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THIRD PARTY PAYORS

Washington Governor signs PBM enforcement legislation

On April 1, Washington Governor Jay Inslee signed SB 5857, which amends a PBM transparency statute passed in 2014 by adding enforcement powers within the Office of the Insurance Commissioner (OIC). The original statute (ESSB 6137) provided for registration of PBMs with the Department of Revenue, established standards for audits of pharmacy claims, and provided for transparency when setting MAC prices with updates to pricing being updated at least weekly. The 2014 legislation did not provide for enforcement nor did it establish significant penalties. SB 5857 moves enforcement to the OIC, allows the Insurance Commissioner to set registration fees by regulation sufficient to fund enforcement activities, and establishes a \$1,000 penalty for each violation of the chapter, which may increase to \$5,000 per a violation that is knowing and willful. The OIC is authorized to render a binding decision in "any dispute between a pharmacy benefit manager, or third-party administrator of prescription drug benefits, and a pharmacy arising out of an appeal ... regarding drug pricing or reimbursement." The statute redefines "maximum allowable cost pricing" as "predetermined reimbursement cost for a multisource generic drug."

A pharmacy may appeal when a reimbursement for a drug is "less than the net amount that the network pharmacy paid to the supplier of the drug." The PBM must complete its review of the appeal within 30 days, otherwise the appeal is considered denied. For pharmacies with fewer than 15 retail outlets in Washington under the corporate umbrella, the PBM must uphold the appeal "if the pharmacy or pharmacist can demonstrate that it is unable to purchase a therapeutically equivalent interchangeable product from a supplier doing business in Washington at the pharmacy benefit manager's list price." Chains with 15 or more outlets may submit information about an appeal to the OIC "for the purposes of information collection and analysis."

Appeals that are denied, or appeals where the network pharmacy is "unsatisfied with the outcome," may be disputed with a review requested by the OIC, beginning on July 1, 2017, for pharmacies with fewer than 15 outlets in the state.

Additional sections of the legislation require the OIC to "review the potential to use ... independent review organizations ... as an alternative to the appeal process ...," and submit recommendations by December 1, 2016. Also, the OIC must conduct a study of the pharmacy supply chain with results delivered to the legislature by November 1, 2016. The substantive portions of the statute take effect on January 1, 2017. [Washington State Legislature, ESSB 5857, <http://1.usa.gov/1T1MqHi>]