Multiple Agency Fiscal Note Summary

Bill Number: 5213 2S SB	**Title:** Pharmacy benefit managers

Estimated Cash Receipts

NONE

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Washington State Health Care Authority	Non-zero but indeterminate cost and/or savings. Please see discussion.											
Office of Insurance Commissioner	1.4	0	0	423,399	1.5	0	0	446,428	1.5	0	0	446,428
Total $	**1.4**	**0**	**0**	**423,399**	**1.5**	**0**	**0**	**446,428**	**1.5**	**0**	**0**	**446,428**

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Washington State Health Care Authority	.0	0	0	.0	0	0	.0	0	0
Office of Insurance Commissioner	.0	0	0	.0	0	0	.0	0	0
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Estimated Capital Budget Breakout

NONE

Prepared by: Jason Brown, OFM	**Phone:** (360) 742-7277	**Date Published:** Final 3/ 2/2023

FNPID 67799

FNS029 Multi Agency rollup

Individual State Agency Fiscal Note

Bill Number: 5213 2S SB	Title: Pharmacy benefit managers	Agency: 107-Washington State Health Care Authority

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

Non-zero but indeterminate cost and/or savings. Please see discussion.

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Sandy Stith	Phone: 786-7710	Date: 02/24/2023
Agency Preparation:	Joseph Cushman	Phone: 360-725-5714	Date: 03/01/2023
Agency Approval:	Megan Atkinson	Phone: 360-725-1222	Date: 03/01/2023
OFM Review:	Marcus Ehrlander	Phone: (360) 489-4327	Date: 03/02/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Please see attached.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

Please see attached.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Please see attached.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. B - Expenditures by Object Or Purpose

Non-zero but indeterminate cost and/or savings. Please see discussion.

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Bill Number: 5213 2S SB Pharmacy Benefit Manager HCA Request #: 23-169

Part II: Narrative Explanation

An act relating to pharmacy benefit managers, amending several RCW's.

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

The second substitute adopts the first substitute into section 6 and adds several sections from the original bill.

Section 2(4)(b) removes "insurer" from the definition of Entity. The definition of "third-party payor" is expanded to include:

- A health carrier
- Managed Health Care System (under RCW 74.09.522)
- Public and School Employee Benefit Program
- Any entity administering a self-funded group health plan.

Section 2(17) defines Pharmacy Benefit manager (PBM) as a person that administers or manages a pharmacy benefit plan or program under a contractual obligation with a third-party payor. PBM's do not include:

- Health carriers
- Managed health care systems
- Health plans offered to public and school employees under chapter 41.05 RCW
- Discount plans as defined in RCW 48.155.010
- Direct patient-provider primary care practices as defined in RCW 48.150.010
- A hospital licensed under chapter 70.41 RCW or ambulatory surgical facility licensed under chapter 70.230
- The prescription drug purchasing consortium established under RCW 70.14.060
- Pharmacy services administrative organizations

Section 4 states that the Health Care Authority (HCA) would not need to file contracts with the Office of the Insurance Commissioner (OIC) but all contracts between PBM's and their Managed Care Organization (MCO) and Third Party Administrators (TPA)

Section 6(1) lists several restrictions that limit how a pharmacy benefit manager (PBM) reimburse, use, or exclude a pharmacy from their network.

Section 6(2) lists several provisions a PBM must include in contracts with participating pharmacies. Such as permitting a covered person to receive delivery or mail order of a medication through any network pharmacy while maintaining the same copays, fees, and days allowances.

Section 6(3) lists requirements PBM's must adhere to when a covered person is using a mail order or specialty pharmacy.

Section 7(2) amends language to allow a pharmacy's representative to appeal reimbursement is not adequate and helps adjust to make pharmacies whole.

****

Sec. 1(2) states that if a covered patient chooses to fill a prescription through a nonresident pharmacy, the Pharmacy Benefit Manager (PBM) shall ensure access to counseling by a pharmacist and shall have consumer safeguard processes including medication distribution management and shipping logistics.

Sec 1(3) states that if a covered person chooses a nonresident pharmacy to fill a prescription, the PBM shall allow for dispensing at local network pharmacies if the prescription is delayed by more that one day or if the drug arrives in an unusable condition.

****

II. B - Cash Receipts Impact

None

II. C – Expenditures

Indeterminate.

Section 6(1) may increase costs to Uniform Medicaid Plan (UMP) and other Employee and Retiree Benefit (ERB) plans because they use select mail order and specialty pharmacies to negotiate discounts that would be eroded with open access. Community pharmacies would be able to dispense these medications at higher costs to the program because they may not have the same discounted rate or their reimbursement requests may be higher if their discounts from wholesalers is not as good as specialty or mail order pharmacies. These costs are indeterminate because it depends on the actual medications, the number of patients who switch pharmacies, and the price of the drugs in the future.

Sections 6 (2) & (3) states a PBM shall allow for dispensing at local pharmacies if a prescription is delayed or unusable, this could lead to increased drug costs to ERB plans relating to preferred specialty and mail order pharmacies. These preferred pharmacies have specific contracted reimbursement rates that could be affected if patients switch pharmacies under this provision.

If patients were to choose to have specialty drugs filled at community pharmacies instead of providing affirmative authorization to the current UMP preferred specialty pharmacy, then pharmacy costs will increase because the discount on prescription drugs is greater at the preferred specialty pharmacy than at community pharmacies. If 20% of the cost of specialty drugs were to shift to community pharmacies, and the increase in costs is about 3%, then UMP would see an annual increase of $2.5 million due to this legislation.

Part IV: Capital Budget Impact

None

Part V: New Rule Making Require

None

Individual State Agency Fiscal Note

Bill Number: 5213 2S SB	Title: Pharmacy benefit managers	Agency: 160-Office of Insurance Commissioner

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.2	1.5	1.4	1.5	1.5
Account					
Insurance Commissioners Regulatory Account-State 138-1	200,185	223,214	423,399	446,428	446,428
Total $	200,185	223,214	423,399	446,428	446,428

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☒ Requires new rule making, complete Part V.

Legislative Contact:	Sandy Stith	Phone: 786-7710	Date: 02/24/2023
Agency Preparation:	Jane Beyer	Phone: 360-725-7043	Date: 03/01/2023
Agency Approval:	Michael Wood	Phone: 360-725-7007	Date: 03/01/2023
OFM Review:	Jason Brown	Phone: (360) 742-7277	Date: 03/02/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Sections 1(4)(b) and 1(4)(c)(xvi), effective January 1, 2025, removes Pharmacy Benefit Managers (PBMs) from the definition of Health Care Benefit Managers (HCBMs).

Section 2(17)(a) defines Pharmacy Benefit Manager as a person that administers or manages a pharmacy benefits plan or program under a contractual obligation with a third-party payor.

Section 3(1) and (2) requires PBMs to register with the Office of Insurance Commissioner (OIC) and pay an initial registration and an annual registration renewal fee. The OIC must set the fees through rulemaking and ensure the fees are sufficient to cover the costs of registration, renewing and overseeing the activities of the PBMs. All fees must be deposited into the Insurance Commissioner's Regulatory Account.

Section 4(1) and (2) require PBMs to enter into contracts for administration of pharmacy benefit plans and to file those contracts with OIC for review.

Section 5(1) requires PBMs to respond to OIC inquiries within 15 business days in the form and manner requested by the commissioner. If a PBM fails to respond in a complete or timely manner, it will be considered a violation of this chapter.

Section 6 outlines numerous prohibitions and requirements related to PBM business practices.

Section 8 authorizes the OIC to adopt rules necessary to implement this act.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

Section 3(1) and (2) requires Pharmacy Benefit Managers (PBMs) to register with the Office of Insurance Commissioner (OIC) and pay an initial registration and an annual registration renewal fee. The OIC must set the fees through rulemaking and ensure the fees are sufficient to cover the costs of registration, renewing and overseeing the activities of the PBMs. All fees must be deposited into the Insurance Commissioner's Regulatory Account.

It is assumed that the initial registration and annual renewal fees for PBMs will be treated similarly, in process, to the OIC's current Health Care Benefit Manager (HCBM) registration and renewal fees. Initial registration fees will be $200, which is the same as the current HCBM initial registration fee, and registrations/renewals will be valid through the end of a fiscal year. Once per year, based on legislative appropriation and fund balance, the PBM renewal fee will be set for the coming fiscal year.

Currently, to be registered or renewed as a HCBM, PBMs are already required to pay fees that are sufficient to cover the costs of registering, renewing and oversight activities. Therefore, the OIC assumes no additional revenue impact because of this bill.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Section 2(17)(a) defines Pharmacy Benefit Manager (PBM) as a person that administers or manages a pharmacy benefits plan or program under a contractual obligation with a third-party payor. The definition does not limit PBM activity to fully

insured health plans and PEBB/SEBB, as is the case in the current health care benefit manager statute in chapter 48.200 RCW. The bill also applies to PBM practices related to self-funded group health plans, as well as Medicare Advantage plans.

Section 3, effective January 1, 2025, requires PBMs to register with the Office of Insurance Commissioner (OIC) and pay an initial registration and an annual registration renewal fee. PBMs are currently required to register as a Health Care Benefit Manager (HCBM) and pay fees that are sufficient to cover the costs of registering, renewing and oversight activities. Removing PBM registrations and fees from the HCBMs processes will require the OIC to make changes to its information technology (IT) systems to enable the agency's existing licensing/registration system and online e-commerce portal website to process registrations and renewals online for PBMs. The changes to IT systems would include a combination of system configuration changes and software programming enhancements. The OIC's IT staff will implement these changes in-house to ensure that the system changes align with existing IT infrastructure and technical approaches that the OIC uses in its other online licensing/registration portal systems and e-commerce websites. The cost estimate for the system changes and new software development is assumed to be a one-time cost in FY2024 and estimated at 381 hours utilizing five IT staff. The cost estimate is based on the similar work performed to implement the Health Care Benefit Manager registration/renewal process, which the agency completed in late 2020. Additionally, issuance of a new certificate of registration for each registered PBM will require approximately 4 hours of a Functional Program Analyst 3 in FY2024.

Section 4(1) and (2) require PBMs to enter into contracts for administration of pharmacy benefit plans and to file those contracts with OIC for review. The OIC will be required to develop and issue new PBM general filing instructions to permit PBMs to submit contracts and contract amendments requiring one-time costs of 8 hours of a Functional Program Analyst 4 in FY2024.

Section 5(1) requires PBMs to respond to OIC inquiries within 15 business days in the form and manner requested by the commissioner. If a PBM fails to respond in a complete or timely manner, it will be considered a violation of this chapter.

Section 6 outlines numerous prohibitions and requirements related to PBM business practices. All PBM provider contracts and health plan form filings must be reviewed to ensure that they are in compliance with the requirements of this section. The OIC receives approximately 200 pharmacy provider contracts and 312 health plan form filings each year and assumes the modified review criteria will result in an additional 30 minutes of review per provider contract filing; and an additional 15 minutes of review per health form filing in FY2024, reduced to 5 minutes of review per health form filing beginning in FY2025 requiring 100 hours (200 provider contracts x 30 minutes) of a Functional Program Analyst 3 (FPA3) beginning in FY2024; 78 hours (312 health form filings x 15 minutes) of a FPA3 in FY2024; and 26 hours (312 health form filings x 5 minutes) of a FPA3 in FY2025 and thereafter. The (OIC) will also require one-time costs, in FY2024, of 34 hours of a Functional Program Analyst 4 to update filing review standards, update checklist documents and filing instructions, and train staff.

Due to the numerous prohibitions and requirements in Section 6, and that plans not previously regulated by state law are now included, the OIC assumes additional inquiries will be received and additional time will be required to resolve PBM related consumer and provider complaints and inquiries. The amount of consumer calls, written inquires and complaints relating to PBMs is expected to remain the same. However, the complexity of these cases due to the numerous prohibitions and requirements of this bill will significantly increase time required for the average informational case. In 2022, the OIC processed 46 informational cases regarding PBMs. Informational cases generally take 10 minutes per case. For purposes of this fiscal note, it is assumed information cases will require 3.25 hours per case requiring a total of 142 hours (46 info cases x 3.10 hours) of a Functional Program Analyst 3 each year beginning in FY2025.

The OIC assumes an additional 1% of the 112,000 licensed pharmacists, or 1,120, will contact the OIC with inquiries each year. Informational cases generally take 10 minutes per case requiring 187 hours (1,120 inquiries x 10 minutes) of a FPA3 beginning in FY2025.

Medicare beneficiaries utilize benefits at a much higher rate than those with private or employer-sponsored health plans. The OIC assumes an additional 156 inquiries and 156 complaints each year beginning in FY2025. Informational cases generally take 15 minutes per case and complaint cases generally take 4 hours per case requiring a total of 663 hours (156 info cases x 15 minutes + 156 complaint cases x 4 hours) of a Health Insurance Advisor 1 each year beginning in FY2025.

The provisions in section 6 will lead to an increase in enforcement actions, including hearing demands. The OIC anticipates an average of an additional 30 enforcement cases, with 3 cases being sent to hearings, each year to primarily address registrations and renewals under Section 3, contracting violations under Section 4, and the numerous prohibitions and requirements in Section 6. Enforcement actions require the equivalent of approximately 40 hours per case and hearings generally take 50 hours per case requiring 1,350 hours (30 cases x 40 hours and 3 hearings x 50 hours) of an Insurance Enforcement Specialist beginning in FY2025.

Section 8 authorizes the OIC to adopt rules necessary to implement this act. 'Complex' rulemaking, in FY2024, will be required to align current WACs with the new law. The OIC has re-evaluated the requirements related to rulemaking and from prior experience working with interested parties related to this legislation, determined the required rulemaking to be 'complex'. Recodifying the requirements from RCW 48.200.040 (HCBM) to a new chapter exclusively related to pharmacy benefit managers will require OIC to establish rules for developing and issuing SERFF pharmacy benefit manager general filing instructions; development of registration and renewal fees; addressing required business practices established in section 6 of the bill and enforcement.

Ongoing Costs:
Salary, benefits and associated costs for .28 FTE Functional Program Analyst 3, .41 FTE Health Insurance Advisor 1, and .83 FTE Insurance Enforcement Specialist.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2024	FY 2025	2023-25	2025-27	2027-29
138-1	Insurance Commissioners Regulatory Account	State	200,185	223,214	423,399	446,428	446,428
		Total $	200,185	223,214	423,399	446,428	446,428

III. B - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	1.2	1.5	1.4	1.5	1.5
A-Salaries and Wages	121,478	133,148	254,626	266,296	266,296
B-Employee Benefits	38,670	45,423	84,093	90,846	90,846
C-Professional Service Contracts					
E-Goods and Other Services	40,037	44,643	84,680	89,286	89,286
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total $	200,185	223,214	423,399	446,428	446,428

III. C - Operating FTE Detail: *List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
Functional Program Analyst 3	73,260	0.1	0.3	0.2	0.3	0.3
Functional Program Analyst 4	80,952	0.2		0.1		
Health Insurance Advisor 1	73,260		0.4	0.2	0.4	0.4
Insurance Enforcement Specialist	99,516		0.8	0.4	0.8	0.8
IT Applications Developer - Senior	115,824	0.0		0.0		
IT Architecture - Senior	121,620	0.1		0.1		
IT Business Analyst - Senior	115,812	0.0		0.0		
IT Data Management - Senior	113,064	0.0		0.0		
IT Quality Assurance - Journey	100,032	0.0		0.0		
Senior Policy Analyst	108,432	0.7		0.3		
Total FTEs		1.2	1.5	1.4	1.5	1.5

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Section 8 authorizes the Office of Insurance Commissioner (OIC) to adopt rules necessary to implement this act. 'Complex' rulemaking, in FY2024, will be required to align current WACs with the new law. The OIC has re-evaluated the requirements related to rulemaking and from prior experience working with interested parties related to this legislation, determined the required rulemaking to be 'complex'. Recodifying the requirements from RCW 48.200.040 (HCBM) to a new chapter exclusively related to pharmacy benefit managers will require OIC to establish rules for developing and issuing SERFF pharmacy benefit manager general filing instructions; development of registration and renewal fees; addressing required business practices established in section 6 of the bill and enforcement.