
ENGROSSED SUBSTITUTE SENATE BILL 6137

AS AMENDED BY THE HOUSE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Senate Health Care (originally sponsored by Senators Conway, Pearson, Parlette, and Keiser)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to pharmacy benefit managers regarding
2 registration, audits, and maximum allowable cost standards; and adding
3 a new chapter to Title 19 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Claim" means a request from a pharmacy or pharmacist to be
8 reimbursed for the cost of filling or refilling a prescription for a
9 drug or for providing a medical supply or service.

10 (2) "Insurer" has the same meaning as in RCW 48.01.050.

11 (3) "Pharmacist" has the same meaning as in RCW 18.64.011.

12 (4) "Pharmacy" has the same meaning as in RCW 18.64.011.

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

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

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

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

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

7 (6) "Third-party payor" means a person licensed under RCW
8 48.39.005.

9 NEW SECTION. **Sec. 2.** (1) To conduct business in this state, a
10 pharmacy benefit manager must register with the department of revenue's
11 business licensing service and annually renew the registration.

12 (2) To register under this section, a pharmacy benefit manager
13 must:

14 (a) Submit an application requiring the following information:

15 (i) The identity of the pharmacy benefit manager;

16 (ii) The name, business address, phone number, and contact person
17 for the pharmacy benefit manager; and

18 (iii) Where applicable, the federal tax employer identification
19 number for the entity; and

20 (b) Pay a registration fee of two hundred dollars.

21 (3) To renew a registration under this section, a pharmacy benefit
22 manager must pay a renewal fee of two hundred dollars.

23 (4) All receipts from registrations and renewals collected by the
24 department must be deposited into the business license account created
25 in RCW 19.02.210.

26 NEW SECTION. **Sec. 3.** As used in sections 3 through 9 of this act:

27 (1) "Audit" means an on-site or remote review of the records of a
28 pharmacy by or on behalf of an entity.

29 (2) "Clerical error" means a minor error:

30 (a) In the keeping, recording, or transcribing of records or
31 documents or in the handling of electronic or hard copies of
32 correspondence;

33 (b) That does not result in financial harm to an entity; and

34 (c) That does not involve dispensing an incorrect dose, amount or
35 type of medication, or dispensing a prescription drug to the wrong
36 person.

1 (3) "Entity" includes:
2 (a) A pharmacy benefit manager;
3 (b) An insurer;
4 (c) A third-party payor;
5 (d) A state agency; or
6 (e) A person that represents or is employed by one of the entities
7 described in this subsection.

8 (4) "Fraud" means knowingly and willfully executing or attempting
9 to execute a scheme, in connection with the delivery of or payment for
10 health care benefits, items, or services, that uses false or misleading
11 pretenses, representations, or promises to obtain any money or property
12 owned by or under the custody or control of any person.

13 NEW SECTION. **Sec. 4.** An entity that audits claims or an
14 independent third party that contracts with an entity to audit claims:

15 (1) Must establish, in writing, a procedure for a pharmacy to
16 appeal the entity's findings with respect to a claim and must provide
17 a pharmacy with a notice regarding the procedure, in writing or
18 electronically, prior to conducting an audit of the pharmacy's claims;

19 (2) May not conduct an audit of a claim more than twenty-four
20 months after the date the claim was adjudicated by the entity;

21 (3) Must give at least fifteen days' advance written notice of an
22 on-site audit to the pharmacy or corporate headquarters of the
23 pharmacy;

24 (4) May not conduct an on-site audit during the first five days of
25 any month without the pharmacy's consent;

26 (5) Must conduct the audit in consultation with a pharmacist who is
27 licensed by this or another state if the audit involves clinical or
28 professional judgment;

29 (6) May not conduct an on-site audit of more than two hundred fifty
30 unique prescriptions of a pharmacy in any twelve-month period except in
31 cases of alleged fraud;

32 (7) May not conduct more than one on-site audit of a pharmacy in
33 any twelve-month period;

34 (8) Must audit each pharmacy under the same standards and
35 parameters that the entity uses to audit other similarly situated
36 pharmacies;

1 (9) Must pay any outstanding claims of a pharmacy no more than
2 forty-five days after the earlier of the date all appeals are concluded
3 or the date a final report is issued under section 8(3) of this act;

4 (10) May not include dispensing fees or interest in the amount of
5 any overpayment assessed on a claim unless the overpaid claim was for
6 a prescription that was not filled correctly;

7 (11) May not recoup costs associated with:

8 (a) Clerical errors; or

9 (b) Other errors that do not result in financial harm to the entity
10 or a consumer; and

11 (12) May not charge a pharmacy for a denied or disputed claim until
12 the audit and the appeals procedure established under subsection (1) of
13 this section are final.

14 NEW SECTION. **Sec. 5.** An entity's finding that a claim was
15 incorrectly presented or paid must be based on identified transactions
16 and not based on probability sampling, extrapolation, or other means
17 that project an error using the number of patients served who have a
18 similar diagnosis or the number of similar prescriptions or refills for
19 similar drugs.

20 NEW SECTION. **Sec. 6.** An entity that contracts with an independent
21 third party to conduct audits may not:

22 (1) Agree to compensate the independent third party based on a
23 percentage of the amount of overpayments recovered; or

24 (2) Disclose information obtained during an audit except to the
25 contracting entity, the pharmacy subject to the audit, or the holder of
26 the policy or certificate of insurance that paid the claim.

27 NEW SECTION. **Sec. 7.** For purposes of sections 3 through 9 of this
28 act, an entity, or an independent third party that contracts with an
29 entity to conduct audits, must allow as evidence of validation of a
30 claim:

31 (1) An electronic or physical copy of a valid prescription if the
32 prescribed drug was, within fourteen days of the dispensing date:

33 (a) Picked up by the patient or the patient's designee;

34 (b) Delivered by the pharmacy to the patient; or

1 (c) Sent by the pharmacy to the patient using the United States
2 postal service or other common carrier;

3 (2) Point of sale electronic register data showing purchase of the
4 prescribed drug, medical supply, or service by the patient or the
5 patient's designee; or

6 (3) Electronic records, including electronic beneficiary signature
7 logs, electronically scanned and stored patient records maintained at
8 or accessible to the audited pharmacy's central operations, and any
9 other reasonably clear and accurate electronic documentation that
10 corresponds to a claim.

11 NEW SECTION. **Sec. 8.** (1)(a) After conducting an audit, an entity
12 must provide the pharmacy that is the subject of the audit with a
13 preliminary report of the audit. The preliminary report must be
14 received by the pharmacy no later than forty-five days after the date
15 on which the audit was completed and must be sent:

16 (i) By mail or common carrier with a return receipt requested; or

17 (ii) Electronically with electronic receipt confirmation.

18 (b) An entity shall provide a pharmacy receiving a preliminary
19 report under this subsection no fewer than forty-five days after
20 receiving the report to contest the report or any findings in the
21 report in accordance with the appeals procedure established under
22 section 4(1) of this act and to provide additional documentation in
23 support of the claim. The entity shall consider a reasonable request
24 for an extension of time to submit documentation to contest the report
25 or any findings in the report.

26 (2) If an audit results in the dispute or denial of a claim, the
27 entity conducting the audit shall allow the pharmacy to resubmit the
28 claim using any commercially reasonable method, including facsimile,
29 mail, or electronic mail.

30 (3) An entity must provide a pharmacy that is the subject of an
31 audit with a final report of the audit no later than sixty days after
32 the later of the date the preliminary report was received or the date
33 the pharmacy contested the report using the appeals procedure
34 established under section 4(1) of this act. The final report must
35 include a final accounting of all moneys to be recovered by the entity.

36 (4) Recoupment of disputed funds from a pharmacy by an entity or
37 repayment of funds to an entity by a pharmacy, unless otherwise agreed

1 to by the entity and the pharmacy, shall occur after the audit and the
2 appeals procedure established under section 4(1) of this act are final.
3 If the identified discrepancy for an individual audit exceeds forty
4 thousand dollars, any future payments to the pharmacy may be withheld
5 by the entity until the audit and the appeals procedure established
6 under section 4(1) of this act are final.

7 NEW SECTION. **Sec. 9.** Sections 3 through 9 of this act do not:

8 (1) Preclude an entity from instituting an action for fraud against
9 a pharmacy;

10 (2) Apply to an audit of pharmacy records when fraud or other
11 intentional and willful misrepresentation is indicated by physical
12 review, review of claims data or statements, or other investigative
13 methods; or

14 (3) Apply to a state agency that is conducting audits or a person
15 that has contracted with a state agency to conduct audits of pharmacy
16 records for prescription drugs paid for by the state medical assistance
17 program.

18 NEW SECTION. **Sec. 10.** (1) As used in this section:

19 (a) "List" means the list of drugs for which maximum allowable
20 costs have been established.

21 (b) "Maximum allowable cost" means the maximum amount that a
22 pharmacy benefit manager will reimburse a pharmacy for the cost of a
23 drug.

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

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

29 (e) "Therapeutically equivalent" has the same meaning as in RCW
30 69.41.110.

31 (2) A pharmacy benefit manager:

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

1 (b) Shall ensure that all drugs on a list are generally available
2 for purchase by pharmacies in this state from national or regional
3 wholesalers;

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

5 (d) Shall make available to each network pharmacy at the beginning
6 of the term of a contract, and upon renewal of a contract, the sources
7 utilized to determine the maximum allowable cost pricing of the
8 pharmacy benefit manager;

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

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

16 (g) Shall ensure that dispensing fees are not included in the
17 calculation of maximum allowable cost.

18 (3) A pharmacy benefit manager must establish a process by which a
19 network pharmacy may appeal its reimbursement for a drug subject to
20 maximum allowable cost pricing. A network pharmacy may appeal a
21 maximum allowable cost if the reimbursement for the drug is less than
22 the net amount that the network pharmacy paid to the supplier of the
23 drug. An appeal requested under this section must be completed within
24 thirty calendar days of the pharmacy making the claim for which an
25 appeal has been requested.

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

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

31 (b) A final response to an appeal of a maximum allowable cost
32 within seven business days; and

33 (c) If the appeal is denied, the reason for the denial and the
34 national drug code of a drug that may be purchased by similarly
35 situated pharmacies at a price that is equal to or less than the
36 maximum allowable cost.

37 (5)(a) If an appeal is upheld under this section, the pharmacy
38 benefit manager shall make an adjustment on a date no later than one

1 day after the date of determination. The pharmacy benefit manager
2 shall make the adjustment effective for all similarly situated
3 pharmacies in this state that are within the network.

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 rule
6 for purposes related to the prescription drug purchasing consortium
7 established under RCW 70.14.060, the adjustment approved under (a) of
8 this subsection shall apply only to critical access pharmacies.

9 (6) This section does not apply to the state medical assistance
10 program.

11 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
12 constitute a new chapter in Title 19 RCW.

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