

2 **SSB 6368** - S AMD 603
3 By Senator Parlette

4 NOT ADOPTED 02/18/02

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that access to
8 prescription drugs is vital to the health of many Washington residents,
9 but that recent substantial increases in drug expenditures threaten the
10 overall viability of the state's medical assistance program and cannot
11 be sustained. For those people not currently eligible for this
12 program, or otherwise lacking prescription drug coverage, the high
13 costs may limit their access to medications altogether. The
14 legislature therefore intends to implement strategies to reduce the
15 cost of providing prescription drugs while maintaining and improving
16 access to high quality prescription drug therapies.

17 **Sec. 2.** RCW 74.09.010 and 1990 c 296 s 6 are each amended to read
18 as follows:

19 ~~((As used in this chapter:))~~ The definitions in this section apply
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Children's health program" means the health care services
22 program provided to children under eighteen years of age and in
23 households with incomes at or below the federal poverty level as
24 annually defined by the federal department of health and human services
25 as adjusted for family size, and who are not otherwise eligible for
26 medical assistance or the limited casualty program for the medically
27 needy.

28 (2) "Committee" means the ~~((children's health services))~~ pharmacy
29 and therapeutics committee created in ~~((section 3 of this act))~~ section
30 5 of this act.

31 (3) "County" means the board of county commissioners, county
32 council, county executive, or tribal jurisdiction, or its designee. A
33 combination of two or more county authorities or tribal jurisdictions
34 may enter into joint agreements to fulfill the requirements of RCW
35 74.09.415 through 74.09.435.

1 (4) "Department" means the department of social and health
2 services.

3 (5) "Department of health" means the Washington state department of
4 health created pursuant to RCW 43.70.020.

5 (6) "Internal management" means the administration of medical
6 assistance, medical care services, the children's health program, and
7 the limited casualty program.

8 (7) "Limited casualty program" means the medical care program
9 provided to medically needy persons as defined under Title XIX of the
10 federal social security act, and to medically indigent persons who are
11 without income or resources sufficient to secure necessary medical
12 services.

13 (8) "Medical assistance" means the federal aid medical care program
14 provided to categorically needy persons as defined under Title XIX of
15 the federal social security act.

16 (9) "Medical care services" means the limited scope of care
17 financed by state funds and provided to general assistance recipients,
18 and recipients of alcohol and drug addiction services provided under
19 chapter 74.50 RCW.

20 (10) "Nursing home" means nursing home as defined in RCW 18.51.010.

21 (11) "Poverty" means the federal poverty level determined annually
22 by the United States department of health and human services, or
23 successor agency.

24 (12) "Preferred drug" means the department's drug of choice within
25 a selected therapeutic class, as determined by the process established
26 in section 3 of this act.

27 (13) "Prior authorization" means a process requiring the prescriber
28 or the dispenser to verify with the state medicaid agency or its
29 contractor that the proposed medical use of a particular medicine for
30 a patient meets predetermined criteria for payment by the program.

31 (14) "Secretary" means the secretary of social and health services.

32 (15) "Therapeutic class" means a group of drugs used for the
33 diagnosis, treatment, remediation, or cure of a specific order or
34 disease.

35 NEW SECTION. Sec. 3. A new section is added to chapter 74.09 RCW
36 to read as follows:

37 The department shall begin implementation of a preferred drug
38 program pursuant to 42 U.S.C. Sec. 1396r-8 by January 1, 2003. The

1 program shall apply only to fee-for-service medical assistance clients,
2 except those fee-for-service clients who receive care from a delivery
3 system operated by a health maintenance organization as defined in RCW
4 48.46.020. In implementing the program, the department may adopt
5 rules, and must:

6 (1) Identify for initial consideration those classes of drugs for
7 which it annually has the greatest aggregate fee-for-service
8 expenditures, excluding from consideration any of the following
9 classes, which shall be exempt from any preferred drug list:

- 10 (a) Antipsychotics;
- 11 (b) Chemotherapy;
- 12 (c) Antiretroviral drugs;
- 13 (d) Immunosuppressants; and
- 14 (e) Hypoglycemia rescue agents;

15 (2) Contract with one or more qualified, independent entities to
16 determine which drugs within each of the identified therapeutic class
17 are essentially equal in terms of safety, efficacy, and outcomes. The
18 contracted entity must base its determinations on the strength of
19 scientific evidence and standards of practice that include, but are not
20 limited to:

21 (a) Assessing peer-reviewed medical literature, including
22 randomized clinical trials (especially drug comparison studies),
23 pharmacoeconomic studies, and outcomes research data;

24 (b) Employing published practice guidelines, developed by an
25 acceptable evidenced-based process;

26 (c) Comparing the efficacy as well as the type and frequency of
27 side effects and potential drug interactions among alternative drug
28 products in the class under review;

29 (d) Assessing the likely impact of a drug product on patient
30 compliance when compared to alternative products; and

31 (e) Thoroughly evaluating the benefits, risks, and potential
32 outcomes for patients, including adverse drug events;

33 (3) Submit the determinations made under subsection (2) of this
34 section to the committee established in section 5 of this act, which
35 shall incorporate them into recommendations to the department;

36 (4) Develop a preferred drug list based on the recommendations of
37 the committee. For each therapeutic class considered, the list must
38 identify the drugs determined to be essentially equal, and from among
39 those, which ones are the preferred drugs. The department, based on

1 the recommendations of the committee, may revise the preferred drug
2 list annually, or as necessary to meet the objectives of this act;

3 (a) In developing the preferred drug list, the department may
4 negotiate, directly or through contract with an outside agency,
5 supplemental rebates from pharmaceutical manufacturers that are in
6 addition to those required by Title XIX of the social security act and
7 at no less than ten percent of the average manufacturer price as
8 defined in 42 U.S.C. Sec. 1936 on the last day of a quarter unless the
9 federal or supplemental rebate, or both, equals or exceeds twenty-five
10 percent, unless the department determines that specific products are
11 competitive at lower rebate percentages. There is no upper limit on
12 the supplemental rebates the agency may negotiate.

13 (b) Agreement to pay the minimum supplemental rebate percentage
14 will guarantee a manufacturer that the department will consider a
15 product for inclusion as a preferred drug. However, a pharmaceutical
16 manufacturer is not guaranteed placement as a preferred drug by simply
17 paying the minimum supplemental rebate. Department decisions will be
18 made on the clinical efficacy of a drug and recommendations of the
19 pharmacy and therapeutics committee, as well as the price of competing
20 products minus federal and state rebates.

21 (c) The department may seek any federal waivers necessary to
22 implement this section;

23 (5) Distribute the initial preferred drug list, and any subsequent
24 revisions, to every provider with prescriptive authority with whom it
25 has a core provider agreement, including with it a description of how
26 the list was developed, and how it will be used.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09 RCW
28 to read as follows:

29 Reimbursement of any nonpreferred drug is subject to prior
30 authorization. A preferred drug may be subject to prior authorization
31 where it has a narrow therapeutic indication, presents a risk of
32 inappropriate utilization, or poses significant safety concerns. A
33 preferred drug may not be subject to prior authorization for the sole
34 reason that it costs more than other drugs in its therapeutic class.

35 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.09 RCW
36 to read as follows:

1 (1) The pharmacy and therapeutics committee is established to
2 assist the department in the development and implementation of a
3 preferred drug program.

4 (2) The committee shall be comprised as specified in 42 U.S.C. Sec.
5 1396r-8, and consist of nine members, to be appointed by the governor
6 as follows:

7 (a) Four physicians licensed under chapter 18.57 or 18.71 RCW and
8 actively engaged in the practice of medicine, at least one of whom is
9 employed by a carrier as defined in RCW 48.43.005, chosen from a list
10 of nominees provided by the Washington state medical association;

11 (b) One advanced registered nurse practitioner licensed in this
12 state and actively engaged in the practice of nursing chosen from a
13 list of nominees provided by the Washington state nurses association;

14 (c) Three pharmacists licensed in this state and actively engaged
15 in the practice of pharmacy chosen from a list of nominees provided by
16 the Washington state pharmacists association; and

17 (d) One person with background experience, education, or expertise
18 in pharmacoconomics.

19 (3) No person shall be appointed to or remain on the committee who
20 is employed by a pharmaceutical manufacturer, or who receives or has
21 received remuneration, grants, or other thing of economic value from a
22 pharmaceutical manufacturer if it could reasonably be expected that the
23 remuneration, grant, or thing of economic value would influence the
24 vote, action, or judgment of the person as a member of the committee.

25 (4) Committee members serve staggered three-year terms. Of the
26 initial members, one physician, the advanced registered nurse
27 practitioner, and one pharmacist are each appointed for two-year terms,
28 and one physician, one pharmacist, and the pharmacoconomics
29 representative are each appointed for one-year terms. The remaining
30 committee members are appointed for three-year terms. Members may be
31 reappointed for a period not to exceed three three-year terms. A
32 committee member whose term has expired will continue to serve until
33 his or her successor is appointed. Vacancies on the committee must be
34 filled for the balance of the unexpired term from nominee lists for the
35 appropriate committee category as under subsection (2) of this section.

36 (5) Committee members must select a chair and a vice-chair on an
37 annual basis from the committee membership.

1 (6) The department must provide staff support to the committee.
2 Committee members serve without compensation, but must be reimbursed
3 for expenses pursuant to RCW 43.03.050 and 43.03.060.

4 (7) The members of the committee are immune from civil liability
5 for any official acts performed in good faith as members of the
6 committee.

7 (8) The committee must:

8 (a) Recommend to the department which drugs it should identify as
9 its preferred drugs from among those determined, pursuant to section
10 3(2) of this act, to be essentially equal in terms of safety, efficacy,
11 and outcomes. In making these recommendations, the committee must
12 consider, among other factors, the relative cost-effectiveness of the
13 drugs being considered, the impact of each drug on the state's overall
14 health care expenditures, and the efforts of each drug's manufacturer
15 to ensure that all Washington residents have access to medically
16 necessary medicines at an affordable price. The committee must review
17 the preferred drug list at least annually, and recommend to the
18 department any changes it deems appropriate to meet the objectives of
19 this act;

20 (b) Make recommendations regarding the rules to be adopted by the
21 department to implement the preferred drug program; and

22 (c) Make recommendations regarding the preferred drug list
23 development and review process, and program implementation, as
24 necessary to achieve the objectives of this act.

25 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.09 RCW
26 to read as follows:

27 Proprietary information submitted upon request of the department or
28 the committee by any vendor or pharmaceutical manufacturer for the
29 purposes of this act are exempt from public inspection and copying
30 under chapter 42.17 RCW when necessary to prevent trade secrets or
31 prevent unfair competition.

32 **Sec. 7.** RCW 42.30.110 and 2001 c 216 s 1 are each amended to read
33 as follows:

34 (1) Nothing contained in this chapter may be construed to prevent
35 a governing body from holding an executive session during a regular or
36 special meeting:

37 (a) To consider matters affecting national security;

1 (b) To consider the selection of a site or the acquisition of real
2 estate by lease or purchase when public knowledge regarding such
3 consideration would cause a likelihood of increased price;

4 (c) To consider the minimum price at which real estate will be
5 offered for sale or lease when public knowledge regarding such
6 consideration would cause a likelihood of decreased price. However,
7 final action selling or leasing public property shall be taken in a
8 meeting open to the public;

9 (d) To review negotiations on the performance of publicly bid
10 contracts when public knowledge regarding such consideration would
11 cause a likelihood of increased costs;

12 (e) To consider, in the case of an export trading company,
13 financial and commercial information supplied by private persons to the
14 export trading company;

15 (f) To receive and evaluate complaints or charges brought against
16 a public officer or employee. However, upon the request of such
17 officer or employee, a public hearing or a meeting open to the public
18 shall be conducted upon such complaint or charge;

19 (g) To evaluate the qualifications of an applicant for public
20 employment or to review the performance of a public employee. However,
21 subject to RCW 42.30.140(4), discussion by a governing body of
22 salaries, wages, and other conditions of employment to be generally
23 applied within the agency shall occur in a meeting open to the public,
24 and when a governing body elects to take final action hiring, setting
25 the salary of an individual employee or class of employees, or
26 discharging or disciplining an employee, that action shall be taken in
27 a meeting open to the public;

28 (h) To evaluate the qualifications of a candidate for appointment
29 to elective office. However, any interview of such candidate and final
30 action appointing a candidate to elective office shall be in a meeting
31 open to the public;

32 (i) To discuss with legal counsel representing the agency matters
33 relating to agency enforcement actions, or to discuss with legal
34 counsel representing the agency litigation or potential litigation to
35 which the agency, the governing body, or a member acting in an official
36 capacity is, or is likely to become, a party, when public knowledge
37 regarding the discussion is likely to result in an adverse legal or
38 financial consequence to the agency.

1 This subsection (1)(i) does not permit a governing body to hold an
2 executive session solely because an attorney representing the agency is
3 present. For purposes of this subsection (1)(i), "potential
4 litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a)
5 concerning:

6 (A) Litigation that has been specifically threatened to which the
7 agency, the governing body, or a member acting in an official capacity
8 is, or is likely to become, a party;

9 (B) Litigation that the agency reasonably believes may be commenced
10 by or against the agency, the governing body, or a member acting in an
11 official capacity; or

12 (C) Litigation or legal risks of a proposed action or current
13 practice that the agency has identified when public discussion of the
14 litigation or legal risks is likely to result in an adverse legal or
15 financial consequence to the agency;

16 (j) To consider, in the case of the state library commission or its
17 advisory bodies, western library network prices, products, equipment,
18 and services, when such discussion would be likely to adversely affect
19 the network's ability to conduct business in a competitive economic
20 climate. However, final action on these matters shall be taken in a
21 meeting open to the public;

22 (k) To consider, in the case of the state investment board,
23 financial and commercial information when the information relates to
24 the investment of public trust or retirement funds and when public
25 knowledge regarding the discussion would result in loss to such funds
26 or in private loss to the providers of this information;

27 (l) To consider, in the case of the pharmacy and therapeutics
28 committee established in section 5 of this act, proprietary or
29 confidential nonpublished information that relates to the development
30 or revision of the preferred drug list or the designation of a drug for
31 prior authorization.

32 (2) Before convening in executive session, the presiding officer of
33 a governing body shall publicly announce the purpose for excluding the
34 public from the meeting place, and the time when the executive session
35 will be concluded. The executive session may be extended to a stated
36 later time by announcement of the presiding officer.

37 **NEW SECTION. Sec. 8.** (1) By January 1, 2003, the department of
38 social and health services shall submit to the governor and the

1 legislature a progress report regarding the implementation of the
2 preferred drug program.

3 (2) Beginning January 1, 2004, and by January 1st of each year
4 through 2006, the department shall submit to the governor and the
5 legislature a report on the effect of the preferred drug program. The
6 report must address whether the programs have succeeded in promoting
7 improved clinical outcomes and cost-effective drug utilization, and may
8 present recommendations for program modifications, or for additional
9 strategies that should be pursued to promote appropriate and cost-
10 effective utilization of prescription drugs by residents of the state
11 of Washington.

12 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.09 RCW
13 to read as follows:

14 The department shall submit and, upon approval, implement a section
15 1115 research and demonstration waiver request to the federal centers
16 for medicare and medicaid services to establish a medicaid senior
17 prescription drug assistance program. The program shall:

18 (1) Cover persons age sixty-five years old or older with household
19 incomes up to two hundred percent of the federal poverty level who have
20 no medicare supplement policy or retiree health benefit plan that
21 covers drugs;

22 (2) Provide a pharmacy benefit as comprehensive as that provided in
23 the current Washington medicaid state plan; and

24 (3) Include reasonable enrollee cost sharing.

25 The department shall limit enrollment as necessary to prevent an
26 overexpenditure of the program's appropriation."

27 **SSB 6368** - S AMD 603
28 By Senator Parlette

29 NOT ADOPTED 02/18/02

30 On page 1, line 2 of the title, after "system;" strike the
31 remainder of the title and insert "amending RCW 74.09.010 and
32 42.30.110; adding new sections to chapter 74.09 RCW; and creating new
33 sections."

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