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**SUBSTITUTE HOUSE BILL 1813**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

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

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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