
SUBSTITUTE HOUSE BILL 1813

State of Washington

67th Legislature

2022 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Schmick, Macri, Graham, and Chambers)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to freedom of pharmacy choice; amending RCW
2 48.200.020 and 48.200.280; and adding new sections to chapter 48.200
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.200
6 RCW to read as follows:

7 (1) A pharmacy benefit manager that administers a prescription
8 drug benefit may not:

9 (a) Require a covered person to use a mail order pharmacy;

10 (b) Impose different days allowance to fill for using one
11 participating pharmacy over another participating pharmacy;

12 (c) Require a covered person to obtain prescriptions from a mail
13 order pharmacy unless the prescription drug is a specialty or limited
14 distribution prescription drug;

15 (d) Reimburse a covered person's chosen participating pharmacy an
16 amount less than the amount the pharmacy benefit manager reimburses
17 participating affiliated pharmacies; or

18 (e) Reimburse a nonparticipating pharmacy more than a
19 participating pharmacy.

20 (2) A pharmacy benefit manager shall:

1 (a) Provide fair and reasonable reimbursement to the covered
2 person's participating pharmacy of choice;

3 (b) Include a provision in contracts with participating
4 pharmacies and pharmacy services administrative organizations that
5 authorizes the pharmacy to decline to fill a prescription if the
6 pharmacy benefit manager refuses to reimburse the pharmacy at a rate
7 that is at least equal to the pharmacy's acquisition cost of the
8 drug;

9 (c) Maintain an adequate and accessible pharmacy network for the
10 provision of prescription drugs for a health benefit plan. The
11 pharmacy network must provide for convenient access for covered
12 persons to pharmacies and critical access pharmacies; and

13 (d) Permit the covered person to receive delivery or mail order
14 of a medication through any participating pharmacy.

15 (3) A pharmacy services administration organization must include
16 a provision in contracts with participating pharmacies that
17 authorizes the pharmacy to decline to fill a prescription if the
18 pharmacy services administration organization refuses to reimburse
19 the pharmacy at a rate that is at least equal to the pharmacy's
20 acquisition cost of the drug.

21 (4) If a covered person is using a mail order pharmacy, the
22 pharmacy benefit manager must:

23 (a) Allow for dispensing at local participating pharmacies under
24 the following circumstances to ensure patient access to prescription
25 drugs:

26 (i) If there are delays in mail order;

27 (ii) If the prescription drug arrives in an unusable condition;

28 or

29 (iii) If the prescription drug does not arrive; and

30 (b) Ensure patients have easy and timely access to prescription
31 counseling by a pharmacist.

32 (5) Subsection (1)(a) of this section does not apply to a health
33 maintenance organization that is an integrated delivery system in
34 which covered persons primarily use pharmacies that are owned and
35 operated by the health maintenance organization.

36 (6) For purposes of this section:

37 (a) "Affiliated pharmacy" means a pharmacy that directly or
38 indirectly through one or more intermediaries is owned by, controlled
39 by, or is under common ownership or control of a pharmacy benefit

1 manager, or where the pharmacy benefit manager has financial interest
2 in the pharmacy.

3 (b) "Covered person" means a person covered by a health plan
4 including an enrollee, subscriber, policyholder, beneficiary of a
5 group plan, or individual covered by any other health plan.

6 (c) "Health benefit plan" means any entity or program that
7 provides reimbursement for pharmaceutical services.

8 (d) "Participating pharmacy" means a pharmacy that has entered
9 into an agreement to provide prescription drugs to the pharmacy
10 benefit manager's covered persons.

11 (e) "Pharmacy network" means the pharmacies located in and
12 licensed by the state and contracted by the pharmacy benefit manager
13 to sell prescription drugs to covered persons.

14 (f) "Specialty or limited distribution prescription drug" means a
15 drug that's distribution is limited by a federal food and drug
16 administration's element to assure safe use.

17 (7) This section applies to health benefit plans issued or
18 renewed on or after January 1, 2023.

19 **Sec. 2.** RCW 48.200.020 and 2020 c 240 s 2 are each amended to
20 read as follows:

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

23 (1) "Affiliate" or "affiliated employer" means a person who
24 directly or indirectly through one or more intermediaries, controls
25 or is controlled by, or is under common control with, another
26 specified person.

27 (2) "Certification" has the same meaning as in RCW 48.43.005.

28 (3) "Employee benefits programs" means programs under both the
29 public employees' benefits board established in RCW 41.05.055 and the
30 school employees' benefits board established in RCW 41.05.740.

31 (4)(a) "Health care benefit manager" means a person or entity
32 providing services to, or acting on behalf of, a health carrier or
33 employee benefits programs, that directly or indirectly impacts the
34 determination or utilization of benefits for, or patient access to,
35 health care services, drugs, and supplies including, but not limited
36 to:

- 37 (i) Prior authorization or preauthorization of benefits or care;
38 (ii) Certification of benefits or care;
39 (iii) Medical necessity determinations;

1 (iv) Utilization review;
2 (v) Benefit determinations;
3 (vi) Claims processing and repricing for services and procedures;
4 (vii) Outcome management;
5 (viii) Provider credentialing and recredentialing;
6 (ix) Payment or authorization of payment to providers and
7 facilities for services or procedures;
8 (x) Dispute resolution, grievances, or appeals relating to
9 determinations or utilization of benefits;
10 (xi) Provider network management; or
11 (xii) Disease management.
12 (b) "Health care benefit manager" includes, but is not limited
13 to, health care benefit managers that specialize in specific types of
14 health care benefit management such as pharmacy benefit managers,
15 radiology benefit managers, laboratory benefit managers, and mental
16 health benefit managers.
17 (c) "Health care benefit manager" does not include:
18 (i) Health care service contractors as defined in RCW 48.44.010;
19 (ii) Health maintenance organizations as defined in RCW
20 48.46.020;
21 (iii) Issuers as defined in RCW 48.01.053;
22 (iv) The public employees' benefits board established in RCW
23 41.05.055;
24 (v) The school employees' benefits board established in RCW
25 41.05.740;
26 (vi) Discount plans as defined in RCW 48.155.010;
27 (vii) Direct patient-provider primary care practices as defined
28 in RCW 48.150.010;
29 (viii) An employer administering its employee benefit plan or the
30 employee benefit plan of an affiliated employer under common
31 management and control;
32 (ix) A union administering a benefit plan on behalf of its
33 members;
34 (x) An insurance producer selling insurance or engaged in related
35 activities within the scope of the producer's license;
36 (xi) A creditor acting on behalf of its debtors with respect to
37 insurance, covering a debt between the creditor and its debtors;
38 (xii) A behavioral health administrative services organization or
39 other county-managed entity that has been approved by the state

1 health care authority to perform delegated functions on behalf of a
2 carrier;

3 (xiii) A hospital licensed under chapter 70.41 RCW or ambulatory
4 surgical facility licensed under chapter 70.230 RCW;

5 (xiv) The Robert Bree collaborative under chapter 70.250 RCW;

6 (xv) The health technology clinical committee established under
7 RCW 70.14.090; or

8 (xvi) The prescription drug purchasing consortium established
9 under RCW 70.14.060.

10 (5) "Health care provider" or "provider" has the same meaning as
11 in RCW 48.43.005.

12 (6) "Health care service" has the same meaning as in RCW
13 48.43.005.

14 (7) "Health carrier" or "carrier" has the same meaning as in RCW
15 48.43.005.

16 (8) "Laboratory benefit manager" means a person or entity
17 providing service to, or acting on behalf of, a health carrier,
18 employee benefits programs, or another entity under contract with a
19 carrier, that directly or indirectly impacts the determination or
20 utilization of benefits for, or patient access to, health care
21 services, drugs, and supplies relating to the use of clinical
22 laboratory services and includes any requirement for a health care
23 provider to submit a notification of an order for such services.

24 (9) "Mental health benefit manager" means a person or entity
25 providing service to, or acting on behalf of, a health carrier,
26 employee benefits programs, or another entity under contract with a
27 carrier, that directly or indirectly impacts the determination of
28 utilization of benefits for, or patient access to, health care
29 services, drugs, and supplies relating to the use of mental health
30 services and includes any requirement for a health care provider to
31 submit a notification of an order for such services.

32 (10) "Network" means the group of participating providers,
33 pharmacies, and suppliers providing health care services, drugs, or
34 supplies to beneficiaries of a particular carrier or plan.

35 (11) "Person" includes, as applicable, natural persons, licensed
36 health care providers, carriers, corporations, companies, trusts,
37 unincorporated associations, and partnerships.

38 (12)(a) "Pharmacy benefit manager" means a person that contracts
39 with pharmacies on behalf of an insurer, a third-party payor, or the

1 prescription drug purchasing consortium established under RCW
2 70.14.060 to:

3 (i) Process claims for prescription drugs or medical supplies or
4 provide retail network management for pharmacies or pharmacists;

5 (ii) Pay pharmacies or pharmacists for prescription drugs or
6 medical supplies;

7 (iii) Negotiate rebates with manufacturers for drugs paid for or
8 procured as described in this subsection;

9 (iv) Manage pharmacy networks; or

10 (v) Make credentialing determinations.

11 (b) "Pharmacy benefit manager" does not include a health care
12 service contractor as defined in RCW 48.44.010.

13 (13)(a) "Radiology benefit manager" means any person or entity
14 providing service to, or acting on behalf of, a health carrier,
15 employee benefits programs, or another entity under contract with a
16 carrier, that directly or indirectly impacts the determination or
17 utilization of benefits for, or patient access to, the services of a
18 licensed radiologist or to advanced diagnostic imaging services
19 including, but not limited to:

20 (i) Processing claims for services and procedures performed by a
21 licensed radiologist or advanced diagnostic imaging service provider;
22 or

23 (ii) Providing payment or payment authorization to radiology
24 clinics, radiologists, or advanced diagnostic imaging service
25 providers for services or procedures.

26 (b) "Radiology benefit manager" does not include a health care
27 service contractor as defined in RCW 48.44.010, a health maintenance
28 organization as defined in RCW 48.46.020, or an issuer as defined in
29 RCW 48.01.053.

30 (14) "Utilization review" has the same meaning as in RCW
31 48.43.005.

32 (15) "Critical access pharmacy" means a pharmacy in Washington
33 that is further than a 15-mile radius from any other pharmacy, is the
34 only pharmacy on an island, or provides critical services to
35 vulnerable populations. If one critical access pharmacy's 15-mile
36 radius intersects with that of another critical access pharmacy, both
37 shall be considered a critical access pharmacy if either critical
38 access pharmacy's closure could result in impaired access for rural
39 areas or for vulnerable populations. The health care authority's
40 chief pharmacy officer may also further identify pharmacies as

1 critical access based on their unique ability to care for a
2 population.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.200
4 RCW to read as follows:

5 If a pharmacy benefit manager offers a distinct reimbursement to
6 rural pharmacies, it shall provide a similar reimbursement to
7 critical access pharmacies if the critical access pharmacy agrees to
8 the terms and conditions set for affiliated pharmacies and the
9 network as established by the health plan.

10 **Sec. 4.** RCW 48.200.280 and 2020 c 240 s 15 are each amended to
11 read as follows:

12 (1) The definitions in this subsection apply throughout this
13 section unless the context clearly requires otherwise.

14 (a) "List" means the list of drugs for which predetermined
15 reimbursement costs have been established, such as a maximum
16 allowable cost or maximum allowable cost list or any other benchmark
17 prices utilized by the pharmacy benefit manager and must include the
18 basis of the methodology and sources utilized to determine
19 multisource generic drug reimbursement amounts.

20 (b) "Multiple source drug" means a therapeutically equivalent
21 drug that is available from at least two manufacturers.

22 (c) "Multisource generic drug" means any covered outpatient
23 prescription drug for which there is at least one other drug product
24 that is rated as therapeutically equivalent under the food and drug
25 administration's most recent publication of "Approved Drug Products
26 with Therapeutic Equivalence Evaluations;" is pharmaceutically
27 equivalent or bioequivalent, as determined by the food and drug
28 administration; and is sold or marketed in the state during the
29 period.

30 (d) "Network pharmacy" means a retail drug outlet licensed as a
31 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit
32 manager.

33 (e) "Therapeutically equivalent" has the same meaning as in RCW
34 69.41.110.

35 (2) A pharmacy benefit manager:

36 (a) May not place a drug on a list unless there are at least two
37 therapeutically equivalent multiple source drugs, or at least one
38 generic drug available from only one manufacturer, generally

1 available for purchase by network pharmacies from national or
2 regional wholesalers;

3 (b) Shall ensure that all drugs on a list are readily available
4 for purchase by pharmacies in this state from national or regional
5 wholesalers that serve pharmacies in Washington;

6 (c) Shall ensure that all drugs on a list are not obsolete;

7 (d) Shall make available to each network pharmacy at the
8 beginning of the term of a contract, and upon renewal of a contract,
9 the sources utilized to determine the predetermined reimbursement
10 costs for multisource generic drugs of the pharmacy benefit manager;

11 (e) Shall make a list available to a network pharmacy upon
12 request in a format that is readily accessible to and usable by the
13 network pharmacy;

14 (f) Shall update each list maintained by the pharmacy benefit
15 manager every seven business days and make the updated lists,
16 including all changes in the price of drugs, available to network
17 pharmacies in a readily accessible and usable format;

18 (g) Shall ensure that dispensing fees are not included in the
19 calculation of the predetermined reimbursement costs for multisource
20 generic drugs;

21 (h) May not cause or knowingly permit the use of any
22 advertisement, promotion, solicitation, representation, proposal, or
23 offer that is untrue, deceptive, or misleading;

24 (i) May not charge a pharmacy a fee related to the adjudication
25 of a claim, credentialing, participation, certification,
26 accreditation, or enrollment in a network including, but not limited
27 to, a fee for the receipt and processing of a pharmacy claim, for the
28 development or management of claims processing services in a pharmacy
29 benefit manager network, or for participating in a pharmacy benefit
30 manager network;

31 (j) May not require accreditation standards inconsistent with or
32 more stringent than accreditation standards established by a national
33 accreditation organization;

34 (k) May not reimburse a pharmacy in the state an amount less than
35 the amount the pharmacy benefit manager reimburses an affiliate for
36 providing the same pharmacy services; and

37 (l) May not directly or indirectly retroactively deny or reduce a
38 claim or aggregate of claims after the claim or aggregate of claims
39 has been adjudicated, unless:

40 (i) The original claim was submitted fraudulently; or

1 (ii) The denial or reduction is the result of a pharmacy audit
2 conducted in accordance with RCW 48.200.220.

3 (3) A pharmacy benefit manager must establish a process by which
4 a network pharmacy may appeal its reimbursement for a drug subject to
5 predetermined reimbursement costs for multisource generic drugs. A
6 network pharmacy may appeal a predetermined reimbursement cost for a
7 multisource generic drug if the reimbursement for the drug is less
8 than the net amount that the network pharmacy paid to the supplier of
9 the drug. An appeal requested under this section must be completed
10 within thirty calendar days of the pharmacy submitting the appeal. If
11 after thirty days the network pharmacy has not received the decision
12 on the appeal from the pharmacy benefit manager, then the appeal is
13 considered denied.

14 The pharmacy benefit manager shall uphold the appeal of a
15 pharmacy with fewer than fifteen retail outlets, within the state of
16 Washington, under its corporate umbrella if the pharmacy or
17 pharmacist can demonstrate that it is unable to purchase a
18 therapeutically equivalent interchangeable product from a supplier
19 doing business in Washington at the pharmacy benefit manager's list
20 price.

21 (4) A pharmacy benefit manager must provide as part of the
22 appeals process established under subsection (3) of this section:

23 (a) A telephone number at which a network pharmacy may contact
24 the pharmacy benefit manager and speak with an individual who is
25 responsible for processing appeals; and

26 (b) If the appeal is denied, the reason for the denial and the
27 national drug code of a drug that has been purchased by other network
28 pharmacies located in Washington at a price that is equal to or less
29 than the predetermined reimbursement cost for the multisource generic
30 drug. A pharmacy with fifteen or more retail outlets, within the
31 state of Washington, under its corporate umbrella may submit
32 information to the commissioner about an appeal under subsection (3)
33 of this section for purposes of information collection and analysis.

34 (5)(a) If an appeal is upheld under this section, the pharmacy
35 benefit manager shall make a reasonable adjustment on a date no later
36 than one day after the date of determination.

37 (b) If the request for an adjustment has come from a critical
38 access pharmacy, (~~as defined by the state health care authority by~~
39 ~~rule for purposes related to the prescription drug purchasing~~
40 ~~consortium established under RCW 70.14.060,)~~) the adjustment approved

1 under (a) of this subsection shall apply only to critical access
2 pharmacies.

3 (6) Beginning July 1, 2017, if a network pharmacy appeal to the
4 pharmacy benefit manager is denied, or if the network pharmacy is
5 unsatisfied with the outcome of the appeal, the pharmacy or
6 pharmacist may dispute the decision and request review by the
7 commissioner within thirty calendar days of receiving the decision.

8 (a) All relevant information from the parties may be presented to
9 the commissioner, and the commissioner may enter an order directing
10 the pharmacy benefit manager to make an adjustment to the disputed
11 claim, deny the pharmacy appeal, or take other actions deemed fair
12 and equitable. An appeal requested under this section must be
13 completed within thirty calendar days of the request.

14 (b) Upon resolution of the dispute, the commissioner shall
15 provide a copy of the decision to both parties within seven calendar
16 days.

17 (c) The commissioner may authorize the office of administrative
18 hearings, as provided in chapter 34.12 RCW, to conduct appeals under
19 this subsection (6).

20 (d) A pharmacy benefit manager may not retaliate against a
21 pharmacy for pursuing an appeal under this subsection (6).

22 (e) This subsection (6) applies only to a pharmacy with fewer
23 than fifteen retail outlets, within the state of Washington, under
24 its corporate umbrella.

25 (7) This section does not apply to the state medical assistance
26 program.

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