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HOUSE BILL 2489

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State of Washington                      63rd Legislature                      2014 Regular Session

By Representatives Schmick, Morrell, Short, Harris, DeBolt, and Cody

1            AN ACT Relating to pharmacies; and adding a new chapter to Title 48  
2            RCW.

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

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

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

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

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

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 2.** (1) To conduct business in this state, a  
8 pharmacy benefit manager must register with the office of the insurance  
9 commissioner and annually renew the registration.

10 (2) To register under this section, a pharmacy benefit manager  
11 must:

12 (a) Submit an application to the office on a form prescribed by the  
13 office by rule;

14 (b) Pay a registration fee, not to exceed two hundred dollars,  
15 adopted by the office by rule.

16 (3) To renew a registration under this section, a pharmacy benefit  
17 manager must pay a renewal fee, not to exceed two hundred dollars,  
18 adopted by the office by rule.

19 (4) The office shall deposit all moneys collected under this  
20 section into the insurance commissioner's regulatory account created in  
21 RCW 48.02.190.

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

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

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

26 (a) In the keeping, recording, or transcribing of records or  
27 documents or in the handling of electronic or hard copies of  
28 correspondence;

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

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

33 (3) "Entity" includes:

34 (a) A pharmacy benefit manager;

35 (b) An insurer;

36 (c) A third-party payor;

1 (d) A state agency; or

2 (e) A person that represents or is employed by one of the entities  
3 described in this subsection.

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

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

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

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

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

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

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

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

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

30 (8) Must audit each pharmacy under the same standards and  
31 parameters that the entity uses to audit other similarly situated  
32 pharmacies;

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

36 (10) May not include dispensing fees or interest in the amount of

1 any overpayment assessed on a claim unless the overpaid claim was for  
2 a prescription that was not filled correctly;

3 (11) May not recoup costs associated with:

4 (a) Clerical errors; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 11 (i) By mail or common carrier with a return receipt requested; or
- 12 (ii) Electronically with electronic receipt confirmation.

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

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

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

31 (4) Recoupment of disputed funds from a pharmacy by an entity or  
32 repayment of funds to an entity by a pharmacy, unless otherwise agreed  
33 to by the entity and the pharmacy, shall occur after the audit and the  
34 appeals procedure established under section 4(1) of this act are final.  
35 If the identified discrepancy for an individual audit exceeds forty  
36 thousand dollars, any future payments to the pharmacy may be withheld

1 by the entity until the audit and the appeals procedure established  
2 under section 4(1) of this act are final.

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

4 (1) Preclude an entity from instituting an action for fraud against  
5 a pharmacy;

6 (2) Apply to an audit of pharmacy records when fraud or other  
7 intentional and willful misrepresentation is evidenced by physical  
8 review, review of claims data or statements, or other investigative  
9 methods; or

10 (3) Apply to a state agency that is conducting audits or a person  
11 that has contracted with a state agency to conduct audits of pharmacy  
12 records for prescription drugs paid for by the state medical assistance  
13 program.

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

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

17 (b) "Maximum allowable cost" means the maximum amount that a  
18 pharmacy benefit manager will reimburse a pharmacy for the cost of a  
19 drug.

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

22 (d) "Network pharmacy" means a retail drug outlet licensed as a  
23 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit  
24 manager.

25 (e) "Therapeutically equivalent" has the same meaning as in RCW  
26 69.41.110.

27 (2) A pharmacy benefit manager:

28 (a) May not place a drug on a list unless there is at least one  
29 therapeutically equivalent multiple source drug generally available for  
30 purchase by network pharmacies from national or regional wholesalers;

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

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

35 (d) Shall make available to each network pharmacy at the beginning

1 of the term of a contract, and upon renewal of a contract, the sources  
2 utilized to determine the maximum allowable cost pricing of the  
3 pharmacy benefit manager;

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

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

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

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

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

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

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

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

32 (5)(a) If an appeal is upheld under this section, the pharmacy  
33 benefit manager shall make an adjustment on the date that the pharmacy  
34 benefit manager makes the determination. The pharmacy benefit manager  
35 shall make the adjustment effective for all similarly situated  
36 pharmacies in this state that are within the network.

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 rule

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

4 (6) This section does not apply to the state medical assistance  
5 program.

6 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act  
7 constitute a new chapter in Title 48 RCW.

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