisfied with the outcome of the appeal, a pharmacy with fewer than 15 retail outlets in Washington may dispute the denial and request a second level review by the Commissioner, beginning January 1, 2017. All relevant information from the parties may be presented to the Commissioner, and the Commissioner may enter an order directing the PBM to make an adjustment to the disputed claim, deny the pharmacy appeal, or take other actions deemed fair and equitable. The appeal to the Commissioner must be completed within 30 calendar days, and a copy of the decision must be provided to both parties within seven days. The OIC appeals are subject to the Administrative Procedures Act, and the Commissioner may authorize the Office of Administrative Hearings to conduct the appeals.

Pharmacies with more than 15 retail outlets in Washington may submit information to the Commissioner on an appeal with a PBM for purposes of information collection and analysis.

The OIC must review the potential to use the independent review organizations that currently review consumer disputes with health plans, as an alternative to the appeal process, and submit recommendations to the Legislature by December 1, 2016.

By November 1, 2016, the OIC must complete a study of the pharmacy chain of supply that must:

- review the entire drug supply chain including plan and PBM reimbursements to network pharmacies, wholesaler or pharmacy service administrative organization prices, and drug manufacturer prices to network pharmacies;
- discuss suggestions that recognize the unique nature of small and rural pharmacies and possible options that support a viable business model that do not increase the cost of pharmacy products;
- review the availability of all drugs on the maximum allowable cost list or similar list;
- review data submitted on the appeals for patterns and trends in the denials of internal PBM appeals for pharmacies with 15 or more retail outlets in the state;
- review the telephone contacts and standards for response times and availability; and
- review the pharmacy acquisition cost from national or regional wholesalers that serve pharmacies in Washington.

Votes on Final Passage:

2015 Regular Session
Senate 49 0

2015 Second Special Session
Senate 44 0

2015 Third Special Session
Senate 44 0

2016 Regular Session
Senate 33 16
House 94 3 (House amended)
Senate 49 0 (Senate concurred)

Effective: June 9, 2016
January 1, 2017 (Section 1)