
SENATE BILL 5445

State of Washington

68th Legislature

2023 Regular Session

By Senators Rivers, Cleveland, Hasegawa, Keiser, Kuderer, and Lovelett

Read first time 01/18/23. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to cost-sharing fairness; adding a new section to
2 chapter 48.43 RCW; adding a new section to chapter 41.05 RCW; adding
3 a new section to chapter 48.200 RCW; creating a new section; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) Citizens of Washington frequently rely on state-regulated
8 commercial carriers to secure access to the prescription medicines
9 needed to protect their health;

10 (b) Commercial insurance benefit designs increasingly require
11 patients to bear significant out-of-pocket costs for their
12 prescription medicines;

13 (c) High out-of-pocket costs on prescription medicines impact the
14 ability of patients to start new and necessary medicines and to stay
15 adherent to their current medicines;

16 (d) High or unpredictable deductible and coinsurance cost-sharing
17 requirements are a main driver of elevated patient out-of-pocket
18 costs;

19 (e) The burdens of high or unpredictable deductibles and
20 coinsurance are borne disproportionately by patients with chronic or
21 debilitating conditions;

1 (f) Pharmaceutical manufacturers may offer sizeable rebates,
2 discounts, and price concessions in connection with the dispensing or
3 administration of a therapy, but patients do not necessarily
4 financially benefit from these amounts at the point of sale, and,
5 instead, carriers or other intermediaries may retain the value of
6 rebates, discounts, and price concessions;

7 (g) Restrictions are needed on the ability of carriers and their
8 intermediaries to retain rebates, discounts, and price concessions
9 that instead should be directly passed on to patients as cost
10 savings; and

11 (h) Patients need equitable and accessible health coverage that
12 does not impose unfair cost-sharing burdens upon them.

13 (2) Therefore, the legislature of the state of Washington intends
14 to add a new section to the Washington insurance code to ensure that,
15 to the full extent permissible and consistent with applicable law,
16 patients directly receive at the pharmacy counter their full and fair
17 share of the benefit of rebates and discounts for prescription
18 medicines that accrue directly or indirectly to state-regulated
19 carriers. It is the intent of the legislature that these amendments
20 be interpreted to pass on meaningful, direct, and durable cost
21 savings to patients in Washington at the point of sale such that
22 patients directly benefit from rebates and other price concessions
23 that pharmaceutical manufacturers offer in connection with the
24 dispensing or administration of a particular therapy.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43
26 RCW to read as follows:

27 (1) For health plans issued or renewed on or after January 1,
28 2025, an enrollee's coinsurance or deductible payment for each
29 prescription drug covered by a health plan shall be calculated at the
30 point of sale based on a price that is reduced by an amount equal to
31 100 percent of all rebates received, or to be received, in connection
32 with the dispensing or administration of the prescription drug.

33 (a) The carrier or subcontractor shall pass through to each
34 enrollee at the point of sale a good faith estimate of the enrollee's
35 decrease in cost sharing required pursuant to this subsection.

36 (b) In addition to the pass-through at the point of sale
37 described in (a) of this subsection, the carrier shall provide the
38 enrollee with an end-of-calendar-year reconciliation for any cost-
39 sharing reductions owed to the enrollee pursuant to this subsection

1 that were not passed on to the enrollee through the estimated amount
2 at the point of sale.

3 (2) Nothing in this section shall preclude a carrier or
4 subcontractor from decreasing an enrollee's coinsurance or deductible
5 payment by an amount greater than that required under subsection (1)
6 of this section.

7 (3) No pharmacy or pharmacist may be subject to any liability,
8 penalty, or disciplinary action from a carrier or the commissioner
9 for failure to comply with this section, if such pharmacy or
10 pharmacist has not received sufficient information from the carrier
11 or subcontractor to comply. A carrier or subcontractor may not impose
12 any form of monetary penalty on, or withhold any payments to, a
13 pharmacy that engaged in good faith efforts to comply with this
14 section.

15 (4) The commissioner may adopt rules to implement and administer
16 this section.

17 (5) The commissioner may take appropriate action against a
18 carrier and its subcontractor to enforce this chapter by imposing a
19 civil penalty not to exceed \$1,000 per violation.

20 (6) A carrier shall disclose to the commissioner upon request
21 information sufficient to show compliance with this section,
22 including but not limited to wholesale acquisition cost and actual
23 amounts of rebates. The commissioner may audit the information a
24 health carrier provides under this section for accuracy.

25 (7) In complying with the provisions of this section, a carrier
26 or its agents may not publish or otherwise reveal information
27 regarding the amount of rebates or price protection rebates it
28 receives on a product, manufacturer, or pharmacy-specific basis. Such
29 information is a trade secret, is not a public record as defined in
30 the public records act, RCW 42.56.010, and shall not be disclosed
31 directly or indirectly. A carrier shall impose the confidentiality
32 protections of this subsection on any third parties or vendors with
33 which it contracts that may receive or have access to rebate or price
34 protection rebate information.

35 (8) For the purposes of this section:

36 (a) "Price protection rebate" means a negotiated price concession
37 that accrues directly or indirectly to the carrier, or other party on
38 behalf of the carrier, in the event of an increase in the wholesale
39 acquisition cost of a drug above a specified threshold.

40 (b) "Rebate" means:

1 (i) Negotiated price concessions including but not limited to
2 base price concessions, whether described as a rebate or otherwise,
3 and reasonable estimates of any price protection rebates and
4 performance-based price concessions that may accrue directly or
5 indirectly to the carrier during the coverage year from a
6 manufacturer or other party in connection with the dispensing or
7 administration of a prescription drug; and

8 (ii) Reasonable estimates of any negotiated price concessions,
9 fees, and other administrative costs that are passed through, or are
10 reasonably anticipated to be passed through, to the carrier and serve
11 to reduce the carrier's liabilities for a prescription drug.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.05
13 RCW to read as follows:

14 (1) For health plans issued or renewed on or after January 1,
15 2025, an enrollee's coinsurance or deductible payment for each
16 prescription drug covered by a health plan shall be calculated at the
17 point of sale based on a price that is reduced by an amount equal to
18 100 percent of all rebates received, or to be received, in connection
19 with the dispensing or administration of the prescription drug.

20 (a) The carrier or subcontractor shall pass through to each
21 enrollee at the point of sale a good faith estimate of the enrollee's
22 decrease in cost sharing required pursuant to this subsection.

23 (b) In addition to the pass-through at the point of sale
24 described in (a) of this subsection, the carrier shall provide the
25 enrollee with an end-of-calendar-year reconciliation for any cost-
26 sharing reductions owed to the enrollee pursuant to this subsection
27 that were not passed on to the enrollee through the estimated amount
28 at the point of sale.

29 (2) Nothing in this section shall preclude a carrier or
30 subcontractor from decreasing an enrollee's coinsurance or deductible
31 payment by an amount greater than that required under subsection (1)
32 of this section.

33 (3) No pharmacy or pharmacist may be subject to any liability,
34 penalty, or disciplinary action from a carrier or the commissioner
35 for failure to comply with this section, if such pharmacy or
36 pharmacist has not received sufficient information from the carrier
37 or subcontractor to comply. A carrier or subcontractor may not impose
38 any form of monetary penalty on, or withhold any payments to, a

1 pharmacy that engaged in good faith efforts to comply with this
2 section.

3 (4) The insurance commissioner may adopt rules to implement and
4 administer this section.

5 (5) The insurance commissioner may take appropriate action
6 against a carrier and its subcontractor to enforce this chapter by
7 imposing a civil penalty not to exceed \$1,000 per violation.

8 (6) A carrier shall disclose to the insurance commissioner upon
9 request information sufficient to show compliance with this section,
10 including but not limited to wholesale acquisition cost and actual
11 amounts of rebates. The insurance commissioner may audit the
12 information a health carrier provides under this section for
13 accuracy.

14 (7) In complying with the provisions of this section, a carrier
15 or its agents may not publish or otherwise reveal information
16 regarding the amount of rebates or price protection rebates it
17 receives on a product, manufacturer, or pharmacy-specific basis. Such
18 information is a trade secret, is not a public record as defined in
19 the public records act, RCW 42.56.010, and shall not be disclosed
20 directly or indirectly. A carrier shall impose the confidentiality
21 protections of this subsection on any third parties or vendors with
22 which it contracts that may receive or have access to rebate or price
23 protection rebate information.

24 (8) For the purposes of this section:

25 (a) "Price protection rebate" means a negotiated price concession
26 that accrues directly or indirectly to the carrier, or other party on
27 behalf of the carrier, in the event of an increase in the wholesale
28 acquisition cost of a drug above a specified threshold.

29 (b) "Rebate" means:

30 (i) Negotiated price concessions including but not limited to
31 base price concessions, whether described as a rebate or otherwise,
32 and reasonable estimates of any price protection rebates and
33 performance-based price concessions that may accrue directly or
34 indirectly to the carrier during the coverage year from a
35 manufacturer or other party in connection with the dispensing or
36 administration of a prescription drug; and

37 (ii) Reasonable estimates of any negotiated price concessions,
38 fees, and other administrative costs that are passed through, or are
39 reasonably anticipated to be passed through, to the carrier and serve
40 to reduce the carrier's liabilities for a prescription drug.

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

3 (1) No pharmacy benefit manager may derive income from pharmacy
4 benefit management services provided to a carrier in this state
5 except for income derived from a pharmacy benefit management fee. The
6 amount of any pharmacy benefit management fees must be set forth in
7 the agreement between the pharmacy benefit manager and the carrier.

8 (2) The pharmacy benefit management fee charged by or paid to a
9 pharmacy benefit manager from a carrier shall not be directly or
10 indirectly based or contingent upon:

11 (a) The acquisition cost or any other price metric of a drug;

12 (b) The amount of savings, rebates, or other fees charged,
13 realized, or collected by or generated based on the activity of the
14 pharmacy benefit manager; or

15 (c) The amount of premiums, deductibles, or other cost sharing or
16 fees charged, realized, or collected by the pharmacy benefit manager
17 from patients or other persons on behalf of a patient.

18 (3) Annually by December 31st, each pharmacy benefit manager
19 operating in the state shall certify to the commissioner that it has
20 fully and completely complied with the requirements of this section
21 throughout the prior calendar year. Such certification shall be
22 signed by the chief executive officer or chief financial officer of
23 the pharmacy benefit manager.

24 (4) A pharmacy benefit manager contract with a carrier entered
25 into on or after the effective date of this section shall specify all
26 forms of revenue, including pharmacy benefit management fees, to be
27 paid by the carrier to the pharmacy benefit manager.

28 (5) In addition to any other civil or criminal penalty authorized
29 by law, the commissioner may take appropriate action to enforce this
30 chapter by imposing a civil penalty not to exceed \$1,000 per
31 violation.

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