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SENATE BILL 6200

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State of Washington 57th Legislature 2001 Second Special Session

By Senators Franklin, Winsley, Thibaudeau, Kohl-Welles, Gardner, Kastama, Costa, Snyder, Shin, Fairley, Fraser, Prentice, McAuliffe, Jacobsen and Rasmussen

Read first time 06/08/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to prescription drug price reduction; amending RCW  
2 74.09.010; adding new sections to chapter 74.09 RCW; and creating new  
3 sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that affordability is  
6 critical in providing access to prescription drugs for Washington  
7 residents. The legislature intends to make prescription drugs more  
8 affordable for qualified Washington residents, thereby increasing the  
9 overall health of Washington residents, promoting healthy communities,  
10 and protecting the public health and welfare of Washington residents.

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

13 As used in this chapter:

14 (1) "Children's health program" means the health care services  
15 program provided to children under eighteen years of age and in  
16 households with incomes at or below the federal poverty level as  
17 annually defined by the federal department of health and human services  
18 as adjusted for family size, and who are not otherwise eligible for

1 medical assistance or the limited casualty program for the medically  
2 needy.

3 (~~(("Committee" means the children's health services committee~~  
4 ~~created in section 3 of this act.)~~) "Commission" means the prescription  
5 drug advisory commission.

6 (3) "County" means the board of county commissioners, county  
7 council, county executive, or tribal jurisdiction, or its designee. A  
8 combination of two or more county authorities or tribal jurisdictions  
9 may enter into joint agreements to fulfill the requirements of RCW  
10 74.09.415 through 74.09.435.

11 (4) "Department" means the department of social and health  
12 services.

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

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

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

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

26 (9) "Medical care services" means the limited scope of care  
27 financed by state funds and provided to general assistance recipients,  
28 and recipients of alcohol and drug addiction services provided under  
29 chapter 74.50 RCW.

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

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

34 (12) "Secretary" means the secretary of social and health services.

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

37 (1) The prescription drug advisory commission is established to  
38 review access to and the pricing of prescription drugs for state

1 residents, to advise the secretary on prescription drug pricing and to  
2 provide periodic reports to the secretary, the governor, and the  
3 legislature.

4 (2) The commission consists of the following twelve members:

5 (a) Three members of the public, appointed by the president of the  
6 senate, one of whom must represent the interests of senior citizens.  
7 Of the initial appointees, one must be appointed for a two-year term  
8 and two for three-year terms;

9 (b) Three members of the public, appointed by the speaker of the  
10 house of representatives, one of whom must represent the interests of  
11 senior citizens. Of the initial appointees, one must be appointed for  
12 a two-year term and two for three-year terms;

13 (c) Two members who are authorized by the laws of this state to  
14 prescribe drugs, appointed by the governor. Of the initial appointees,  
15 one must be appointed for a two-year term and one for a three-year  
16 term;

17 (d) Two pharmacists, appointed by the governor. Of the initial  
18 appointees, one must be appointed for a two-year term and one for a  
19 three-year term. To be appointed to and remain on the commission, each  
20 pharmacist must: (i) Be licensed to practice pharmacy and be engaged  
21 in the practice of retail pharmacy in this state; (ii) have at least  
22 five years of experience in this state as a licensed pharmacist; and  
23 (iii) be a resident of this state; and

24 (e) The insurance commissioner and the executive director of the  
25 state board of pharmacy, or their designees, who shall serve as ex  
26 officio, nonvoting members.

27 (3) With the exception of the initial appointees, all members of  
28 the commission serve for terms of three years and may be reappointed.  
29 With the exception of the pharmacist members, if the profession or  
30 qualifications of a commission member change during the term of  
31 commission membership, the member may continue to complete the term for  
32 which the appointment was made.

33 (4) The commission shall meet at least four times per year. The  
34 members shall select a chair from among the members. Additional  
35 meetings may be called by the chair.

36 (5) The duties of the commission include the following:

37 (a) To review access to prescription drugs for residents of the  
38 state, including, but not limited to, pricing and affordability  
39 information;

1 (b) To advise the secretary on access to prescription drugs and  
2 prescription drug prices, including, but not limited to, insurance and  
3 third-party payments for prescription drugs, the need for maximum  
4 retail prices, and, if maximum retail prices are established, the  
5 procedures for adoption and periodic review of maximum retail prices,  
6 the procedures for establishing maximum retail prices for new  
7 prescription drugs and for reviewing maximum retail prices of selected  
8 drugs and the procedures for phasing out or terminating maximum retail  
9 prices;

10 (c) To advise the secretary on the adoption of rules necessary to  
11 implement this section and section 4 of this act; and

12 (d) To report to the secretary, the legislature, and the governor  
13 by April 1, 2002, and annually thereafter by the second week in  
14 January, including in the report any recommendations for action  
15 regarding access to and the pricing of prescription drugs.

16 (6) The department shall provide staffing for the commission.

17 (7) Members of the commission may receive compensation for their  
18 services in accordance with RCW 43.03.220.

19 (8) In performing its duties, the commission shall work with the  
20 department, the state board of pharmacy, and the insurance  
21 commissioner.

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

24 (1) The following provisions apply to determinations regarding  
25 maximum retail prices for prescription drugs and to the procedures for  
26 establishing those prices:

27 (a) By July 1, 2003, the department must adopt rules establishing  
28 the procedures for adoption and periodic review of maximum retail  
29 prices, the procedures for establishing maximum retail prices for new  
30 prescription drugs and for reviewing maximum retail prices of selected  
31 drugs, and the procedures for phasing out or terminating maximum retail  
32 prices. Before adopting rules under this subsection, the secretary  
33 must consult with and consider the recommendations of the commission  
34 regarding the rules.

35 (b) By January 5, 2004, the secretary must determine whether the  
36 cost of prescription drugs provided to qualified residents under the  
37 prescription drug price program is reasonably comparable to the lowest

1 cost paid for the same drugs delivered or dispensed in the state. In  
2 making this determination the following provisions apply:

3 (i) The secretary must review prescription drug use in the medicaid  
4 program using data from the most recent six-month period for which data  
5 is available.

6 (ii) Using the data reviewed in (b)(i) of this subsection, the  
7 secretary must determine the one hundred drugs for which the most units  
8 were provided and the one hundred drugs for which the total cost was  
9 the highest.

10 (iii) For each prescription drug listed in (b)(ii) of this  
11 subsection, the secretary must determine the cost for each drug for  
12 qualified residents provided those drugs under the prescription drug  
13 price program on a certain date. The average cost for each such drug  
14 must be calculated.

15 (iv) For each prescription drug listed in (b)(ii) of this  
16 subsection, the secretary must determine the lowest cost for each drug  
17 paid by any purchaser on the date that is used for (b)(iii) of this  
18 subsection delivered or dispensed in the state, taking into  
19 consideration the federal supply schedule and prices paid by  
20 pharmaceutical benefits managers and by large purchasers and excluding  
21 drugs purchased through the prescription drug price program. The  
22 average cost for each such drug must be calculated.

23 (v) If the average cost for one or more prescription drugs under  
24 the prescription drug price program as determined in (b)(iii) of this  
25 subsection is not reasonably comparable to the average lowest cost for  
26 the same drug or drugs as determined in (b)(iv) of this subsection, the  
27 secretary must establish maximum retail prices for any or all  
28 prescription drugs sold in the state. Maximum prescription drug prices  
29 established under this subsection must take effect July 1, 2004.

30 (c) In establishing maximum retail prices under this subsection,  
31 the secretary must consider the advice of the commission and follow  
32 procedures set forth by rules adopted by the department.

33 (2) In making a determination under this section the secretary may  
34 rely on pricing information on a selected number of prescription drugs  
35 if that list is representative of the prescription drug needs of the  
36 residents of the state and is made public as part of the process of  
37 establishing maximum retail prices.

38 (3) The secretary may take actions that the secretary determines  
39 necessary if there is a severe limitation or shortage of or lack of

1 access to prescription drugs in the state that could threaten or  
2 endanger the public health or welfare.

3 (4) A retailer of prescription drugs may appeal the maximum retail  
4 price of a prescription drug established under this section in  
5 accordance with the administrative procedure act, chapter 34.05 RCW.

6 (5) The legislature finds that the practices covered by this  
7 section are matters vitally affecting the public interest for the  
8 purpose of applying the consumer protection act, chapter 19.86 RCW. A  
9 violation of the maximum retail prices established by this section is  
10 not reasonable in relation to the development and preservation of  
11 business and is an unfair or deceptive act in trade or commerce and an  
12 unfair method of competition for the purpose of applying the consumer  
13 protection act, chapter 19.86 RCW.

14 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act may be known  
15 and cited as the prescription drugs price reduction act.

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