S-3501.1

SENATE BILL 5811

State of Washington 67th Legislature 2022 Regular Session

By Senators Rivers, Keiser, and Short

Read first time 01/11/22. Referred to Committee on Health & Long Term Care.

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:

1 (a) Allow for dispensing at local participating pharmacies under
2 the following circumstances to ensure patient access to prescription
3 drugs:
4 (i) If there are delays in mail order;
5 (ii) If the prescription drug arrives in an unusable condition;
6 or
7 (iii) If the prescription drug does not arrive; and
8 (b) Ensure patients have easy and timely access to prescription
9 counseling by a pharmacist.
10 (5) Subsection (1)(a) of this section does not apply to a health
11 maintenance organization that is an integrated delivery system in
12 which enrollees primarily use pharmacies that are owned and operated
13 by the health maintenance organization.
14 (6) For purposes of this section:
15 (a) "Affiliated pharmacy" means a pharmacy that directly or
16 indirectly through one or more intermediaries is owned by, controlled
17 by, or is under common ownership or control of a pharmacy benefit
18 manager, or where the pharmacy benefit manager has financial interest
19 in the pharmacy.
20 (b) "Health benefit plan" means any entity or program that
21 provides reimbursement for pharmaceutical services.
22 (c) "Participating pharmacy" means a pharmacy that has entered
23 into an agreement to provide prescription drugs to the pharmacy
24 benefit manager's covered persons.
25 (d) "Pharmacy network" means the pharmacies located in and
26 licensed by the state and contracted by the pharmacy benefit manager
27 to sell prescription drugs to covered persons.
28 (e) "Specialty or limited distribution prescription drug" means a
29 drug that's distribution is limited by a federal food and drug
30 administration's element to assure safe use.
31 (7) This section applies to health benefit plans issued on or
32 renewed after January 1, 2023.

33 **Sec. 2.** RCW 48.200.020 and 2020 c 240 s 2 are each amended to
34 read as follows:
35 The definitions in this section apply throughout this chapter
36 unless the context clearly requires otherwise.
37 (1) "Affiliate" or "affiliated employer" means a person who
38 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;

(vi) Discount plans as defined in RCW 48.155.010;

(vii) Direct patient-provider primary care practices as defined in RCW 48.150.010;

(viii) An employer administering its employee benefit plan or the employee benefit plan of an affiliated employer under common management and control;

(ix) A union administering a benefit plan on behalf of its members;

(x) An insurance producer selling insurance or engaged in related activities within the scope of the producer's license;

(xi) A creditor acting on behalf of its debtors with respect to insurance, covering a debt between the creditor and its debtors;

(xii) A behavioral health administrative services organization or other county-managed entity that has been approved by the state health care authority to perform delegated functions on behalf of a carrier;

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

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

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

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

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

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

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

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

(9) "Mental health benefit manager" means a person or entity providing service to, or acting on behalf of, a health carrier, employee benefits programs, or another entity under contract with a

carrier, that directly or indirectly impacts the determination of utilization of benefits for, or patient access to, health care services, drugs, and supplies relating to the use of mental health services and includes any requirement for a health care provider to submit a notification of an order for such services.

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

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

(12)(a) "Pharmacy benefit manager" means a person that contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 to:

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

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

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

(iv) Manage pharmacy networks; or

(v) Make credentialing determinations.

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

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

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

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

(b) "Radiology benefit manager" does not include a health care service contractor as defined in RCW 48.44.010, a health maintenance

1 organization as defined in RCW 48.46.020, or an issuer as defined in
2 RCW 48.01.053.
3 (14) "Utilization review" has the same meaning as in RCW
4 48.43.005.
5 (15) "Critical access pharmacy" means a pharmacy in Washington
6 that is further than a 10-mile radius from any other pharmacy, is the
7 only pharmacy on an island, or provides critical services to
8 vulnerable populations. If one critical access pharmacy's 10-mile
9 radius intersects with that of another critical access pharmacy, both
10 shall be considered a critical access pharmacy if either critical
11 access pharmacy's closure could result in impaired access for rural
12 areas or for vulnerable populations. The health care authority's
13 chief pharmacy officer may also further identify pharmacies as
14 critical access based on their unique ability to care for a
15 population.

16 **Sec. 3.** RCW 48.200.280 and 2020 c 240 s 15 are each amended to
17 read as follows:
18 (1) The definitions in this subsection apply throughout this
19 section unless the context clearly requires otherwise.
20 (a) "List" means the list of drugs for which predetermined
21 reimbursement costs have been established, such as a maximum
22 allowable cost or maximum allowable cost list or any other benchmark
23 prices utilized by the pharmacy benefit manager and must include the
24 basis of the methodology and sources utilized to determine
25 multisource generic drug reimbursement amounts.
26 (b) "Multiple source drug" means a therapeutically equivalent
27 drug that is available from at least two manufacturers.
28 (c) "Multisource generic drug" means any covered outpatient
29 prescription drug for which there is at least one other drug product
30 that is rated as therapeutically equivalent under the food and drug
31 administration's most recent publication of "Approved Drug Products
32 with Therapeutic Equivalence Evaluations;" is pharmaceutically
33 equivalent or bioequivalent, as determined by the food and drug
34 administration; and is sold or marketed in the state during the
35 period.
36 (d) "Network pharmacy" means a retail drug outlet licensed as a
37 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit
38 manager.

1 (e) "Therapeutically equivalent" has the same meaning as in RCW
2 69.41.110.
3 (2) A pharmacy benefit manager:
4 (a) May not place a drug on a list unless there are at least two
5 therapeutically equivalent multiple source drugs, or at least one
6 generic drug available from only one manufacturer, generally
7 available for purchase by network pharmacies from national or
8 regional wholesalers;
9 (b) Shall ensure that all drugs on a list are readily available
10 for purchase by pharmacies in this state from national or regional
11 wholesalers that serve pharmacies in Washington;
12 (c) Shall ensure that all drugs on a list are not obsolete;
13 (d) Shall make available to each network pharmacy at the
14 beginning of the term of a contract, and upon renewal of a contract,
15 the sources utilized to determine the predetermined reimbursement
16 costs for multisource generic drugs of the pharmacy benefit manager;
17 (e) Shall make a list available to a network pharmacy upon
18 request in a format that is readily accessible to and usable by the
19 network pharmacy;
20 (f) Shall update each list maintained by the pharmacy benefit
21 manager every seven business days and make the updated lists,
22 including all changes in the price of drugs, available to network
23 pharmacies in a readily accessible and usable format;
24 (g) Shall ensure that dispensing fees are not included in the
25 calculation of the predetermined reimbursement costs for multisource
26 generic drugs;
27 (h) May not cause or knowingly permit the use of any
28 advertisement, promotion, solicitation, representation, proposal, or
29 offer that is untrue, deceptive, or misleading;
30 (i) May not charge a pharmacy a fee related to the adjudication
31 of a claim, credentialing, participation, certification,
32 accreditation, or enrollment in a network including, but not limited
33 to, a fee for the receipt and processing of a pharmacy claim, for the
34 development or management of claims processing services in a pharmacy
35 benefit manager network, or for participating in a pharmacy benefit
36 manager network;
37 (j) May not require accreditation standards inconsistent with or
38 more stringent than accreditation standards established by a national
39 accreditation organization;

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

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

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

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

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

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

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

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

33 (b) If the appeal is denied, the reason for the denial and the
34 national drug code of a drug that has been purchased by other network
35 pharmacies located in Washington at a price that is equal to or less
36 than the predetermined reimbursement cost for the multisource generic
37 drug. A pharmacy with fifteen or more retail outlets, within the
38 state of Washington, under its corporate umbrella may submit
39 information to the commissioner about an appeal under subsection (3)
40 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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