HOUSE BILL REPORT
HB 2296

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to protecting consumers from excess charges for prescription medications.

Brief Description: Protecting consumers from excess charges for prescription medications.

Sponsors: Representatives Slatter, Schmick, Cody, Robinson, Dolan, Orwall, Tharinger, Macri, Young, Kloba, Appleton, Jinkins, Ormsby, Pollet and Doglio.

Brief History:
Committee Activity:
Health Care & Wellness: 1/12/18, 1/31/18 [DPS].

Brief Summary of Substitute Bill

- Limits the maximum amount a purchaser of prescription medication may pay at the point of sale.
- Prohibits contracts between a pharmacy benefit manager or an insurer and a pharmacy or pharmacist from penalizing a pharmacy or pharmacist for disclosing certain information to a purchaser of prescription medication.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier, Clibborn, DeBolt, Harris, Jinkins, MacEwen, Maycumber, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Staff: Jim Morishima (786-7191).

Background:

A health plan offering coverage to individuals or small groups is required, under the federal Patient Protection and Affordable Care Act (ACA), to cover 10 categories of essential health benefits, one of which is prescription drugs. To comply with the ACA's prescription drug coverage requirement, an issuer must cover prescription drugs in a manner substantially

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equal to a benchmark plan selected by the state. The issuer's formulary is part of the prescription drug category and must be substantially equal to the formulary in the benchmark plan. An issuer must file its formulary quarterly with the Office of the Insurance Commissioner (OIC).

A pharmacy benefit manager (PBM) acts as an intermediary between the entities with which it contracts and pharmaceutical manufacturers to administer the drug benefit portion of a health plan. A PBM processes and pays prescription drug claims, develops and maintains the formulary, contracts with pharmacies, and negotiates discounts and rebates with manufacturers.

To conduct business in Washington, a PBM must register with the OIC. The OIC has enforcement authority over PBMs. A person, corporation, third-party administrator of prescription drug benefits, PBM, or business entity that violates laws relating to PBMs is subject to a civil penalty of $1,000 per violation or $5,000 per violation if the violation was knowing and willful.

Summary of Substitute Bill:

On or after January 1, 2019, the maximum amount a pharmacy benefit manager (PBM) or insurer may require a person to pay at the point of sale for a covered prescription medication is the lesser of:

- the applicable cost sharing for the medication; or
- the amount the person would pay for the medication if he or she purchased it without using a health plan or any other source of prescription medication benefits or discounts.

A contract entered into between a PBM or insurer and a pharmacy or pharmacist may not penalize, including through increased utilization review, reduced payments, or other financial disincentives, the pharmacy's or pharmacist's disclosure to a prescription medication purchaser of information regarding:

- the cost of the prescription medication to the purchaser; or
- the availability of any less expensive therapeutically equivalent alternative medications or less expensive alternative methods of purchasing the medication, including paying the cash price.

The Insurance Commissioner (Commissioner) must evaluate the implementation of similar laws enacted in other states, including a similar law in Connecticut. The evaluation must include an assessment of whether the state's ability to implement its law was adversely affected by including the allowable claim amount among the maximum amounts an individual may be required to pay at the point of sale for a prescription drug. The Legislature states its intent to enact a similar provision if the study finds that the other state's ability to implement its law has not been adversely affected by including the allowable reimbursement or claim amount among the maximum amounts an individual may be required to pay at the point of sale. The Commissioner must report his or her findings to the Legislature by January 1, 2019.

Substitute Bill Compared to Original Bill:

The substitute bill:

- removes the reimbursement amount for a prescription medication from the list of maximum amounts a person may be required to pay at the point of sale for a prescription medication;
- recodifies the provisions relating to purchaser costs and pharmacy disclosures in the Insurance Code;
- requires the Insurance Commissioner (Commissioner) to evaluate the implementation of similar laws in other states, including a similar law enacted in Connecticut;
- requires the Commissioner's evaluation to include an assessment of whether the other state's ability to implement its law was adversely affected by including the allowable claim amount among the maximum amounts an individual may be required to pay at the point of sale; and
- states the Legislature's intent to modify the provisions of the bill relating to prescription costs if the Commissioner's study finds that a state's ability to implement its laws has not been adversely affected by including the allowable reimbursement or claim amount among the maximum amounts a person may be required to pay at the point of sale.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is important to give consumers the lowest price possible. Pharmacies help people every day by managing therapeutic interactions and medication adherence, but few people are aware of the restrictions pharmacy benefit managers (PBMs) and insurers place on pharmacies. Light must be shed on this opaque system. People need to be able to make informed decisions. Copays can be expensive for prescription medications. The reimbursement amount or the cash price is often cheaper. Pharmacy benefit managers often prohibit pharmacies from discussing less expensive options and claw back the excessive copay amounts. Patients are paying premiums for prescription drug coverage, and it is unfair for patients to have to pay the costs of these drugs. This bill preserves the pharmacy's ability to share information with consumers, which will lead to better health outcomes by increasing medication adherence. This bill will also help patients save money and manage resources better.

(Opposed) None.

(Other) Pharmacy benefit managers believe members should pay the lowest price. Most PBMs do not have gag rules prohibiting pharmacies from discussing less expensive options

with patients. Tying payment to the amount an insurer or PBM reimburses for a drug will be impossible to implement and can result in a patient overpaying. This is because reimbursement amounts are often adjusted through performance-based reimbursement practices. This bill would affect self-funded plans and union trusts. This bill should be codified in the Insurance Code instead of the chapter dealing with PBMs.

Persons Testifying: (In support) Representative Slatter, prime sponsor; Patrick Conner, National Federation of Independent Business; Heidi Barrett, Arthritis Foundation; and Jeff Rochan, Washington State Pharmacy Association.

(Other) Abby Stoddard, Prime Therapeutics; Carrie Tellefson, CVS; and Michael Temple, Pharmaceutical Care Management Association.

Persons Signed In To Testify But Not Testifying: None.