

**ESSB 5203** - H COMM AMD

By Committee on Health Care & Wellness

**ADOPTED 04/07/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 70.14  
4 RCW to read as follows:

5 (1) (a) The authority may enter into partnership agreements with  
6 another state, a group of states, a state agency, a nonprofit  
7 organization, or any other entity to produce, distribute, or purchase  
8 generic prescription drugs and distribute and purchase insulin.  
9 Partnership agreements with governmental entities are exempt from  
10 competitive solicitation requirements in accordance with RCW  
11 39.26.125(10). However, the authority must comply with state  
12 procurement laws related to competitive procurement when purchasing  
13 or entering into purchasing agreements with nongovernmental entities.

14 (b) The generic prescription drugs and insulin must be produced  
15 or distributed by a drug company or generic drug manufacturer that is  
16 registered with the United States food and drug administration.

17 (2) The authority shall only enter into partnerships, in  
18 consultation with other state agencies as necessary, to produce,  
19 distribute, or purchase a generic prescription drug or insulin at a  
20 price that results in savings to public and private purchasers and  
21 consumers.

22 (3) For generic prescription drugs and insulin that the authority  
23 has entered into a partnership under this section:

24 (a) State purchased health care programs must purchase the  
25 generic prescription drugs and insulin through the partnership,  
26 unless the state purchased health care program can obtain the generic  
27 prescription drug or insulin at a cost savings through another  
28 purchasing mechanism; and

29 (b) Local governments, private entities, health carriers, and  
30 others may choose to voluntarily purchase the generic prescription  
31 drugs and insulin from the authority as available quantities allow.

1 (4) All information and documents obtained or created under this  
2 section is exempt from disclosure under chapter 42.56 RCW.

3 (5) For purposes of this section, the following definitions  
4 apply:

5 (a) "Authority" means the health care authority.

6 (b) "Eligible prescription drug" means a prescription drug or  
7 biological product, as defined in 42 U.S.C. Sec. 262(i), that is not  
8 under patent.

9 (c) "Generic drug" means a drug that is approved pursuant to an  
10 application referencing an eligible prescription drug that is  
11 submitted under section 505(j) of the federal food, drug, and  
12 cosmetic act (21 U.S.C. Sec. 301 et seq.), or section 351(k) of the  
13 federal public health service act (42 U.S.C. Sec. 262).

14 (d) "Purchase" means the acquisition of generic drugs and  
15 insulin. "Purchase" includes, but is not limited to, entering into  
16 contracts with manufacturers on behalf of those dispensing drugs and  
17 other innovative purchasing strategies to help increase access for  
18 Washington citizens to the best price available for insulin and  
19 generic prescription drugs. This subsection should be interpreted  
20 broadly to provide the authority flexibility in how it procures  
21 generic drugs and insulin in order to obtain the best price.

22 (e) "State purchased health care" means medical and health care,  
23 pharmaceuticals, and medical equipment purchased with state and  
24 federal funds by the department of social and health services,  
25 department of health, state health care authority, department of  
26 labor and industries, department of corrections, and department of  
27 veterans affairs. State purchased health care does not include  
28 prescription drugs purchased for medical assistance program clients  
29 under chapter 74.09 RCW.

30 **Sec. 2.** RCW 70.14.060 and 2020 c 346 s 4 are each amended to  
31 read as follows:

32 (1)(a) The (~~administrator~~[~~director~~]) director of the state  
33 health care authority shall, directly or by contract, adopt policies  
34 necessary for establishment of a prescription drug purchasing  
35 consortium. The consortium's purchasing activities shall be based  
36 upon the evidence-based prescription drug program established under  
37 RCW 70.14.050. (~~State~~) Except as provided in section 1 of this act  
38 or exempted under (b) of this subsection, state purchased health care  
39 programs as defined in RCW 41.05.011 shall purchase prescription

1 drugs through the consortium for those prescription drugs that are  
2 purchased directly by the state and those that are purchased through  
3 reimbursement of pharmacies (~~(, unless exempted under (b) of this~~  
4 ~~subsection)~~). The (~~administrator [director]~~) director shall not  
5 require any supplemental rebate offered to the health care authority  
6 by a pharmaceutical manufacturer for prescription drugs purchased for  
7 medical assistance program clients under chapter 74.09 RCW be  
8 extended to any other state purchased health care program, or to any  
9 other individuals or entities participating in the consortium. The  
10 (~~administrator [director]~~) director shall explore joint purchasing  
11 opportunities with other states.

12 (b) State purchased health care programs are exempt from the  
13 requirements of this section if they can demonstrate to the  
14 (~~administrator [director]~~) director of the state health care  
15 authority that, as a result of the availability of federal programs  
16 or other purchasing arrangements, their other purchasing mechanisms  
17 will result in greater discounts and aggregate cost savings than  
18 would be realized through participation in the consortium.

19 (2) Participation in the purchasing consortium shall be offered  
20 as an option beginning January 1, 2006. Participation in the  
21 consortium is purely voluntary for units of local government, private  
22 entities, labor organizations, health carriers as provided in RCW  
23 48.43.005, state purchased health care services from or through  
24 health carriers as provided in RCW 48.43.005, and for individuals who  
25 lack or are underinsured for prescription drug coverage. The  
26 (~~administrator [director]~~) director may set reasonable fees,  
27 including enrollment fees, to cover administrative costs attributable  
28 to participation in the prescription drug consortium.

29 (3) The state health care authority is authorized to adopt rules  
30 implementing chapter 129, Laws of 2005.

31 NEW SECTION. **Sec. 3.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected."

35 Correct the title.

EFFECT: (1) Defines "purchase" as the acquisition of generic  
drugs and insulin, which is to be interpreted broadly and includes  
entering into contracts with manufacturers on behalf of those

dispensing drugs and other innovative purchasing strategies to help increase access for Washington citizens to the best price available for insulin and generic prescription drugs.

(2) Specifies that partnership agreements with other governmental entities are exempt from competitive solicitation agreements under current law.

(3) Replaces the requirement that the Health Care Authority (HCA) may only enter into partnerships with nongovernmental entities after a competitive bidding process with a requirement that the HCA must comply with state procurement laws when purchasing or entering into purchasing agreements with nongovernmental entities.

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