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SENATE BILL 6197

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State of Washington 57th Legislature 2001 Second Special Session

By Senators Thibaudeau, Deccio, Franklin, Winsley, Fraser and Costa

Read first time 06/07/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the Washington pharmacy access initiative;  
2 amending RCW 41.05.026; adding a new chapter to Title 70 RCW; and  
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Administrator" means the Washington pharmacy access initiative  
8 administrator, who also holds the position of administrator of the  
9 Washington state health care authority.

10 (2) "Eligible person" means a resident of the state who is:

11 (a) Ineligible for medicaid prescription drug benefits;

12 (b) Ineligible for, or not receiving, or both, a prescription drug  
13 benefit under a medicare supplemental policy or any other third-party  
14 payer prescription drug benefit;

15 (c) Not confined or residing in a government-operated institution,  
16 unless he or she meets eligibility criteria adopted by the  
17 administrator;

18 (d)(i) At least sixty-five years old; or (ii) between the ages of  
19 nineteen and sixty-four who is otherwise eligible for benefits under

1 Title II of the social security act (federal old age, survivors, and  
2 disability insurance benefits); and

3 (e) A person whose gross family income at the time of enrollment  
4 does not exceed two hundred percent of the federal poverty level as  
5 adjusted for family size and determined annually by the federal  
6 department of health and human services.

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

11 (4) "Mail order program" means a program to dispense prescription  
12 drugs by postal delivery service designated and administered by the  
13 Washington state health care authority, and any entity with which it  
14 contracts, upon an enrollee's submission of a prescription and the  
15 applicable copayment.

16 (5) "Maintenance drug" means a prescription drug prescribed to an  
17 individual for a chronic condition, the use of which is medically  
18 necessary for a consecutive period of ninety days or longer.

19 (6) "Manufacturer" means a manufacturer of prescription drugs and  
20 includes a subsidiary or affiliate of a manufacturer.

21 (7) "Pharmacy benefit manager" means an entity under contract with  
22 the Washington state health care authority, whether organized on a for-  
23 profit or a not-for-profit basis, contracted to manage the Washington  
24 prescription drug insurance plan established by sections 3 through 9 of  
25 this act.

26 (8) "Pharmacy services" means services provided by a pharmacist,  
27 consistent with chapter 18.64 RCW, intended to assist an enrollee in  
28 the safe, appropriate, and cost-effective use of drugs that he or she  
29 has been prescribed. These services may include but are not limited to  
30 disease management, case management, education and counseling, special  
31 pharmaceutical packaging, and medication compliance programs.

32 (9) "Premium" means a periodic payment, based upon gross family  
33 income, that an individual or a financial sponsor makes to the plan as  
34 consideration for an eligible person's enrollment in the plan.

35 (10) "Prescription drug" means any drug required by state or  
36 federal law or regulation to be dispensed only by a prescription,  
37 including finished dosage forms and active ingredients subject to  
38 section 503(b) of the federal food, drug, and cosmetic act.

1 (11) "Program" means the prescription drug price program created in  
2 section 16 of this act.

3 (12) "Retail pharmacy" means a retail pharmacy or other business  
4 licensed to dispense prescription drugs in this state.

5 (13) "Subsidy" means the difference between the full cost of  
6 participation in the plan and the amount determined to be the  
7 enrollee's responsibility under section 4(3) of this act.

8 (14) "Washington prescription drug insurance plan" or "plan" means  
9 the plan for providing coverage for prescription drugs and pharmacy  
10 services established in sections 3 through 9 of this act.

11 NEW SECTION. **Sec. 2.** (1) The Washington pharmacy access  
12 initiative is established within the Washington state health care  
13 authority. The administrative head and appointing authority of the  
14 initiative is the administrator of the Washington state health care  
15 authority. The initiative includes the following components:

16 (a) A subsidized prescription drug insurance plan for seniors and  
17 the disabled, designed and implemented pursuant to sections 3 through  
18 9 of this act;

19 (b) Prescription drug information and education grants awarded to  
20 local organizations pursuant to section 10 of this act;

21 (c) A uniform formulary of prescription drugs and a system for  
22 prescription drug utilization review for state-purchased health care  
23 programs as provided in section 13 of this act. In consultation with  
24 appropriate state agencies, the administrator may determine the extent  
25 to which the formulary or prescription drug utilization review will  
26 apply to each state-purchased health care program;

27 (d) A system of academic detailing and consumer counterdetailing  
28 that educates physicians and other prescribers and consumers on the  
29 therapeutic and cost-effective utilization of prescription drugs. In  
30 developing this, the administrator shall:

31 (i) First assess current private and public sector academic  
32 detailing and consumer counterdetailing activities in Washington state.  
33 The system developed under this subsection should be designed to  
34 complement, coordinate, and strengthen these existing activities; and

35 (ii) Ensure that the system developed under this subsection is  
36 consistent with and supports successful implementation of the formulary  
37 developed pursuant to section 13 of this act and complements the grants  
38 awarded pursuant to section 10 of this act;

1 (e) Recommendations for continuing medical education opportunities  
2 for physicians and other health care professionals who prescribe,  
3 dispense, or administer prescription drugs. Any continuing medical  
4 education recommended or offered as a result of efforts under this  
5 section must ensure that information presented to attendees regarding  
6 utilization of prescription drugs is unbiased;

7 (f) Disease management pilot projects, as provided in section 14 of  
8 this act; and

9 (g) The prescription drug price program, implemented pursuant to  
10 sections 16 through 21 of this act.

11 (2) In carrying out his or her duties under this act, the  
12 administrator shall request the participation of the department of  
13 social and health services, the department of health, the state board  
14 of health, the department of corrections, the department of labor and  
15 industries, the office of the insurance commissioner, physicians,  
16 advanced registered nurse practitioners, hospitals, pharmacists, the  
17 state board of pharmacy and any other appropriate licensing boards,  
18 consumer representatives, health plans as defined in RCW 48.43.005,  
19 pharmacy benefits management companies, self-insured employer sponsored  
20 health benefits plans, and any other interested party.

21 (3) In carrying out his or her duties under this act, the  
22 administrator may:

23 (a) Contract with third parties for services necessary to carry out  
24 the administrator's activities under this act where contracting will  
25 promote economy, avoid duplication of effort, and make the best use of  
26 available expertise. Any such contractor or consultant is prohibited  
27 from releasing, publishing, or otherwise using any information made  
28 available to it under its contractual responsibility without specific  
29 permission of the administrator;

30 (b) Call upon state agencies to provide available information as  
31 necessary to assist the administrator in meeting his or her  
32 responsibilities under this act, which information shall be supplied as  
33 promptly as circumstances permit;

34 (c) Appoint technical or advisory committees, as he or she deems  
35 necessary. Individuals appointed to any technical or other advisory  
36 committee may be reimbursed for their travel expenses under RCW  
37 43.03.050 and 43.03.060;

1 (d) Solicit, accept, and spend public and private grants,  
2 contributions, and other funds to match public funds appropriated to  
3 carry out the purposes of this act.

4 NEW SECTION. **Sec. 3.** The Washington prescription drug insurance  
5 plan is established within the Washington pharmacy access initiative.  
6 The plan shall be actuarially sound and designed to provide eligible  
7 persons with coverage for prescription drugs and pharmacy services.  
8 Enrollment in the plan is voluntary.

9 NEW SECTION. **Sec. 4.** In implementing the Washington prescription  
10 drug insurance plan, the administrator shall take all necessary steps  
11 to ensure that the plan is structured in a way that maximizes savings,  
12 efficiencies, affordability, benefits, and coverage, and in so doing,  
13 has the following powers and duties:

14 (1) To design and from time to time revise a schedule of covered  
15 prescription drugs and pharmacy services. No prescription drug shall  
16 be excluded from any formulary established for the plan unless another  
17 prescription drug is available on the formulary that is therapeutically  
18 equivalent to the excluded prescription drug. All enrollees are  
19 entitled to receive covered drugs and services in return for premium  
20 payments to the plan. In designing and revising the schedule of drugs  
21 and services, the administrator's decisions shall be based on  
22 scientific evidence and be intended to optimize patient care,  
23 discourage prescribing that is not medically indicated, and encourage  
24 the most cost-effective selection of medications. The administrator  
25 shall adopt any uniform formulary developed pursuant to section 13 of  
26 this act;

27 (2) To negotiate price discounts and rebates from pharmaceutical  
28 manufacturers for prescription drugs covered under the plan;

29 (3) To determine the periodic premiums due the plan from enrollees,  
30 based upon gross family income. A financial sponsor may, with the  
31 prior approval of the administrator, pay the premium, rate, or any  
32 other amount on behalf of an enrollee, by arrangement with the enrollee  
33 and through a mechanism acceptable to the administrator;

34 (4) Subject to section 5 of this act, to design and implement a  
35 structure of enrollee cost-sharing. The structure shall discourage  
36 inappropriate enrollee utilization of drugs and services, and may  
37 utilize copayments, deductibles, and other cost-sharing mechanisms, but

1 shall not be so costly to enrollees as to constitute a barrier to  
2 appropriate utilization of necessary drugs and services;

3 (5) To limit enrollment of persons so as to prevent an  
4 overexpenditure of appropriations by the plan. Whenever the  
5 administrator finds that there is danger of such an overexpenditure,  
6 the administrator shall close enrollment until the administrator finds  
7 the danger no longer exists;

8 (6) To limit the payment of subsidies to subsidized enrollees;

9 (7) To enter into a competitively procured contract with one or  
10 more entities including, but not limited to, a pharmacy benefit  
11 manager, to administer benefits under the plan. The procurement shall  
12 explicitly be made a part of, or the contract shall be performed in  
13 conjunction with, any established state agency aggregate purchasing  
14 program. The health care authority may contract with entities to  
15 perform marketing, enrollment, billing, claims processing, claims  
16 management, or any other function it deems necessary;

17 (8) To offer a mail order program and require the use of a mail  
18 order program for maintenance drugs. No mail order program for  
19 maintenance drugs may be required unless the administrator determines  
20 in writing that material savings will result to the state or enrollees  
21 without compromising the health or safety of enrollees. In making such  
22 a determination, the administrator shall consider the impact of a mail  
23 order program on the value of the retail pharmacy services in the  
24 communities. Prior to making such a determination, the administrator  
25 shall hold at least one public hearing in order to hear testimony from  
26 members of the public. Any mail order program must be administered by  
27 the Washington state health care authority, and the contracted pharmacy  
28 benefit manager;

29 (9) To receive periodic premiums from or on behalf of enrollees,  
30 deposit them in the prescription drug insurance plan operating account,  
31 and keep records of enrollee status;

32 (10) To accept applications from individuals for enrollment in the  
33 Washington prescription drug insurance plan, to establish appropriate  
34 minimum-enrollment periods for enrollees as may be necessary, and to  
35 determine, upon application and on a reasonable schedule defined by the  
36 health care authority, or at the request of any enrollee, eligibility  
37 due to current gross family income for sliding scale premiums. Funds  
38 received by a family as part of participation in the adoption support  
39 program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145

1 shall not be counted toward a family's current gross family income for  
2 the purposes of this chapter. When an enrollee fails to report income  
3 or income changes accurately, the administrator shall have the  
4 authority either to bill the enrollee for the amounts overpaid by the  
5 state or to impose civil penalties of up to two hundred percent of the  
6 amount of subsidy overpaid due to the enrollee incorrectly reporting  
7 income. The administrator shall adopt rules to define the appropriate  
8 application of these sanctions and the processes to implement the  
9 sanctions provided in this subsection, within available resources. No  
10 subsidy may be paid with respect to any enrollee whose current gross  
11 family income exceeds twice the federal poverty level or who is a  
12 recipient of medical assistance or medical care services under chapter  
13 74.09 RCW. If a number of enrollees drop their enrollment for no  
14 apparent good cause, the administrator may establish appropriate rules  
15 or requirements that are applicable to such individuals before they are  
16 allowed to reenroll in the plan;

17 (11) To establish a time period, not to exceed nine months from the  
18 effective date of coverage, within which benefits will not be provided  
19 for any condition for which a health care provider recommended or  
20 provided treatment within six months of a person's application for  
21 enrollment. A process to waive the preexisting condition waiting  
22 period in appropriate circumstances may also be established;

23 (12) To evaluate the effects this chapter has on private employer-  
24 based prescription drug coverage and to take appropriate measures  
25 consistent with state and federal statutes that will discourage the  
26 reduction of such coverage in the state;

27 (13) To design and implement prescriber education programs and  
28 other interventions directed at health care providers intended to  
29 promote the safest, most appropriate, and cost-effective use of  
30 prescription drugs by plan enrollees;

31 (14) In consultation with appropriate state and local government  
32 agencies, to establish criteria defining eligibility for persons  
33 confined or residing in government-operated institutions.

34 NEW SECTION. **Sec. 5.** The plan shall pay the costs of all generic  
35 and preferred prescription drugs and pharmacy services for an enrollee  
36 once that enrollee's out-of-pocket expenditures in a calendar year on  
37 prescription drugs and pharmacy services exceeds the lesser of: (1)  
38 Ten percent of the enrollee's gross annual household income; or (2) two

1 thousand dollars. For purposes of this section, out-of-pocket  
2 expenditures do not include monthly premiums, for which an enrollee  
3 remains responsible.

4 NEW SECTION. **Sec. 6.** (1) The Washington state health care  
5 authority, and any entity with which it contracts, shall inform  
6 enrollees in writing of the plan's scope, coverage, cost-sharing  
7 requirements, and any limitations on access to prescription drugs. The  
8 Washington state health care authority, and any entity with which it  
9 contracts, shall provide for a clear and timely process by which  
10 enrollees can appeal a decision by the health care authority or any  
11 contracted entity to deny or limit coverage or benefits under this  
12 section.

13 (2) The appeal process shall, at a minimum, provide enrollees with:  
14 (a) The opportunity to obtain a nonpreferred drug at the copayment  
15 level of a preferred drug, or to obtain any prescription drug excluded  
16 by the plan, upon a separate written certification by the enrollee's  
17 physician, satisfactory to the health care authority, that the  
18 nonpreferred or excluded drug is medically necessary and there is no  
19 therapeutically equivalent preferred drug available to the enrollee;  
20 (b) a provision allowing enrollees to appeal the exclusion of any  
21 prescription drug from any formulary established for the plan. An  
22 enrollee may apply to be exempt from any mail order requirement of the  
23 plan upon a separate written certification by the enrollee's physician,  
24 satisfactory to the health care authority, that due to a disability or  
25 other significant limiting factor, the use of such a mail order program  
26 would be medically inappropriate for the enrollee. A retail pharmacy  
27 may not be required to dispense a prescription upon the failure of an  
28 enrollee to make the required copayment.

29 NEW SECTION. **Sec. 7.** Any enrollee whose premium payments to the  
30 plan are delinquent or who moves his or her residence out of the state  
31 may be dropped from enrollment status. The administrator shall provide  
32 delinquent enrollees with advance written notice of their removal from  
33 the plan and shall provide for a hearing under chapters 34.05 and 34.12  
34 RCW for any enrollee who contests the decision to drop the enrollee  
35 from the plan.

1        NEW SECTION.    **Sec. 8.**    The activities and operations of the  
2 Washington prescription drug insurance plan under this chapter,  
3 including those of pharmacy benefit managers to the extent of their  
4 participation in the plan, are exempt from the provisions and  
5 requirements of Title 48 RCW, except that persons appointed or  
6 authorized to solicit applications for enrollment in the plan,  
7 including employees of the health care authority, must comply with  
8 chapter 48.17 RCW. For the purposes of this section, "solicit" does  
9 not include distributing information and applications for the plan and  
10 responding to questions.

11        NEW SECTION.    **Sec. 9.**    The prescription drug insurance plan trust  
12 account is hereby established in the state treasury. All nongeneral  
13 fund-state funds collected for this program shall be deposited in the  
14 prescription drug insurance plan trust account. Moneys in the account  
15 shall be used exclusively for the purposes of sections 3 through 9 of  
16 this act. Only the administrator or the administrator's designee may  
17 authorize expenditures from the account. The account is subject to  
18 allotment procedures under chapter 43.88 RCW, but an appropriation is  
19 not required for expenditures.

20        NEW SECTION.    **Sec. 10.**    (1) The Washington pharmacy access  
21 initiative shall award prescription drug information and education  
22 grants to local government or nonprofit organizations for the design  
23 and implementation of programs intended to inform and train persons age  
24 sixty-five and older in the safe and appropriate use of prescription  
25 and nonprescription medications.

26        (2) The grants shall be awarded on a competitive basis, using the  
27 following criteria:

28        (a) The demonstrated ability of the applicant organization to  
29 effectively administer such a program, including appropriate outreach  
30 and follow-up;

31        (b) The financial and in-kind resources that the applicant  
32 organization will bring to the program in addition to those funded by  
33 the grant;

34        (c) The extent to which the proposed program design reflects a  
35 comprehensive understanding of issues related to the safe and  
36 appropriate use of prescription drugs by seniors, and how to  
37 effectively communicate with the target audience;

1 (d) The extent to which the proposed program reflects a  
2 collaborative effort between the applicant organization and other  
3 health care providers and programs in the location to be served,  
4 including doctors, pharmacists, and long-term care providers;

5 (e) The extent to which the proposed program will serve as a model  
6 that can be replicated by other organizations around the state; and

7 (f) Any other criteria deemed appropriate by the administrator to  
8 ensure the quality and cost-effectiveness of the programs funded.

9 In awarding the grants, the administrator shall make every effort  
10 to ensure that the programs are geographically dispersed around the  
11 state.

12 NEW SECTION. **Sec. 11.** Notwithstanding the provisions of chapter  
13 42.17 RCW, records obtained, reviewed by, or on file with the  
14 Washington pharmacy access initiative containing information concerning  
15 medical treatment of individuals is exempt from public inspection and  
16 copying.

17 NEW SECTION. **Sec. 12.** The legislature reserves the right to amend  
18 or repeal all or any part of this chapter at any time and there shall  
19 be no vested private right of any kind against such amendment or  
20 repeal. All the rights, privileges, or immunities conferred by this  
21 chapter or any acts done pursuant thereto shall exist subject to the  
22 power of the legislature to amend or repeal this chapter at any time.

23 NEW SECTION. **Sec. 13.** (1) The administrator shall establish a  
24 pharmacy and therapeutics committee to develop a uniform formulary for  
25 state-purchased health care.

26 (a) The pharmacy and therapeutics committee may be established  
27 directly or through a contract with a private organization. The  
28 committee must be composed of actively practicing health care  
29 professionals, including physicians, pharmacists, advanced registered  
30 nurse practitioners, at least one health care professional employed by  
31 a health plan, as defined in RCW 48.43.005, and experts in  
32 pharmacoeconomics. Additional specialty expertise and participation  
33 may be obtained when necessary.

34 (b) The formulary must be based upon careful consideration and  
35 pharmacoeconomic analysis, giving primary consideration to clinical  
36 efficacy of prescription drugs that have been approved by the federal

1 food and drug administration. Cost considerations can influence  
2 decisions regarding prescription drugs to be included in the formulary  
3 only after safety, efficacy, and therapeutic need have been evaluated.  
4 When safety, efficacy, and clinical outcomes of a drug are similar to  
5 those of existing formulary drugs, or where a positive economic outcome  
6 is not expected with a new drug, it is rational to make a drug  
7 formulary decision based upon the unit cost of that drug. Any other  
8 public or private entity may choose to adopt the formulary developed  
9 under this subsection.

10 (c) The formulary must include clear standards and procedures for  
11 an exception process to ensure consumer access to medically necessary  
12 alternatives to the formulary. No formulary can account for every  
13 therapeutic eventuality or unique patient need. The procedures to  
14 allow the prescribing of nonformulary medications must neither pose a  
15 substantial barrier to the prescribing health care professional nor  
16 hinder the consumer's ability to receive necessary medication.  
17 However, to encourage the use of clinically efficacious and cost-  
18 effective drugs, the administrator may relate prescription drug cost-  
19 sharing to the formulary status of a drug.

20 (d) The administrator may require pharmaceutical manufacturers to  
21 submit available pharmacoeconomic data, including clinical and cost  
22 outcomes, safety, efficacy, and effectiveness information, to the  
23 pharmacy and therapeutics committee in a standardized format to assist  
24 the committee in its evaluation of prescription drug products.

25 (e) Due to the sensitivity of proprietary or nonpublished data that  
26 may be used to evaluate prescription drug products for inclusion on the  
27 formulary, meetings of the pharmacy and therapeutics committee shall be  
28 exempted from application of the open public meetings act, chapter  
29 42.30 RCW.

30 (2) The drug utilization review program must include but is not  
31 limited to prescription drug review, management, and education,  
32 including prospective, concurrent, and retrospective review, to improve  
33 the quality of pharmaceutical care by ensuring that prescription drugs  
34 provided through state-purchased health care programs are appropriate,  
35 medically necessary, and not likely to produce adverse medical results.

36 The administrator may establish a drug utilization review committee  
37 either directly or through a contract with a private organization to  
38 assist in development and implementation of the drug utilization review  
39 program. The committee should be composed of actively practicing

1 health care professionals. Additional specialty expertise may be  
2 obtained as needed. Due to the sensitivity of proprietary or  
3 nonpublished data that may be used by the drug utilization review  
4 committee, meetings of the committee shall be exempted from application  
5 of the open public meetings act, chapter 42.30 RCW.

6 NEW SECTION. **Sec. 14.** The administrator shall design and  
7 implement at least two pilot disease management programs for persons  
8 covered through state-purchased health care programs. The programs  
9 shall begin operation on or before July 1, 2002.

10 (1) The administrator shall determine, in consultation with  
11 appropriate state agencies, the disease groups most appropriate for  
12 disease management and the state-purchased health care programs to  
13 which the disease management programs will apply, after reviewing  
14 claims and cost information and research on the effectiveness of  
15 disease management programs. The following disease groups should first  
16 be considered for disease management programs: Asthma, diabetes,  
17 cardiovascular disease, malignancies, obesity, hemophilia, renal  
18 disease, transplants, intervertebral disc disorders, and populations at  
19 highest risk of improper use of medication.

20 (2) Each pilot disease management program must include physicians,  
21 pharmacists, and other appropriate health care providers in the design  
22 and implementation of the program. Physicians may not be required to  
23 participate in a disease management program as a condition of  
24 contracting to provide state-purchased health care services.

25 (3) The programs must incorporate an evaluation component that will  
26 allow the administrator to identify successful programs that are  
27 candidates for statewide expansion. The evaluation should consider the  
28 impact of the disease management program upon the health status of  
29 participating enrollees, the use of health services by these enrollees,  
30 and the overall costs of treating these enrollees.

31 NEW SECTION. **Sec. 15.** Any savings to health care benefit programs  
32 administered by the public employees' benefits board that result from  
33 implementation of the pharmacy access initiative under this act must be  
34 deposited into the public employees' and retirees' insurance account  
35 established under RCW 41.05.120.

1        NEW SECTION.    **Sec. 16.**    (1) The prescription drug price program is  
2 established within the Washington pharmacy access initiative to lower  
3 prescription drug prices for uninsured and underinsured residents of  
4 the state.

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

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

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

30        NEW SECTION.    **Sec. 17.**    A retail pharmacy shall discount the price  
31 of prescription drugs sold to program participants.

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

37        (2) Beginning no later than January 1, 2002, a retail pharmacy  
38 shall offer prescription drugs at or below the average wholesale price,

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

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

16 NEW SECTION. **Sec. 18.** All residents of the state are authorized  
17 to participate in the program. The administrator shall establish  
18 simplified procedures for issuing program enrollment cards to  
19 authorized residents. The health care authority shall undertake  
20 outreach efforts to build public awareness of the program and maximize  
21 enrollment by authorized residents.

22 NEW SECTION. **Sec. 19.** (1) The board of pharmacy, created under  
23 RCW 18.64.001, shall adopt rules requiring disclosure by retail  
24 pharmacies to program participants of the amount of savings provided as  
25 a result of the program. The rules must protect information that is  
26 proprietary in nature.

27 (2) The health care authority may not impose transaction charges on  
28 retail pharmacies that submit claims or receive payments under the  
29 program.

30 (3) A retail pharmacy shall submit claims to the health care  
31 authority to verify the amount charged to program participants.

32 (4) On a weekly or biweekly basis, the health care authority shall  
33 reimburse a retail pharmacy for discounted prices provided to program  
34 participants and dispensing fees set by the administrator.

35 (5) The health care authority shall collect from the retail  
36 pharmacies utilization data necessary to calculate the amount of the  
37 rebate from the manufacturer or labeler. The health care authority

1 shall protect the confidentiality of all information subject to  
2 confidentiality protection under state or federal law, rule, or  
3 regulation.

4 NEW SECTION. **Sec. 20.** Discrepancies in rebate amounts must be  
5 resolved using the process established in this section.

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

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

24 (3) Following the procedures established in subsection (1) or (2)  
25 of this section, either the health care authority or the manufacturer  
26 or labeler may request a hearing. Supporting documentation must  
27 accompany the request for a hearing.

28 NEW SECTION. **Sec. 21.** The prescription drug price account is  
29 created in the custody of the state treasurer. All receipts from  
30 revenues paid by manufacturers or labelers who pay rebates and any  
31 appropriations made to the account must be deposited into the account.  
32 Expenditures from the account may be used only to reimburse retail  
33 pharmacies for discounted prices provided to program participants and  
34 to reimburse the health care authority for the costs of administering  
35 the program. Only the administrator or the administrator's designee  
36 may authorize expenditures from the account. The account is subject to

1 allotment procedures under chapter 43.88 RCW, but an appropriation is  
2 not required for expenditures.

3 NEW SECTION. **Sec. 22.** By January 1, 2002, and by January 1st of  
4 each year through 2005, the administrator shall submit to the governor  
5 and the legislature a progress report regarding the implementation and  
6 impact of the pharmacy access initiative, including, where appropriate,  
7 information regarding enrollment in and the financial status of each of  
8 its components. The report shall be prepared in consultation with the  
9 agencies and organizations participating in the development of the  
10 initiative under section 2 of this act, and may present recommendations  
11 for modifications to the initiative, or for additional strategies that  
12 should be pursued to provide affordable access to and promote  
13 therapeutic and cost-effective utilization of prescription drugs by  
14 residents of the state of Washington.

15 NEW SECTION. **Sec. 23.** The health care authority may adopt rules  
16 to implement the provisions of this chapter.

17 NEW SECTION. **Sec. 24.** The health care authority may seek any  
18 waivers of federal law, rule, or regulation necessary to implement the  
19 provisions of this chapter.

20 **Sec. 25.** RCW 41.05.026 and 1991 c 79 s 1 are each amended to read  
21 as follows:

22 (1) When soliciting proposals for the purpose of awarding contracts  
23 for goods or services, the administrator shall, upon written request by  
24 the bidder, exempt from public inspection and copying such proprietary  
25 data, trade secrets, or other information contained in the bidder's  
26 proposal that relate to the bidder's unique methods of conducting  
27 business or of determining prices or premium rates to be charged for  
28 services under terms of the proposal.

29 (2) Actuarial formulas, statistics, cost and utilization data, or  
30 other proprietary information submitted upon request of the  
31 administrator or board by a contracting insurer, health care service  
32 contractor, health maintenance organization, or vendor may be withheld  
33 at any time from public inspection when necessary to preserve trade  
34 secrets or prevent unfair competition.

1       (3) Proprietary information submitted upon request of the  
2 administrator by any insurer, vendor, pharmaceutical manufacturer, or  
3 other entity/person for the purpose of analyzing and developing cost  
4 containment options, delivery alternatives, prescription drug education  
5 and utilization systems, and consolidated purchasing for state-  
6 purchased health care programs may be withheld at any time from public  
7 inspection when necessary to preserve trade secrets or prevent unfair  
8 competition.

9       (4) The board may hold an executive session during any regular or  
10 special meeting to discuss information submitted in accordance with  
11 subsection (1) or (2) of this section.

12       NEW SECTION.   **Sec. 26.**   If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16       NEW SECTION.   **Sec. 27.**   Sections 1 through 24 and 26 of this act  
17 constitute a new chapter in Title 70 RCW.

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