

SENATE BILL REPORT

SB 6026

As of February 5, 2018

Title: An act relating to prohibiting health carriers and pharmacy benefit managers from using contracts to prevent pharmacists from telling their customers about cheaper ways to buy prescription drugs.

Brief Description: Prohibiting health carriers and pharmacy benefit managers from using contracts to prevent pharmacists from telling their customers about cheaper ways to buy prescription drugs.

Sponsors: Senators Kuderer, Frockt, Rolfes, Van De Wege, Keiser, Conway, Short and Hasegawa.

Brief History:

Committee Activity: Health & Long Term Care: 1/22/18, 1/29/18 [DPS-WM, w/oRec].
Ways & Means: 2/05/18.

Brief Summary of First Substitute Bill

- Prohibits health carriers or pharmacy benefit managers (PBMs) from agreeing to contracts that would penalize pharmacies or pharmacists for making certain disclosures.
- Sets forth criteria for determining the amount which a health carrier or PBM may require and individual to pay for a prescription drug at the point of sale.
- Makes a violation of these provisions, a violation of the Consumer Protection Act (CPA).

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 6026 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Bailey and Fain.

Staff: Evan Klein (786-7483)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sandy Stith (786-7710)

Background: PBMs. 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 Office of the Insurance Commissioner, develop an appeals process for pharmacies, and follow specified standards for auditing pharmacy claims.

CPA. The CPA prohibits unfair or deceptive acts or practices in the conduct of trade or commerce directly or indirectly affecting the people of Washington. The CPA allows a person injured by a violation of the act to bring a private cause of action for damages.

Summary of Bill (First Substitute): A health carrier or PBM may not offer or agree to contracts that penalize pharmacies or pharmacists for disclosing:

- the cost of a prescription drug or the availability of a therapeutically equivalent alternative to a customer; or
- information, if the contract provision prohibits the disclosure or disadvantages the pharmacy or pharmacist that makes the disclosure.

Health carriers and PBMs may not require an individual to make a payment at a point of sale for a covered prescription greater than the lesser of:

- the copayment;
- the allowable claim amount on initial claim approval; or
- the amount an individual would pay if the prescription were purchased without using a health benefit plan.

A violation of these provisions is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the CPA. The insurance commissioner may also suspend or revoke the registration of a health carrier or PBM for a violation of these provisions.

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 on First Substitute (Health & Long Term Care):

PRO: People can currently pay for drugs at a lower rate by paying cash than through their

insurance, but pharmacists are often precluded from telling consumers that. This bill is a consumer protection bill. Pharmacists should be able to tell consumers they can pay less by not using their benefit plan if that is indeed the case. There is concern that the penalties are handled through the Consumer Protection Act. A per occurrence per day penalty may be a better approach to avoid forcing the attorney general to enforce another provision. Medications are far too expensive and the systems are very confusing. This bill will provide an important opportunity for pharmacists to disclose valuable information to consumers.

OTHER: There are concerns about subsection 2 of the bill. Protecting the disclosure of information is important, but there is some concern about controlling the price a member pays at the point of sale. PBMs and insurers have control of what they will pay a pharmacy, but have no control over how much the pharmacy charges. If a pharmacy cannot ascertain a specific amount, it may prohibit pharmacies from being able to comply. Members should already pay the lowest price and gag orders should not be supported in any contracts. The mixing of reimbursement and consumer cost-sharing would impede the ability to use performance-based contracts and should not be linked. There is already an appeals process for consumers through the OIC as well. Minnesota handled this issue by outlawing gag orders in the pharmacy practice act. The price being populated for the patient is already the best of the cash price or the copay. Discussing pharmacy reimbursement is not calculated in the same way as patient cost-sharing. The enforcement provisions are also very broad. There is a fear that a patient could lose their prescription drug benefits. PBMs should not currently be using claw-back provisions.

Persons Testifying (Health & Long Term Care): PRO: Senator Patty Kuderer, Prime Sponsor; Jeff Rochon, Washington State Pharmacy Association; Patrick Connor, NFIB/Washington.

OTHER: Meg Jones, Association of Washington Healthcare Plans; Abigail Stoddard, Prime Therapeutics; Maral Farsi, CVS Health; Michael Temple, Pharmaceutical Care Management Association.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This is an issue in Washington. These are only two of the issues of unfair business practices of pharmacy benefit managers. There are currently no rules governing or oversight of PBMs and this trickles down to consumers.

Persons Testifying (Ways & Means): PRO: Dedi Little, Washington State Pharmacy Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.