

SENATE BILL REPORT

SB 5184

As Reported by Senate Committee On:
Health & Long Term Care, February 18, 2019

Title: An act relating to prescription coverage and the use of nonresident pharmacies.

Brief Description: Concerning prescription coverage and the use of nonresident pharmacies.
[**Revised for 1st Substitute:** Concerning prescription coverage and the use of mail order services.]

Sponsors: Senators Kuderer, Cleveland and Darneille.

Brief History:

Committee Activity: Health & Long Term Care: 1/23/19, 1/28/19, 2/18/19 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Requires health carriers to include in any contract with a pharmacy benefit manager (PBM) a requirement that the PBM receive enrollee authorization prior to filling prescriptions through a nonresident pharmacy.
- Requires health plans and nonresident pharmacies to provide notices to health plan enrollees about the use of nonresident pharmacies.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5184 be substituted therefor, and the substitute bill do pass.

Signed by Senators Cleveland, Chair; Randall, Vice Chair; Bailey, Becker, Conway, Dhingra, Frockt, Keiser, Rivers and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senator O'Ban, Ranking Member.

Staff: Evan Klein (786-7483)

Background: Nonresident pharmacies are pharmacies located outside of Washington State that ship, mail, or deliver prescription drugs, including both controlled substances and legend

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drugs, and devices into the state. Nonresident pharmacies are licensed by the Department of Health.

Many health insurance carriers contract with a PBM to manage health plan pharmacy benefits, including network development with pharmacies, processing claims, maintaining a formulary, negotiating with manufacturers for rebates, and managing mail order services.

Summary of Bill (First Substitute): Health plans issued on or after January 1, 2020 that include prescription drug coverage, must protect enrollees from unintentional use of or enrollment in a nonresident pharmacy.

Health carriers must include in any contract with a PBM, a requirement that the PBM require a contracted nonresident pharmacy to obtain affirmative authorization from a health plan enrollee—in writing or by electronic communication—prior to filling the enrollee's prescription through a nonresident pharmacy or billing an enrollee's health plan. The authorization may permit the use of a nonresident pharmacy for the plan year.

Nonresident pharmacies must include instructions for how to terminate use of their services in each pharmaceutical shipment.

Health carriers must include information in their health plan booklets explaining the need for obtaining affirmative authorization from the enrollee prior to filling a prescription through a nonresident pharmacy. Health plans must allow enrollees to opt out of mandatory use of a nonresident pharmacy. Health plans may not require an enrollee to purchase pharmacy services exclusively through a nonresident pharmacy.

Nonresident pharmacies with a specialty pharmacy accreditation from a nationally recognized accreditation entity are exempt from the requirements to obtain affirmative authorization and provide instructions on terminating the use of services, and the prohibitions on health plans requiring an enrollee to purchase pharmacy services exclusively through a nonresident pharmacy do not apply to nonresident pharmacies with a specialty accreditation.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Requires contracted nonresident pharmacies to obtain affirmative authorization, as opposed to a PBM or its agent;
- Requires affirmative authorization prior to billing an enrollee's health plan, in addition to prior to filling an enrollee's prescription;
- Adds a requirement that health plans must allow enrollees to opt out of mandatory use of a nonresident pharmacy; and
- Exempts nonresident pharmacies with a specialty pharmacy accreditation from a nationally recognized accreditation entity from the requirements in the bill.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill stemmed from being involuntarily enrolled in a mail-order prescription program. Requiring written authorization to enter into a mail-order program will help save elderly from being forced into these agreements and having to pay their insurance bills. This bill is a work in progress, and there is a need to craft an exemption for specialty pharmacies. This is a simple consumer protection bill, as patient rights, informed consent, and awareness are fundamental. Too frequently, patients are being pushed to out of state pharmacies without a patient's consent, and these mail order pharmacies often have affiliations with PBMs. Patients expect that their prescriptions can be filled at a pharmacy, but are getting turned away and told that their insurance requires them to call for a mail-order prescription. Pharmacists who work in clinics are receiving phone calls from PBMs requiring them to send patients to their mail order pharmacies. There is some clarification needed for who is responsible for certain notifications.

CON: Existing law prohibits any pharmacy from dispensing a drug without a prescription. Transferring of prescriptions is a very common practice and is controlled and directed by the patient. Patients can make these transfers online, and can keep a prescription from inadvertently being moved to mail without their consent by requesting notifications before the transfer. This bill would have significant effects for Cowlitz and Clark counties. The filling of drugs for people with Kaiser health insurance in these counties is done in Portland, even though they can choose to have the drug mailed to them or go into a clinic to physically pick up the drug. This bill will increase wait time at pharmacies in Cowlitz and Clark counties. It is important to ensure that the administrative process associated with this bill work for health plan members, and allow for easy access to both mail order prescriptions and retail pharmacies. Mail order pharmacies help to solve the problem of cost in health care. Opting out of mail order pharmacies is much easier than requiring an opt-in program. Nonresident pharmacies include specialty pharmacies. There are several drugs that are only available through specialty pharmacies, and it is important to ensure consumers have access to nonresident pharmacies that provide specialty drugs.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Dedi Little, Washington State Pharmacy Association.

CON: Meg Jones, Association of Washington Healthcare Plans; Amber Ulvenes, Kaiser Permanente; Cindy Laubacher, Express Scripts, a Cigna Company; LuGina Mendez-Harper, Prime Therapeutics.

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