
SENATE BILL 6201

State of Washington 57th Legislature 2001 Second Special Session

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

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

1 AN ACT Relating to prescription drug prices; and adding a new
2 chapter to Title 70 RCW.

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

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

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

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

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

1 that could have supported them outside of an institution. In each of
2 these circumstances, state medical assistance programs, including the
3 medicaid program, literally pay the price.

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

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

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

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

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

27 (1) "Department" means the department of social and health
28 services.

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

33 (3) "Manufacturer" means a manufacturer of prescription drugs and
34 includes a subsidiary or affiliate of a manufacturer.

35 (4) "Program" means the prescription drug price program created in
36 section 3 of this act.

37 (5) "Retail pharmacy" means a retail pharmacy or other business
38 licensed to dispense prescription drugs in this state.

1 (6) "Secretary" means the secretary of social and health services,
2 or the secretary's designee.

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 secretary 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 secretary 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 secretary 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 secretary shall also publicize to doctors, pharmacists,
25 and other health professionals information about the relative cost of
26 drugs 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 no later than January 1, 2002, a retail pharmacy
36 shall offer prescription drugs at or below the average wholesale price,
37 minus six percent, plus a dispensing fee designated by the secretary.

1 These initial price levels shall be calculated by the secretary 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 October 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 secretary. In determining the discounted price
12 levels, the secretary 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 secretary.

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 secretary or the secretary's designee may authorize
31 expenditures from the account. The account is subject to allotment
32 procedures under chapter 43.88 RCW, but an appropriation is not
33 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.** Sections 1 through 14 of this act
20 constitute a new chapter in Title 70 RCW.

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