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SENATE BILL 5699

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State of Washington

65th Legislature

2017 Regular Session

By Senators Rivers and Mullet

1 AN ACT Relating to pharmacy appeals of payments made by pharmacy  
2 benefit managers; and amending RCW 19.340.100.

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

4 **Sec. 1.** RCW 19.340.100 and 2016 c 210 s 4 are each amended to  
5 read as follows:

6 (1) As used in this section:

7 (a) "List" means the list of drugs for which predetermined  
8 reimbursement costs have been established, such as a maximum  
9 allowable cost or maximum allowable cost list or any other benchmark  
10 prices utilized by the pharmacy benefit manager and must include the  
11 basis of the methodology and sources utilized to determine  
12 multisource generic drug reimbursement amounts.

13 (b) "Multiple source drug" means a therapeutically equivalent  
14 drug that is available from at least two manufacturers.

15 (c) "Multisource generic drug" means any covered outpatient  
16 prescription drug for which there is at least one other drug product  
17 that is rated as therapeutically equivalent under the food and drug  
18 administration's most recent publication of "Approved Drug Products  
19 with Therapeutic Equivalence Evaluations;" is pharmaceutically  
20 equivalent or bioequivalent, as determined by the food and drug

1 administration; and is sold or marketed in the state during the  
2 period.

3 (d) "Network pharmacy" means a retail drug outlet licensed as a  
4 pharmacy under RCW 18.64.043 that contracts with a pharmacy benefit  
5 manager.

6 (e) "Therapeutically equivalent" has the same meaning as in RCW  
7 69.41.110.

8 (2) A pharmacy benefit manager:

9 (a) May not place a drug on a list unless there are at least two  
10 therapeutically equivalent multiple source drugs, or at least one  
11 generic drug available from only one manufacturer, generally  
12 available for purchase by network pharmacies from national or  
13 regional wholesalers;

14 (b) Shall ensure that all drugs on a list are readily available  
15 for purchase by pharmacies in this state from national or regional  
16 wholesalers that serve pharmacies in Washington;

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

18 (d) Shall make available to each network pharmacy at the  
19 beginning of the term of a contract, and upon renewal of a contract,  
20 the sources utilized to determine the predetermined reimbursement  
21 costs for multisource generic drugs of the pharmacy benefit manager;

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

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

29 (g) Shall ensure that dispensing fees are not included in the  
30 calculation of the predetermined reimbursement costs for multisource  
31 generic drugs.

32 (3) A pharmacy benefit manager must establish a process by which  
33 a network pharmacy may appeal its reimbursement for a drug subject to  
34 predetermined reimbursement costs for multisource generic drugs. A  
35 network pharmacy may appeal a predetermined reimbursement cost for a  
36 multisource generic drug if the reimbursement for the drug is less  
37 than the net amount that the network pharmacy paid to the supplier of  
38 the drug. An appeal requested under this section must be completed  
39 within thirty calendar days of the pharmacy submitting the appeal. If  
40 after thirty days the network pharmacy has not received the decision

1 on the appeal from the pharmacy benefit manager, then the appeal is  
2 considered denied.

3 The pharmacy benefit manager shall uphold the appeal of a  
4 pharmacy (~~(with fewer than fifteen retail outlets, within the state~~  
5 ~~of Washington, under its corporate umbrella)~~) if the pharmacy or  
6 pharmacist can demonstrate that it is unable to purchase a  
7 therapeutically equivalent interchangeable product from a supplier  
8 doing business in Washington at the pharmacy benefit manager's list  
9 price.

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

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

15 (b) If the appeal is denied, the reason for the denial and the  
16 national drug code of a drug that has been purchased by other network  
17 pharmacies located in Washington at a price that is equal to or less  
18 than the predetermined reimbursement cost for the multisource generic  
19 drug. A pharmacy (~~(with fifteen or more retail outlets, within the~~  
20 ~~state of Washington, under its corporate umbrella)~~) may submit  
21 information to the commissioner about an appeal under subsection (3)  
22 of this section for purposes of information collection and analysis.

23 (5)(a) If an appeal is upheld under this section, the pharmacy  
24 benefit manager shall make a reasonable adjustment on a date no later  
25 than one day after the date of determination.

26 (b) If the request for an adjustment has come from a critical  
27 access pharmacy, as defined by the state health care authority by  
28 rule for purposes related to the prescription drug purchasing  
29 consortium established under RCW 70.14.060, the adjustment approved  
30 under (a) of this subsection shall apply only to critical access  
31 pharmacies.

32 (6) Beginning July 1, 2017, if a network pharmacy appeal to the  
33 pharmacy benefit manager is denied, or if the network pharmacy is  
34 unsatisfied with the outcome of the appeal, the pharmacy or  
35 pharmacist may dispute the decision and request review by the  
36 commissioner within thirty calendar days of receiving the decision.

37 (a) All relevant information from the parties may be presented to  
38 the commissioner, and the commissioner may enter an order directing  
39 the pharmacy benefit manager to make an adjustment to the disputed  
40 claim, deny the pharmacy appeal, or take other actions deemed fair

1 and equitable. An appeal requested under this section must be  
2 completed within thirty calendar days of the request.

3 (b) Upon resolution of the dispute, the commissioner shall  
4 provide a copy of the decision to both parties within seven calendar  
5 days.

6 (c) The commissioner may authorize the office of administrative  
7 hearings, as provided in chapter 34.12 RCW, to conduct appeals under  
8 this subsection (6).

9 (d) A pharmacy benefit manager may not retaliate against a  
10 pharmacy for pursuing an appeal under this subsection (6).

11 ~~((e) This subsection (6) applies only to a pharmacy with fewer  
12 than fifteen retail outlets, within the state of Washington, under  
13 its corporate umbrella.))~~

14 (7) This section does not apply to the state medical assistance  
15 program.

16 (8) A pharmacy benefit manager shall comply with any requests for  
17 information from the commissioner for purposes of the study of the  
18 pharmacy chain of supply conducted under section 7, chapter 210, Laws  
19 of 2016.

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