

SENATE BILL REPORT

SB 5699

As of February 13, 2017

Title: An act relating to pharmacy appeals of payments made by pharmacy benefit managers.

Brief Description: Addressing pharmacy appeals of payments made by pharmacy benefit managers.

Sponsors: Senators Rivers, Mullet and Keiser.

Brief History:

Committee Activity: Health Care: 2/13/17.

Brief Summary of Bill

- Allows a pharmacy of any size to appeal its reimbursement from a pharmacy benefit manager and to request a second level review of the appeal.

SENATE COMMITTEE ON HEALTH CARE

Staff: Mich'l Needham (786-7442)

Background: Legislation passed in 2014 established new requirements for pharmacy benefit managers (PBMs) including a requirement to register with the Department of Revenue, to develop an appeals process for pharmacies, and to follow specified standards for auditing pharmacy claims.

Legislation passed in 2016 established oversight for PBMs with the Office of Insurance Commissioner (OIC), modified the appeals process for a pharmacy to file an appeal with the PBM for the reimbursement for a drug, and created a second level review of appeals with the OIC for a pharmacy that has fewer than 15 retail outlets in Washington. The PBM must uphold the appeal of a pharmacy with fewer than 15 retail outlets within 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.

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.

Summary of Bill: The PBM must uphold the appeal of a pharmacy 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. The reference limiting the appeal to pharmacies with fewer than 15 retail outlets in Washington is removed.

If a pharmacy appeal to the PBM is denied, or the pharmacy is unsatisfied with the outcome of the appeal, the pharmacy may request a second level review by the OIC. The reference limiting the second level appeal to pharmacies with fewer than 15 retail outlets in Washington is removed.

Appropriation: None.

Fiscal Note: Requested on February 1, 2017.

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: We were at the table for the negotiations on last year's bill and at the very end an amendment was added that limited the appeals to small pharmacies. We are bigger but we still have challenges with the PBMs and the reimbursement. We just want you to remember the larger pharmacies are still out here and we are waiting and losing money every year. The small pharmacies can't fight for reimbursement and the appeals process was focused on the small pharmacies, but we believe all pharmacies should be allowed to appeal and help patients get their medications. It is the choice of a pharmacy to help their patient get a drug and then fight for reimbursement, but we should allow all pharmacies to advocate for their patients and ensure they get the drugs they need.

CON: We are not against the underlying goal but we are asking for time to let us implement last year's bill and gain some experience with the appeals for the small pharmacies first. We are nervous that we are not ready to expand yet. Last year's bill has not been fully implemented yet. The OIC just finished rule making in December 2016 and the appeals will begin in July. We believe this should only apply to the small independent pharmacies not the largest chain stores. We worked long and hard on last year's bill and the focus should remain on the smallest pharmacies. This change is getting ahead of implementation. It is possible there will be 15,000 appeals from the small pharmacies and if we open it up to the large chains it will be a significant increase which will drive up costs. The information that OIC will receive in the appeals will be subject to public disclosure and that is a concern. Our member plans use PBMs as a cost effective manager of the drug benefit. The central debate in last year's bill was on the viability for the small pharmacies and we should retain the focus on the small pharmacies, and not include the big box stores. We need to gain experience from the appeals after they begin in July. By next session, we will have a better sense of the volume and gain some quantifiable information before making a change to the scope.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Jeff Rochon, WA State Pharmacy Association; Holly Chisa, NW Grocery Assn.

CON: Cindy Laubacher, Express Scripts; Mel Sorensen, America's Health Insurance Plans; Lonnie Johns-Brown, OIC; David Knutson, Association of Washington Healthcare Plans; Michael Temple, Pharmaceutical Care Management Association; Brenda Wiest, Teamsters 117.

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