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**SUBSTITUTE SENATE BILL 6088**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser, Conway, Das, Frockt, Hasegawa, Hunt, Kuderer, Pedersen, Randall, Rolfe, Stanford, and Wilson, C.)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to establishing a prescription drug affordability  
2 board; and adding new sections to chapter 70.14 RCW.

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

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

6 The definitions in this section apply throughout this act unless  
7 the context clearly requires otherwise.

8 (1) "Biological product" has the same meaning as in 42 U.S.C.  
9 Sec. 262(i)(1).

10 (2) "Biosimilar" has the same meaning as in 42 U.S.C. Sec.  
11 262(i)(2).

12 (3) "Board" means the prescription drug affordability board.

13 (4) "Excess costs" means:

14 (a) Costs of appropriate utilization of a prescription drug that  
15 exceed the therapeutic benefit relative to other alternative  
16 treatments; or

17 (b) Costs of appropriate utilization of a prescription drug that  
18 are not sustainable to public and private health care systems over a  
19 ten-year time frame.

20 (5) "Generic drug" has the same meaning as in RCW 69.48.020.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 70.14  
2 RCW to read as follows:

3        (1) Subject to the availability of amounts appropriated for this  
4 specific purpose, the prescription drug affordability board is  
5 established, to include five members who have expertise in health  
6 care economics or clinical medicine appointed by the governor.

7        (2) Board members shall serve for a term of five years.

8        (3) No board member may be an employee of, a board member of, or  
9 consultant to a prescription drug manufacturer, pharmacy benefit  
10 manager, health carrier, prescription drug wholesale distributor, or  
11 related trade association.

12        (4) The board may establish advisory groups consisting of  
13 relevant stakeholders when the board deems it necessary. Advisory  
14 group members are immune from civil liability for any official act  
15 performed in good faith as a member of the group.

16        (5) The health care authority shall provide administrative  
17 support to the board and any advisory group and may adopt rules  
18 governing their operation.

19        (6) Board members shall be compensated for participation in the  
20 work of the board in accordance with a personal services contract to  
21 be executed after appointment and before commencement of activities  
22 related to the work of the board.

23        (7) A simple majority of the board's membership constitutes a  
24 quorum for the purpose of conducting business.

25        (8) All meetings of the board must be open and public, except  
26 that the board may hold executive sessions to the extent permitted by  
27 chapter 42.30 RCW.

28        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 70.14  
29 RCW to read as follows:

30        By June 30, 2021, and yearly thereafter, utilizing data collected  
31 pursuant to chapter 43.71C RCW, or other data deemed relevant by the  
32 board, the board must identify:

33        (1) Brand name prescription drugs and biologic products that:

34        (a) Are introduced to the market with a wholesale acquisition  
35 cost of thirty thousand dollars or more per year or course of  
36 treatment lasting less than one year; or

37        (b) Have a price increase of three thousand dollars or more in  
38 any twelve-month period or for a course of treatment lasting less  
39 than twelve months;

1 (2) Biosimilar products with a wholesale acquisition cost less  
2 than fifteen percent below the reference brand biologic product;

3 (3) Generic drugs with a wholesale acquisition cost of one  
4 hundred dollars for a thirty-day supply or less that has increased in  
5 price by two hundred percent or more in the preceding twelve months;  
6 and

7 (4) Any other prescription drug product the board determines may  
8 create excess costs for the state and patients.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.14  
10 RCW to read as follows:

11 (1) The board may choose to conduct a cost review of any  
12 prescription drug identified pursuant to section 3 of this act.

13 (2) For drugs chosen for a cost review, the board must determine  
14 whether the drug has led or will lead to excess costs to the state or  
15 patients. The board may examine publicly available information as  
16 well as collect information from the drug manufacturer and other  
17 relevant sources. When conducting a review, the board should  
18 consider:

19 (a) The relevant factors contributing to the price paid by the  
20 state for the prescription drug, including the wholesale acquisition  
21 cost and discounts, rebates, or other price concessions provided by  
22 the manufacturer to the state;

23 (b) The average patient co-pay or other cost sharing for the  
24 drug;

25 (c) The dollar value of patient assistance programs offered by  
26 the manufacturer for the drug;

27 (d) The price of therapeutic alternatives; and

28 (e) Any other relevant factors as determined by the board.

29 (3) If, after considering the factors listed in subsection (2) of  
30 this section, the board is unable to determine if the drug will lead  
31 to excess costs for the state or patients, the board may consider the  
32 following factors:

33 (a) The manufacturer's research and development costs, as  
34 indicated on the manufacturer's federal tax filing or information  
35 filed with the federal securities and exchange commission for the  
36 most recent tax year in proportion to the manufacturer's sales in the  
37 state;

38 (b) The portion of direct-to-consumer marketing costs eligible  
39 for favorable federal tax treatment in the most recent tax year that

1 are specific to the prescription drug under review and that are  
2 multiplied by the ratio of total manufacturer in-state sales to total  
3 manufacturer sales in the United States for the drug under review;

4 (c) The manufacturer's gross and net revenues for the most recent  
5 tax year; and

6 (d) Any additional factors identified by the board.

7 (4) All information collected by the board pursuant to this  
8 section is not subject to public disclosure under chapter 42.56 RCW.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.14  
10 RCW to read as follows:

11 (1) The board must establish a process for setting upper payment  
12 limits for prescription drugs the board has determined have led or  
13 will lead to excess costs to the state or patients.

14 (2) Any state agency administering a state purchased health care  
15 program shall not pay an amount above the upper payment limit set by  
16 the board for a prescription drug.

17 (3) The process must take into consideration:

18 (a) The cost of administering the drug;

19 (b) The cost of delivering the drug to patients; and

20 (c) Other relevant administrative costs related to the production  
21 and delivery of the drug.

22 (4) The process must provide for the suspension of an upper  
23 payment limit if a drug is placed on the food and drug administration  
24 shortage list.

25 (5) The board must monitor the supply of drugs for which it sets  
26 an upper payment limit and may suspend that limit if there is a  
27 shortage of the drug in the state.

28 (6) Any entity affected by a decision of the board may request an  
29 appeal within thirty days of the board's decision, and the board must  
30 rule on the appeal within sixty days. Board rulings are subject to  
31 judicial review pursuant to chapter 34.05 RCW.

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