

## **Washington State Health Care Benefit Managers SB 5601**

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**Washington State SB 5601** creates a new designation of managed care providers called “Health Care Benefit Manager.” That new designation includes pharmacy benefit managers. It is unclear if workers’ compensation PBMs would be subject to this new law. Since Washington is a monopolistic state and private workers’ compensation insurers are not licensed to offer coverage in the State of Washington, the issue then becomes, does this act apply to self-insured employers and would it apply to insurers if they were allowed to do business in Washington state?

**Section 2** of the bill provides definitions. “Health Care Benefit Manager” is defined as a person or entity providing services to, or acting in behalf of, a health carrier or employee benefits program. This section goes on to say that health care benefit managers include pharmacy benefit managers.

This section also defines “health carrier” or “carrier” as having the same meaning as in RCW 48.43.005. That definition is as follows:

“(26) "Health carrier" or "carrier" means a disability insurer regulated under chapter [48.20](#) or [48.21](#) RCW, a health care service contractor as defined in RCW [48.44.010](#), or a health maintenance organization as defined in RCW [48.46.020](#), and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

- Under 48.20 Scope of Chapter provisions, workers’ compensation is excluded.
- 48.21 applies to group disability policies, which are separate and distinct from workers’ compensation insurance.
- 48.44.010 defines a health service contractor as an entity sponsored by a group of providers not otherwise engaged in the business of insurance – this would not include workers’ compensation insurance or a self-insured employer.
- 48.46.020 defines health maintenance organizations which are creatures of the commercial health market and would not apply to workers’ compensation.

Pharmacy benefit manager is also defined in this section as “a person that contracts with pharmacies on behalf of an insurer, third party payor, or the prescription drug consortium...” Since insurer and third party payor are not defined in this section, if you assign the broadest definition a workers’ compensation insurer or a self-insured employer could be included.

So, under the definition of a health care benefit manager a workers’ compensation PBM would not be included because it is not acting on behalf of a health carrier or employee benefits program. However, under the definition of a pharmacy benefit manager we would be included. The confusion arises since the definition of a health care benefit manager also includes a PBM.

**Section 3** of the bill requires registration by “health care benefit managers” with the state insurance commissioner. Since workers’ compensation care is not included in the definition of a health care benefits manager this section would not appear to apply to a workers’ compensation PBM.

**Section 4** of the bill requires “health care benefit managers” to enter into agreements with a health carrier or employee benefits program. Since workers’ compensation PBMs do not contract with these types of entities, this section would not appear to apply to a workers’ compensation PBM.

**Section 5** of the bill deals with complaints by health carrier or employee benefits program. Since workers’ compensation PBMs do not contract or do business with these types of entities, this section would not appear to apply to a workers’ compensation PBM.

**Section 6** of the bill requires carrier to notify health plan enrollees of the existence and use of a health benefit plan manager. Since workers’ compensation PBMs do not provide benefits to health plan enrollees, this section would not appear to apply to a workers’ compensation PBM.

**Section 7** deals with duties of the Commissioner and insurance rate filings by an insurer, health care service contractor or health maintenance organization. Since insurer is not defined, in its broadest application it could include a workers’ compensation insurer. However, this section only talks about filings related to the individual or small group products by health carriers. It does not appear to apply to workers’ compensation insurers.

**Section 8** talks about the Commissioner’s duties related to registrations filed by health care benefit managers. As noted previously, since workers’ compensation care is not included in the definition of a health care benefits manager this section would not appear to apply to a workers’ compensation PBM.

**Section 9** amends the section of law that protects proprietary information. This section applies broadly to insurance carriers and already include workers’ compensation. This is not specific to the registration of health care benefit managers, though their contracts were added to this area of statute to protect them from disclosure.

**Section 10** amends the definitions in the existing PBM law. The definition of “insurer” was already included in the existing law. Interpreted broadly, insurer would include workers’ compensation. Third party payor is newly defined in this section as meaning the same a RCW 48.39.005. That definition includes 48.20 (disability), 48.21 (group and blanket disability), 48.44 (health care services), 48.46 (health maintenance organizations), and 74.09.522 (TANF). None of those definitions would include a workers’ compensation third party payor.

**Section 11, 12, 13 and 14** amend the existing PBM law. If it is determined that the PBM law applies to workers' compensation PBMs, then these sections on the proper conduct of audits would apply.

**Section 15** amends the existing PBM law. This section deals with how drugs are placed on a formulary or "list." If the overarching PBM law does apply to workers' compensation PBMs, then this section would apply. However, some provisions of this section could conflict with the drug formulary rule adopted by the Department of Labor and Industry. Additionally, there is already a dispute process for workers' compensation medical bills administered by the Department of Labor and Industry. The appeal provisions in this statute could conflict. Or, at the very least, could create a situation of double jeopardy for a payor. For example, if a pharmacy wasn't happy with the outcome of an appeal under this section, they could also pursue a complaint under the labor law or rules. (It should be noted this is already in the existing law)

**Section 16** outlines the Commissioner's authority under this chapter.

**Sections 17, 18 and 19** wrap all the new law into a new chapter in Title 48 RCW (insurance Code) and repeal parts of RCW 19.340 (Pharmacy Benefit Managers)

**Section 20** gives the Commissioner rulemaking authority.

**Section 21** was vetoed by the Governor.

**Section 22** is the severability clause.

**Section 23** is the effective dates section.

### **Conclusion**

There is nothing in this legislation that refers to RCW 51 – Industrial Insurance law. While there is some ambiguity as to whether or not a workers' compensation insurer would fall under the insurer definition in the PBM sections of this legislation, there was no ambiguity that third party payors, as newly defined in Section 10 would not include any entity serving the employers who are self-insuring their workers' compensation coverage. The monopolistic workers' compensation system in Washington State is governed by Title 51 and would not be subject to this legislation.

Based on these conclusions, I don't believe that Mitchell ScriptAdvisor would be required to register in Washington State as a PBM.