SENATE BILL REPORT
SB 5213

As Reported by Senate Committee On:
Health & Long Term Care, February 17, 2023
Ways & Means, February 23, 2023

Title: An act relating to pharmacy benefit managers.

Brief Description: Concerning pharmacy benefit managers.

Sponsors: Senators Kuderer, Short, Cleveland, Conway, Dhingra, Rolfes, Wellman and Wilson, C..

Brief History:
Committee Activity: Health & Long Term Care: 2/03/23, 2/17/23 [DPS-WM, w/oRec]. Ways & Means: 2/21/23, 2/23/23 [DP2S, w/oRec].

Brief Summary of Second Substitute Bill

- Removes pharmacy benefit managers from the definition of health care benefit manager and separately regulates pharmacy benefit managers.
- Imposes certain requirements on pharmacy benefit manager business practices.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5213 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Muzzall, Assistant Ranking Member; Conway, Dhingra, Randall and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers, Ranking Member; Holy and Padden.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Greg Attanasio (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5213 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Torres, Van De Wege and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Muzzall and Wagoner.

Staff: Sandy Stith (786-7710)

Background: Health Care Benefit Managers. All health care benefit managers (HCBMs), including pharmacy benefit managers (PBMs), must be registered by the Office of the Insurance Commissioner (OIC). Applications for registration must include the identity of the HCBM and the individuals and entities with a controlling interest in the HCBM, and whether the HCBM does business as a PBM or a different type of benefit manager, in addition to other required information. Registered HCBMs must pay licensing and renewal fees. The fees must be set at an amount that ensures the registration, renewal, and oversight activities of the OIC are self-supporting.

Prior to approving an application, the OIC must find that the HCBM has not committed any act that resulted in the denial, suspension, or revocation of a registration, has the capacity to comply with state and federal laws, and has designated a person responsible for such compliance.

A HCBM may not provide services to a health carrier or an employee benefits program without a written agreement describing the rights and responsibilities of the parties. The HCBM must file with the OIC every benefit management contract and contract amendment between the HCBM and a provider, pharmacy, pharmacy services administration organization, or other HCBM.

Pharmacy Benefit Manager Regulation. A PBM is a person that contracts with pharmacies on behalf of an insurer, third party payer, or the prescription drug purchasing consortium to:

- process claims;
- provide retail network management;
- pay pharmacies or pharmacists;

- negotiate rebates;
- manage pharmacy networks; or
- make credentialing determinations.

A PBM may not:

- cause or knowingly permit to be used any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;
- charge a pharmacist or pharmacy a fee related to the adjudication of a claim, credentialing, participation, certification, accreditation, or enrollment in a network, including a fee for the receipt and processing of a pharmacy claim, for the development or management of claims processing services in a PBM network, or for participating in a PBM network;
- require accreditation standards inconsistent with or more stringent than accreditation standards established by a national accreditation organization;
- reimburse a pharmacy or pharmacist an amount less than the amount the PBM reimburses an affiliate for providing the same services; or
- retroactively deny or reduce a claim or aggregate of claims after the claim or aggregate of claims has been adjudicated, unless the original claim was submitted fraudulently or the denial or reduction is the result of a pharmacy audit.

Summary of Bill (Second Substitute): PBMs are removed from the definition of HCBM, and a new chapter regulating PBMs is created, incorporating existing PBM regulations.

A PBM is defined as a person that administers or manages a pharmacy benefits plan or program under a contractual obligation. A pharmacy benefits plan is a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state.

PBMs must register with the OIC. Registered PBMs must pay licensing and renewal fees. The fees must be set at an amount that ensures the registration, renewal, and oversight activities of the OIC are self-supporting. Before approving an application, the OIC must find that the PBM has not committed any act that resulted in the denial, suspension, or revocation of a registration, has the capacity to comply with state and federal laws, and has designated a person responsible for such compliance.

A PBM may not administer a pharmacy benefits plan without a written agreement describing the rights and responsibilities of the parties. The PBM must file with the OIC every pharmacy benefits plan contract and contract amendment between the PBM and an entity, provider, pharmacy, pharmacy services administration organization, or other PBM.

A PBM may not:

- require a covered person to obtain prescriptions from a mail order pharmacy unless the prescription drug is a specialty drug, and must receive affirmative authorization from a covered person before filling a prescription drug through a mail order

pharmacy;
- reimburse a network pharmacy an amount less than the contract price between the pharmacy benefit manager and the third-party payor the pharmacy benefit manager has contracted with to provide a pharmacy benefits plan or program;
- deny, restrict, or reduce payment to a participating provider for a medically necessary provider-administered drug on the basis that the provider obtained the drug from a wholesaler or pharmacy;
- exclude a pharmacy from the network on the basis that the pharmacy is new, has only been open for a limited time, or has transferred locations;
- require a covered person to pay more for a drug than the PBM reimburses the pharmacy, including the dispensing fee; or
- use information obtained through claim adjudication to solicit, coerce, or incentivize a covered person to use a pharmacy owned or affiliated with the PBM.

A PBM must:
- apply the same copays, fees, days allowance regardless of which participating pharmacy a covered person uses;
- permit the covered person to receive delivery or mail order of a medication through any network pharmacy; and
- pay for patient specific assistive hardware related to dispensed prescriptions including, but not limited to, audible prescription labels.

If a covered person uses a mail-order pharmacy, the PBM must allow for dispensing at a local network pharmacy if the mail-order is delayed by more than one day, or if the order arrives in a unusable condition. The PBM must also ensure that covered persons using a mail-order pharmacy have easy and timely access to prescription counseling by a pharmacist.

A pharmacy benefit manager must establish a process by which a network pharmacy, or its representative, may appeal its reimbursement for a drug. A network pharmacy may appeal a reimbursement cost for a drug if the reimbursement for the drug is less than the net amount that the network pharmacy paid to the supplier of the drug.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Removes PBMs from the definition of health care benefit manager, redefines, and separately regulates PBMs, including requiring registration and contract filing.
- Prohibits PBMs from requiring use of a mail order pharmacy, except for specialty drugs; engaging in spread pricing; excluding a pharmacy from the network based on the time the pharmacy has been open; denying or reducing payment to a provider for a provider-administered drug on the basis that the provider obtained the drug from a wholesaler or pharmacy; requiring a covered person to pay more than the PBM reimburses the pharmacy; or using personal information to solicit a covered person to

use an affiliated pharmacy.
- Requires a PBM to apply the same copay and fees regardless of which network pharmacy a person uses; permit a person to receive a mail order prescription from any network pharmacy; and pay for audible prescription labels.
- Imposes conditions on the use of mail-order pharmacies, including allowing for dispensing at a local network pharmacy if a mail order is delayed by more than one day, or if the order arrives in a unusable condition; and ensure that covered persons using a mail-order pharmacy have easy and timely access to prescription counseling by a pharmacist.
- Allows a network pharmacy to appeal a reimbursement for a drug if the reimbursement is less than the net amount that the network pharmacy paid to the supplier of the drug.

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

- Removes the bill original language and requires that PBMs receive affirmative authorization to fill a prescription through a nonresident pharmacy, provide access to pharmacy counseling for those using a nonresident pharmacy, and allow for a prescription to be filled at a local pharmacy if the nonresident pharmacy order is more than one day late or arrives in unusable condition.
- Changes the title.

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 (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: Prohibiting spread pricing has the potential to save millions of dollars. PBMs control all aspects of obtaining drugs including price, who fills the prescription, and what drugs are available to patients. This bill builds on existing regulations and adds additional accountability and transparency. PBMs continue to charge fees to pharmacy because the currently law only applies to state regulated plans. PBM practices are forcing community pharmacies to close. State laws should apply to all PBMs regardless of who they contract with. Patients should have the ability to choose where and when they obtain their prescriptions. Mail order pharmacies do not offer the same services that community pharmacies do.

CON: PBMs are essential to keeping drug prices affordable. Independent pharmacies make

more money from higher drug costs. Requiring an opt-in for mail order pharmacy services is confusing for current customers. Plans must be able to manage costs for provider-administered drugs. This bill limits the ability for plans to design affordable networks.

OTHER: Under the bill, pharmacies can refuse to fill a prescription if the reimbursement is too low. This puts consumer in the middle of dispute between the pharmacy and the PBM.

Persons Testifying (Health & Long Term Care): PRO: Senator Patty Kuderer, Prime Sponsor; Jenny Arnold, Washington State Pharmacy Association; Ryan Oftebro, Kelley-Ross Pharmacy; Jack Holt, Hi-School Pharmacy Services; Kaitlynn Johnson, Tick Klock Drug; Nathan Johnson, Tick Klock Drug; Erin Callahan, Diabetes Patient Advocacy Coalition; Jim Freeburg, Patient Coalition of Washington.

CON: Angela Henderson; Lua Pritchard Pritchard, Executive Director of the Wa State Asia Pacific Alliance Center; Janine Terrano, CEO and Owner of Topia Technology; LuGina Mendez Harper, Prime Therapeutics; Timothy O'Donnell Sr., I.B.E.W. Local 76 Business Manager/Chairman; Jennifer Ziegler, Association of Washington Health Care Plans; Chris Bandoli, America's Health Insurance Plans; Tirhas Gebru; Jonathan Edelheit, Global Health Resources.

OTHER: Jane Beyer, Office of the Insurance Commissioner.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): PRO: Laura Boudreau, AIDS Healthcare Foundation; Lisa Nelson, Washington Association for Community Health; Rob Geddes, Albertsons Companies, Inc.; Rachel Wittenauer.

CON: Fred Brown, National Labor Alliance of Healthcare Coalitions.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* OTHER: PBMs keep finding loopholes in the legislative efforts to approach the use of nonresident pharmacies and continue to have record earnings. Constituents would like to see the current version of this bill return to its original version. The changes made stripped away patient protections and accountability provisions, removed exclusion for specialty drugs, and failed to address the widespread practice of patient steering. Patients rely on their prescriptions for various reasons, including treatment of serious, chronic, and life-threatening illness. Since the pandemic, there has been an increase in mail order delivery for patients. For some, mail order auto delivery is helpful in receiving medications in a timely manner. However, mail order delivery can cost around 40% more than getting prescriptions from a local pharmacy. Additionally, medications that require specific temperature management are delivered in Styrofoam coolers which contribute to pollution. The timing of delivery can be inconvenient for patients and there is no recourse for poor service. There are concerns regarding language and practical applications in this bill. Affirmative authorization before filling a prescription can create a barrier for those who receive maintenance medications if they are required to receive authorization each time a refill is needed. This legislation

should avoid double-dispensing medications.

Persons Testifying (Ways & Means): OTHER: Heather Chapman, Ardon Health Specialty Pharmacy; Laura Boudreau, AIDS Healthcare Foundation; KARI VANDERHOUWEN, DUVALL FAMILY DRUGS; Dedi Little, Washington State Pharmacy Association; Erik Hansen, Self; Tonia Sorrell-Neal, Pharmaceutical Care Management Association; Isaac Kastama, Prime Therapeutics.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.