

SENATE BILL REPORT

SHB 2296

As Reported by Senate Committee On:
Health & Long Term Care, February 22, 2018

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

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

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Slatter, Schmick, Cody, Robinson, Dolan, Orwall, Tharinger, Macri, Young, Kloba, Appleton, Jinkins, Ormsby, Pollet and Doglio).

Brief History: Passed House: 2/08/18, 98-0.

Committee Activity: Health & Long Term Care: 2/19/18, 2/22/18 [DP].

Brief Summary of Bill

- Restricts the amount a pharmacy benefit manager (PBM) may charge a person for a covered prescription medication to the lesser of the applicable cost sharing or the amount that would have been paid without use of a prescription medication benefit or discount.
- Prohibits contracts between PBMs and pharmacies or pharmacists from penalizing certain pharmacy or pharmacist disclosures.
- Requires the Insurance Commissioner (Commissioner) to evaluate the implementation of similar laws enacted by other states and report the findings to the Legislature.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass.

Signed by Senators Cleveland, Chair; Kuderer, Vice Chair; Rivers, Ranking Member; Bailey, Becker, Conway, Fain, Keiser, Mullet and Van De Wege.

Staff: Evan Klein (786-7483)

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 ten categories

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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 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).

Many health insurance carriers contract with a PBM to manage the pharmacy benefit, including: network development with pharmacies, processing claims, maintaining a formulary, negotiating with manufacturers for rebates, and managing mail order services. PBMs must register with the OIC, develop an appeals process for pharmacies, and follow specified standards for auditing pharmacy claims.

Summary of Bill: On or after January 1, 2019, the maximum amount a 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 person purchasing medication, 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 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 the findings to the Legislature by January 1, 2019.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: It is surprising to hear that pharmacists are gagged from sharing information about prescriptions with patients. This bill is an opportunity for a patient to get information on lowest price cost options. There is some concern about the point of sale piece, so it was delayed for one year. There needs to be a balance to encourage innovation and development, but not overcharge consumers. This issue is one of the few that the Pharmaceutical Care Management Association has a policy on. The patient should pay the lowest price, there should not be claw-backs, and the pharmacy should be able to discuss price with consumers. If PBMs passed along savings, then patients would be able to save a lot of money on high cost drugs. It is not easy having a family with multiple auto-immune diseases. The drugs that the family takes are quite expensive, and a pharmacist should be able to tell the family how to save money on their drugs. PBMs often do not allow any negotiations of contracts, due to their contractual power. Without a PBM contract, pharmacies do not have options to serve patients. Not all PBMs have non-disclosure clauses in their contracts, but the ones that do keep pharmacies from giving patients all available information.

Persons Testifying: PRO: Representative Vandana Slatter, Prime Sponsor; Heidi Barrett, Arthritis Foundation; Jeff Rochon, Washington State Pharmacy Association; Meg Jones, Association of Washington Healthcare Plans; Carrie Tellefson, Regence BlueShield and CVS Health; Michael Temple, Pharmaceutical Care Management Association.

Persons Signed In To Testify But Not Testifying: No one.