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HOUSE BILL 1703

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Conway, Darneille, Keiser, Cooper, Romero, Tokuda, Veloria and Fisher

Read first time 02/01/2001. Referred to Committee on Health Care.

1 AN ACT Relating to prescription drug prices; adding a new chapter  
2 to Title 70 RCW; providing an effective date; and declaring an  
3 emergency.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) Approximately one in four residents of Washington state have no  
7 or wholly inadequate prescription drug insurance coverage.

8 (b) These uninsured residents pay excessive prices for prescription  
9 drugs, far higher prices than are paid by managed care organizations,  
10 insurance companies, and the federal government for the same medicines  
11 and dosages. In many cases, these excessive drug prices have the  
12 effect of denying residents access to medically necessary care, and  
13 thereby threatening their health and safety.

14 (c) Many residents require repeated doctor or medical clinic  
15 appointments, having gotten sicker because they cannot afford to take  
16 the prescriptions prescribed for them. Many residents are admitted to  
17 or treated at hospitals each year because they cannot afford the drugs  
18 prescribed for them that could have prevented the need for  
19 hospitalization. Many others enter expensive institutional care

1 settings because they cannot afford their necessary prescription drugs  
2 that could have supported them outside of an institution. In each of  
3 these circumstances, state medical assistance programs, including the  
4 medicaid program, literally pay the price.

5 (d) One major reason uninsured residents pay so much for  
6 prescription drugs is that, unlike insured residents, they have no  
7 prescription benefits manager negotiating a fair price with the drug  
8 companies on their behalf.

9 (e) The state government is the only agent that, as a practical  
10 matter, can play an effective role as a market participant on behalf of  
11 all residents who are uninsured or underinsured. The state can and  
12 should act as a prescription benefits manager, negotiating voluntary  
13 drug rebates and using these funds to reimburse retail pharmacies for  
14 offering lower drug prices.

15 (f) The state is a major purchaser of prescription drugs and should  
16 use its position to assist all residents to purchase drugs at a  
17 reasonable price.

18 (2) This chapter is enacted by the legislature to create a program  
19 whereby the state acts as a participant in the prescription drug  
20 marketplace, negotiating voluntary rebates from drug companies and  
21 using the funds to make prescription drugs more affordable to  
22 Washington residents. Such a program will improve public health and  
23 welfare, promote the economic strength of our society, and  
24 substantially benefit state health assistance programs, including the  
25 medicaid program.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply  
27 throughout this chapter unless the context clearly requires otherwise.

28 (1) "Department" means the department of general administration.

29 (2) "Director" means the director of the department of general  
30 administration, or the director's designee.

31 (3) "Labeler" means an entity or person that receives prescription  
32 drugs from a manufacturer or wholesaler and repackages those drugs for  
33 later retail sale, and that has a labeler code from the federal food  
34 and drug administration under 21 C.F.R. Sec. 207.20 (1999).

35 (4) "Manufacturer" means a manufacturer of prescription drugs and  
36 includes a subsidiary or affiliate of a manufacturer.

37 (5) "Program" means the prescription drug price program created in  
38 section 3 of this act.

1 (6) "Retail pharmacy" means a retail pharmacy or other business  
2 licensed to dispense prescription drugs in this state.

3 NEW SECTION. **Sec. 3.** (1) The prescription drug price program is  
4 established within the department to lower prescription drug prices for  
5 uninsured and underinsured residents of the state.

6 (2) A drug manufacturer or labeler that sells prescription drugs in  
7 the state may voluntarily elect to enter into a rebate agreement with  
8 the department.

9 (3) The director shall negotiate the terms of the rebate from a  
10 manufacturer or labeler, taking into consideration the rebate  
11 calculated under the medicaid rebate program pursuant to 42 U.S.C. Sec.  
12 1396r-8, the average wholesale price of prescription drugs, and any  
13 other available information on prescription drug prices and price  
14 discounts.

15 (4) If a drug manufacturer or labeler elects not to agree to a  
16 rebate, the director shall review those manufacturer's products for  
17 prior authorization for the state medicaid program pursuant to chapter  
18 74.09 RCW, and take similar actions involving prior authorization or  
19 formularies for any other state-funded prescription drug program. The  
20 director shall adopt rules creating clear procedures for the  
21 implementation of this subsection. The names of manufacturers and  
22 labelers that do not enter into rebate agreements are public  
23 information and the department shall release this information to the  
24 public. The director shall also publicize to doctors, pharmacists, and  
25 other health professionals information about the relative cost of drugs  
26 produced by manufacturers and labelers that enter into rebate  
27 agreements compared to those who do not enter into rebate agreements.

28 NEW SECTION. **Sec. 4.** A retail pharmacy shall discount the price  
29 of prescription drugs sold to program participants.

30 (1) The department shall establish discounted prices for drugs  
31 covered by a rebate agreement and shall promote the use of efficacious  
32 and reduced-cost drugs, taking into consideration reduced prices for  
33 state and federally capped drug programs, differential dispensing fees,  
34 administrative overhead, and incentive payments.

35 (2) Beginning July 1, 2001, a retail pharmacy shall offer  
36 prescription drugs at or below the average wholesale price, minus six  
37 percent, plus a dispensing fee designated by the director. These

1 initial price levels shall be calculated by the director and the  
2 dispensing fee shall not be less than that provided under the state  
3 medicaid program. The average wholesale price is the wholesale price  
4 charged on a specific commodity that is assigned by the drug  
5 manufacturer and is listed in a nationally recognized drug pricing  
6 file.

7 (3) No later than January 1, 2002, a retail pharmacy shall offer  
8 prescription drugs at or below the initial price levels specified in  
9 subsection (2) of this section minus the amount of any rebate paid by  
10 the state to the retail pharmacy. These discounted price levels shall  
11 be calculated by the director. In determining the discounted price  
12 levels, the director shall consider an average of all rebates weighted  
13 by sales of drugs subject to these rebates over the most recent twelve-  
14 month period for which the information is available.

15 NEW SECTION. **Sec. 5.** All residents of the state are eligible to  
16 participate in the program. The department shall establish simplified  
17 procedures for issuing program enrollment cards to eligible residents.  
18 The department shall undertake outreach efforts to build public  
19 awareness of the program and maximize enrollment by eligible residents.

20 NEW SECTION. **Sec. 6.** (1) The board of pharmacy, created under RCW  
21 18.64.001, shall adopt rules requiring disclosure by retail pharmacies  
22 to program participants of the amount of savings provided as a result  
23 of the program. The rules must protect information that is proprietary  
24 in nature.

25 (2) The department may not impose transaction charges on retail  
26 pharmacies that submit claims or receive payments under the program.

27 (3) A retail pharmacy shall submit claims to the department to  
28 verify the amount charged to program participants.

29 (4) On a weekly or biweekly basis, the department shall reimburse  
30 a retail pharmacy for discounted prices provided to program  
31 participants and dispensing fees set by the director.

32 (5) The department shall collect from the retail pharmacies  
33 utilization data necessary to calculate the amount of the rebate from  
34 the manufacturer or labeler. The department shall protect the  
35 confidentiality of all information subject to confidentiality  
36 protection under state or federal law, rule, or regulation.

1        NEW SECTION.    **Sec. 7.**    Discrepancies in rebate amounts must be  
2 resolved using the process established in this section.

3        (1) If there is a discrepancy in the manufacturer's or labeler's  
4 favor between the amount claimed by a pharmacy and the amount rebated  
5 by the manufacturer or labeler, the department, at the department's  
6 expense, may hire a mutually agreed-upon independent auditor. If a  
7 discrepancy still exists following the audit, the manufacturer or  
8 labeler shall justify the reason for the discrepancy or make payment to  
9 the department for any additional amount due.

10       (2) If there is a discrepancy against the interest of the  
11 manufacturer or labeler in the information provided by the department  
12 to the manufacturer or labeler regarding the manufacturer's or  
13 labeler's rebate, the manufacturer or labeler, at the manufacturer's or  
14 labeler's expense, may hire a mutually agreed-upon independent auditor  
15 to verify the accuracy of the data supplied to the department. If a  
16 discrepancy still exists following the audit, the department shall  
17 justify the reason for the discrepancy or refund to the manufacturer  
18 any excess payment made by the manufacturer or labeler.

19       (3) Following the procedures established in subsection (1) or (2)  
20 of this section, either the department or the manufacturer or labeler  
21 may request a hearing. Supporting documentation must accompany the  
22 request for a hearing.

23       NEW SECTION.    **Sec. 8.**    The prescription drug price account is  
24 created in the custody of the state treasurer. All receipts from  
25 revenues paid by manufacturers or labelers who pay rebates and any  
26 appropriations made to the account must be deposited into the account.  
27 Expenditures from the account may be used only to reimburse retail  
28 pharmacies for discounted prices provided to program participants and  
29 to reimburse the department for the costs of administering the program.  
30 Only the director of general administration or the director's designee  
31 may authorize expenditures from the account. The account is subject to  
32 allotment procedures under chapter 43.88 RCW, but an appropriation is  
33 not required for expenditures.

34       NEW SECTION.    **Sec. 9.**    The department shall report the enrollment  
35 and financial status of the program to the legislature by the second  
36 week in January each year.

1        NEW SECTION.    **Sec. 10.**    In implementing this chapter, the  
2 department shall coordinate with other governmental programs to  
3 increase efficiency and, where it is beneficial to another state  
4 program, combine drug pricing negotiations to maximize drug rebates for  
5 this and other programs, including but not limited to the state  
6 medicaid program, the health care authority, the department of health,  
7 and other participating public and private entities.

8        NEW SECTION.    **Sec. 11.**    The department may adopt rules to implement  
9 the provisions of this chapter.

10       NEW SECTION.    **Sec. 12.**    The department may seek any waivers of  
11 federal law, rule, or regulation necessary to implement the provisions  
12 of this chapter.

13       NEW SECTION.    **Sec. 13.**    This act may be known and cited as the  
14 "prescription drug fair pricing act."

15       NEW SECTION.    **Sec. 14.**    If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19       NEW SECTION.    **Sec. 15.**    This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and takes effect  
22 July 1, 2001.

23       NEW SECTION.    **Sec. 16.**    Sections 1 through 15 of this act  
24 constitute a new chapter in Title 70 RCW.

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