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HOUSE BILL 1813

State of Washington 67th Legislature 2022 Regular Session

By Representatives Schmick, Macri, Graham, and Chambers

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1 AN ACT Relating to freedom of pharmacy choice; amending RCW
2 48.200.020 and 48.200.280; and adding a new section 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 or coerce a covered person to use a mail order
10 pharmacy;
11 (b) Require a covered person to contact the pharmacy benefit
12 manager or mail order pharmacy in order to fill the prescription drug
13 at a pharmacy of a covered person's choice;
14 (c) Impose different cost-sharing, different days allowance to
15 fill, monetary advantages, or penalties for using one participating
16 pharmacy over another participating pharmacy;
17 (d) Prohibit or limit a covered person from selecting a pharmacy
18 of the covered person's choice who has agreed to participate in the
19 participating pharmacy;

1 (e) Require a covered person to obtain prescriptions from a mail
2 order pharmacy unless the prescription drug is a specialty or limited
3 distribution prescription drug;
4 (f) Reimburse a covered person's chosen participating pharmacy an
5 amount less than the amount the pharmacy benefit manager reimburses
6 participating affiliated pharmacies; or
7 (g) Limit a covered person's access to prescription drugs at the
8 participating pharmacy of their choice by adding a prescription drug
9 to a specialty tier or limited distribution tier formulary unless the
10 drug is a specialty or limited distribution prescription drug.
11 (2) A pharmacy benefit manager shall:
12 (a) Provide fair and reasonable reimbursement to the covered
13 person's participating pharmacy of choice that is not less than a
14 pharmacy's cost;
15 (b) Include a provision in contracts with participating
16 pharmacies and pharmacy services administrative organizations that
17 authorizes the pharmacy to decline to fill a prescription if the
18 pharmacy benefit manager refuses to reimburse the pharmacy at a rate
19 that is at least equal to the pharmacy's acquisition cost of the
20 drug;
21 (c) Maintain an adequate and accessible pharmacy network for the
22 provision of prescription drugs for a health benefit plan. The
23 pharmacy network must provide for convenient access for covered
24 persons to pharmacies and critical access pharmacies;
25 (d) Regardless of the participating pharmacy, including mail
26 order pharmacies, where the covered person obtains the prescription
27 drug, apply the same cost-sharing, fees, and other conditions upon
28 the enrollee; and
29 (e) Permit the covered person to receive delivery or mail order
30 of a medication through any participating pharmacy.
31 (3) A pharmacy services administration organization must include
32 a provision in contracts with participating pharmacies that
33 authorizes the pharmacy to decline to fill a prescription if the
34 pharmacy services administration organization refuses to reimburse
35 the pharmacy at a rate that is at least equal to the pharmacy's
36 acquisition cost of the drug.
37 (4) If a covered person is using a mail order pharmacy, the
38 pharmacy benefit manager must:

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

(i) If there are delays in mail order;

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

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

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

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

(6) For purposes of this section:

(a) "Affiliated pharmacy" means a pharmacy that directly or indirectly through one or more intermediaries is owned by, controlled by, or is under common ownership or control of a pharmacy benefit manager, or where the pharmacy benefit manager has financial interest in the pharmacy.

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

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

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

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

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

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

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

(1) "Affiliate" or "affiliated employer" means a person who directly or indirectly through one or more intermediaries, controls

1 or is controlled by, or is under common control with, another
2 specified person.

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

4 (3) "Employee benefits programs" means programs under both the
5 public employees' benefits board established in RCW 41.05.055 and the
6 school employees' benefits board established in RCW 41.05.740.

7 (4)(a) "Health care benefit manager" means a person or entity
8 providing services to, or acting on behalf of, a health carrier or
9 employee benefits programs, that directly or indirectly impacts the
10 determination or utilization of benefits for, or patient access to,
11 health care services, drugs, and supplies including, but not limited
12 to:

13 (i) Prior authorization or preauthorization of benefits or care;

14 (ii) Certification of benefits or care;

15 (iii) Medical necessity determinations;

16 (iv) Utilization review;

17 (v) Benefit determinations;

18 (vi) Claims processing and repricing for services and procedures;

19 (vii) Outcome management;

20 (viii) Provider credentialing and recredentialing;

21 (ix) Payment or authorization of payment to providers and
22 facilities for services or procedures;

23 (x) Dispute resolution, grievances, or appeals relating to
24 determinations or utilization of benefits;

25 (xi) Provider network management; or

26 (xii) Disease management.

27 (b) "Health care benefit manager" includes, but is not limited
28 to, health care benefit managers that specialize in specific types of
29 health care benefit management such as pharmacy benefit managers,
30 radiology benefit managers, laboratory benefit managers, and mental
31 health benefit managers.

32 (c) "Health care benefit manager" does not include:

33 (i) Health care service contractors as defined in RCW 48.44.010;

34 (ii) Health maintenance organizations as defined in RCW
35 48.46.020;

36 (iii) Issuers as defined in RCW 48.01.053;

37 (iv) The public employees' benefits board established in RCW
38 41.05.055;

39 (v) The school employees' benefits board established in RCW
40 41.05.740;

1 (vi) Discount plans as defined in RCW 48.155.010;
2 (vii) Direct patient-provider primary care practices as defined
3 in RCW 48.150.010;
4 (viii) An employer administering its employee benefit plan or the
5 employee benefit plan of an affiliated employer under common
6 management and control;
7 (ix) A union administering a benefit plan on behalf of its
8 members;
9 (x) An insurance producer selling insurance or engaged in related
10 activities within the scope of the producer's license;
11 (xi) A creditor acting on behalf of its debtors with respect to
12 insurance, covering a debt between the creditor and its debtors;
13 (xii) A behavioral health administrative services organization or
14 other county-managed entity that has been approved by the state
15 health care authority to perform delegated functions on behalf of a
16 carrier;
17 (xiii) A hospital licensed under chapter 70.41 RCW or ambulatory
18 surgical facility licensed under chapter 70.230 RCW;
19 (xiv) The Robert Bree collaborative under chapter 70.250 RCW;
20 (xv) The health technology clinical committee established under
21 RCW 70.14.090; or
22 (xvi) The prescription drug purchasing consortium established
23 under RCW 70.14.060.
24 (5) "Health care provider" or "provider" has the same meaning as
25 in RCW 48.43.005.
26 (6) "Health care service" has the same meaning as in RCW
27 48.43.005.
28 (7) "Health carrier" or "carrier" has the same meaning as in RCW
29 48.43.005.
30 (8) "Laboratory benefit manager" means a person or entity
31 providing service to, or acting on behalf of, a health carrier,
32 employee benefits programs, or another entity under contract with a
33 carrier, that directly or indirectly impacts the determination or
34 utilization of benefits for, or patient access to, health care
35 services, drugs, and supplies relating to the use of clinical
36 laboratory services and includes any requirement for a health care
37 provider to submit a notification of an order for such services.
38 (9) "Mental health benefit manager" means a person or entity
39 providing service to, or acting on behalf of, a health carrier,
40 employee benefits programs, or another entity under contract with a

1 carrier, that directly or indirectly impacts the determination of
2 utilization of benefits for, or patient access to, health care
3 services, drugs, and supplies relating to the use of mental health
4 services and includes any requirement for a health care provider to
5 submit a notification of an order for such services.
6 (10) "Network" means the group of participating providers,
7 pharmacies, and suppliers providing health care services, drugs, or
8 supplies to beneficiaries of a particular carrier or plan.
9 (11) "Person" includes, as applicable, natural persons, licensed
10 health care providers, carriers, corporations, companies, trusts,
11 unincorporated associations, and partnerships.
12 (12)(a) "Pharmacy benefit manager" means a person that contracts
13 with pharmacies on behalf of an insurer, a third-party payor, or the
14 prescription drug purchasing consortium established under RCW
15 70.14.060 to:
16 (i) Process claims for prescription drugs or medical supplies or
17 provide retail network management for pharmacies or pharmacists;
18 (ii) Pay pharmacies or pharmacists for prescription drugs or
19 medical supplies;
20 (iii) Negotiate rebates with manufacturers for drugs paid for or
21 procured as described in this subsection;
22 (iv) Manage pharmacy networks; or
23 (v) Make credentialing determinations.
24 (b) "Pharmacy benefit manager" does not include a health care
25 service contractor as defined in RCW 48.44.010.
26 (13)(a) "Radiology benefit manager" means any person or entity
27 providing service to, or acting on behalf of, a health carrier,
28 employee benefits programs, or another entity under contract with a
29 carrier, that directly or indirectly impacts the determination or
30 utilization of benefits for, or patient access to, the services of a
31 licensed radiologist or to advanced diagnostic imaging services
32 including, but not limited to:
33 (i) Processing claims for services and procedures performed by a
34 licensed radiologist or advanced diagnostic imaging service provider;
35 or
36 (ii) Providing payment or payment authorization to radiology
37 clinics, radiologists, or advanced diagnostic imaging service
38 providers for services or procedures.
39 (b) "Radiology benefit manager" does not include a health care
40 service contractor as defined in RCW 48.44.010, a health maintenance

organization as defined in RCW 48.46.020, or an issuer as defined in RCW 48.01.053.

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

(15) "Critical access pharmacy" means a pharmacy in Washington that is further than a 10-mile radius from any other pharmacy, is the only pharmacy on an island, or provides critical services to vulnerable populations. If one critical access pharmacy's 10-mile radius intersects with that of another critical access pharmacy, both shall be considered a critical access pharmacy if either critical access pharmacy's closure could result in impaired access for rural areas or for vulnerable populations. The health care authority's chief pharmacy officer may also further identify pharmacies as critical access based on their unique ability to care for a population.

Sec. 3. RCW 48.200.280 and 2020 c 240 s 15 are each amended to read as follows:

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

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

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

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

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

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

(2) A pharmacy benefit manager:

(a) May not place a drug on a list unless there are at least two therapeutically equivalent multiple source drugs, or at least one generic drug available from only one manufacturer, generally available for purchase by network pharmacies from national or regional wholesalers;

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

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

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

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

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

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

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

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

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

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

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

(i) The original claim was submitted fraudulently; or

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

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

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

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

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

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

1 (5)(a) If an appeal is upheld under this section, the pharmacy
2 benefit manager shall make a reasonable adjustment on a date no later
3 than one day after the date of determination.
4 (b) If the request for an adjustment has come from a critical
5 access pharmacy, ((~~as defined by the state health care authority by~~
6 ~~rule for purposes related to the prescription drug purchasing~~
7 ~~consortium established under RCW 70.14.060,~~)) the adjustment approved
8 under (a) of this subsection shall apply only to critical access
9 pharmacies.
10 (6) Beginning July 1, 2017, if a network pharmacy appeal to the
11 pharmacy benefit manager is denied, or if the network pharmacy is
12 unsatisfied with the outcome of the appeal, the pharmacy or
13 pharmacist may dispute the decision and request review by the
14 commissioner within thirty calendar days of receiving the decision.
15 (a) All relevant information from the parties may be presented to
16 the commissioner, and the commissioner may enter an order directing
17 the pharmacy benefit manager to make an adjustment to the disputed
18 claim, deny the pharmacy appeal, or take other actions deemed fair
19 and equitable. An appeal requested under this section must be
20 completed within thirty calendar days of the request.
21 (b) Upon resolution of the dispute, the commissioner shall
22 provide a copy of the decision to both parties within seven calendar
23 days.
24 (c) The commissioner may authorize the office of administrative
25 hearings, as provided in chapter 34.12 RCW, to conduct appeals under
26 this subsection (6).
27 (d) A pharmacy benefit manager may not retaliate against a
28 pharmacy for pursuing an appeal under this subsection (6).
29 (e) This subsection (6) applies only to a pharmacy with fewer
30 than fifteen retail outlets, within the state of Washington, under
31 its corporate umbrella.
32 (7) This section does not apply to the state medical assistance
33 program.

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