SENATE BILL REPORT
2SHB 1541

As Reported by Senate Committee On:
Health Care
Health & Long Term Care, February 22, 2018
Ways & Means, February 26, 2018

Title: An act relating to prescription drug cost transparency.

Brief Description: Addressing prescription drug cost transparency.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Robinson, Johnson, Harris, McBride, Doglio, Wylie, Peterson, Cody, Stonier, Frame, Sawyer, Macri, Sells, Orwall, Jinkins, Senn, Tharinger, Stanford, Riccelli, Fitzgibbon, Ormsby, Gregerson, Hudgins, Ortiz-Self, Ryu, Farrell, Tarleton, Pollet, Clibborn, Fey, Kilduff, Reeves, Kagi, Chapman, Pellicciotti, Bergquist, Goodman, Lovick and Slatter).

Brief History: Passed House: 3/06/17, 52-46; 2/07/18, 50-48.
Committee Activity: Health Care: 3/27/17.
Health & Long Term Care: 2/19/18, 2/22/18 [DPA-WM, w/oRec].
Ways & Means: 2/24/18, 2/26/18 [DPA(WM), DNP, w/oRec].

Brief Summary of Amended Bill

- Requires issuers and drug manufacturers to report certain prescription drug pricing data to a data organization contracted by the Office of Financial Management (OFM).
- Requires the data organization to summarize the prescription drug pricing data and provide reports to the Legislature and OFM.

SENATE COMMITTEE ON HEALTH CARE

Staff: Mich'l Needham (786-7442)

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Cleveland, Chair; Kuderer, Vice Chair; Conway, Keiser, Mullet and Van De Wege.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.
Signed by Senators Bailey, Becker and Fain.

Staff: Greg Attanasio (786-7410)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Ways & Means.
Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker and Van De Wege.

Minority Report: Do not pass.
Signed by Senators Braun, Ranking Member; Honeyford, Assistant Ranking Member; Bailey, Becker, Brown, Rivers, Schoesler, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.
Signed by Senator Fain.

Staff: Sandy Stith (786-7710)

Background: Prescription Drug Purchasing Consortium. Pursuant to statute, the Health Care Authority (HCA) established a prescription drug purchasing consortium. State-purchased health care programs must purchase prescription drugs through the consortium, and local governments, private entities, labor organizations, and uninsured and underinsured residents may voluntarily participate in the consortium. In 2006, Washington and Oregon formed the Northwest Prescription Drug Consortium (Northwest Consortium) to expand their purchasing power. The Northwest Consortium offers access to retail pharmacy discounts, pharmacy benefit management services, rebate management services, and a prescription discount card for uninsured residents.

All-Payer Health Care Claims Database. OFM is directed by statute to establish an all-payer health care claims database to support transparent public reporting of health care information. In July 2017, OFM selected a lead organization and data vendor to coordinate and manage the database. The database will collect claims data from the Medicaid program, Public Employees' Benefits Board programs, all health carriers, third-party administrators, and Department of Labor and Industries programs. Claim files submitted to the database will include pharmacy claims.

State Agency Work on Prescription Drug Costs. In 2017, two agencies reviewed issues related to prescription drug costs. The Department of Health convened a taskforce to evaluate factors contributing to out-of-pocket costs for patients, including prescription drug cost trends. The HCA and the OFM prepared a report on prescription drug costs and potential purchasing strategies at the request of legislators. The report describes increases in state agency spending on prescription drugs in recent years, current cost drivers, strategies to slow the rate of prescription drug spending, and policy options.

Summary of Amended Bill: OFM must conduct a competitive procurement process to select a data organization that will collect, summarize, and prepare a report on prescription drug pricing data provided by drug manufacturers and insurance carriers.

Insurance Carrier Obligations. By March 1 of each year, insurance carriers and issuers must provide the data organization with:

- the 25 most frequently prescribed prescription drugs by health care providers in their network;
- the 25 costliest prescription drugs, and the issuer's total spending on each drug;
- the 25 prescription drugs with the largest year-over-year increase in spending,
- including the percentage increase; and
- a summary of the impact of prescription drug costs on health plan premiums.

Employer-sponsored self-funded health plans and Taft-Hartley trust health plans may voluntarily provide this data.

Manufacturer Obligations. Beginning October 1, 2018, drug manufacturers that sell prescription drugs in Washington must provide the data organization the following information for covered drugs:

- a description of the factors considered when increasing the wholesale acquisition cost of a covered drug;
- a history of cost increases for the past five years if the drug was manufactured by the company during that time;
- the wholesale acquisition cost of the drug at the time of the acquisition, the company from which the drug was purchased, and the purchase price, if it was purchased within the past five years;
- the year the drug was introduced to the market and at what wholesale price;
- the patent expiration date;
- if the drug is a multiple source drug, an innovator multiple source drug, a noninnovator multiple source drug, or a single source drug;
- an itemized cost for the production and sale of each drug; and
- the total financial assistance given through programs, rebates, and coupons.

A covered drug is defined as:

- a drug the manufacturer intends to introduce to the market at a wholesale acquisition cost of $10,000 or more for a course of treatment or a 12-month period, whichever period is longer; or
- is currently on the market, is manufactured by a covered manufacturer, and has a wholesale acquisition cost of more than forty dollars for a course of treatment, and the manufacturer increases the wholesale acquisition cost at least sixteen percent, including the proposed increase and the cumulative increase that occurred two calendar years prior to the date of the proposed increase.

A manufacturer of a covered drug must also notify the purchaser of a qualifying price increase in writing at least sixty days prior to the planned effective date of the increase, beginning October 1, 2018. The notification must include:

- the date of the increase, the current wholesale acquisition cost of the prescription drug, and the dollar amount of the future increase in the wholesale acquisition cost of the prescription drug; and
- a statement regarding whether a change or improvement in the drug necessitates the price increase, and if so, the manufacturer shall describe the change or improvement.

Pharmacy Benefit Manager Obligations. By March 1 of each year, pharmacy benefit managers must provide the data organization with:

- the wholesale acquisition cost of each drug on the pharmacy benefit manager's formulary;
- any discounts, including the total dollar amount and percentage discount, and any rebate received from a manufacturer for each drug on the formulary;
- the total dollar amount of all discounts and rebates described above that are retained by the pharmacy benefit manager for each drug on the formulary;
- any reimbursements the pharmacy benefit manager pays retail pharmacies for each drug on the formulary;
- the negotiated price health plans pay the pharmacy benefit manager for each drug on the formulary;
- any ownership interest the pharmacy benefit manager has in a pharmacy or health plan with which it conducts business; and
- the results of any appeal filed pursuant to RCW 19.340.100(3).

Wholesaler Obligations. By March 1 of each year, pharmacy benefit managers must provide the data organization with:

- any discounts, including the total dollar amount and percentage discount, and any rebate received from a manufacturer for the 25 most frequently sold prescription drugs; and
- the wholesale price for the 25 most frequently sold prescription drugs to pharmacies and hospitals.

Pharmacy Services Administrative Organization (PSAO) Obligations. By March 1 of each year, PSAO must provide the data organization with:

- the negotiated reimbursement rate of the top 25 drugs for which the PSAO most frequently negotiates reimbursement with a health plan or a pharmacy benefit manager on behalf of a pharmacy;
- the schedule of fees charged to pharmacies for the services provided by the PSAO.

Enforcement. OFM may assess a fine of up to $1,000 per day if an issuer or manufacturer fails to comply with these requirements.

Data reporting. The data organization must compile the data collected from carriers and manufacturers into a report to OFM. OFM must conduct an independent analysis of the data and produce a report for the Legislature demonstrating the impact of prescription drug costs health care premiums.

OFM must also collect data from the all-payers claims database on prescription drug billing and produce a separate report for the Legislature concerning the 25 drugs with the greatest variance in billed charges.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Requires pharmacy benefit managers, drug wholesalers, and pharmacy services administrative organizations to report pricing information to a data organization

EFFECT OF HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

- Requires carriers and manufacturers to report pricing data to a data organization and requires manufactures to also report price increase data to purchasers.
- Requires OFM to produce a report on bill charge variances in prescription drugs based on data from the all-payers claims database.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed. Includes a null and void clause.

Staff Summary of Public Testimony (Health Care): *Testimony from 2017 Regular Session.* PRO: Affordability of prescription drugs is a primary issue. The prescription drugs are outpacing all other medical inflation and fast approaching the share of premium costs that inpatient hospital costs represent. Prescription drug costs have increased at 27 percent, and specialty spending has increased over 60 percent. The Senate budget indicated there is a real interest in focusing on prescription drug costs and we believe this is a study bill that will provide data for decision makers. We believe transparency is a critical step to help lower the cost of drugs. This will help tell us what we should know about the price of prescriptions, and as a recent poll showed, lowering prescription drug costs is among the top priorities of consumers. Prescription drug costs are a national priority for carriers. The rapid increases in prescription drug costs are on the fastest slope of increase, approaching in-patient hospital costs.

CON: There are many holes in pricing transparency in the drug supply chain. There are many other participants in the drug supply chain and this focuses on only one area. Some prescription drug costs have been reduced over time, as products become generics or as competition lowers the costs. We believe the focus should be on the out-of-pocket costs for patients not the pricing by manufacturer. Patients don't pay manufacturers, they pay their insurance plan and their cost-sharing varies by plan. The patient out-of-pocket costs taskforce had a broader focus and different strategies. As a trade association, we do not support requiring any manufacturer to reveal proprietary business practices. Creating another database is problematic. We believe there will be federal action on drug pricing and the state should pause while that develops.

Persons Testifying (Health Care): PRO: Katharine Weiss, Washington State Labor Council, AFL-CIO; Scott Plack, Kaiser Permanente; David Knutson, Association of Washington Health Plans; Mel Sorensen, America's Health Insurance Plans.

CON: Jeff Gombosky, Pharmaceutical Research and Manufacturers of America; Sheri Nelson, Association of Washington Business; Brian Warren, Biotechnology Innovation Organization; Bill Clarke, Biotechnology Innovation Organization.

Persons Signed In To Testify But Not Testifying (Health Care): No one.

Staff Summary of Public Testimony on Second Substitute House Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: Drug manufacturers set the initial drug price and this bill is a good step to understanding those pricing decisions. It will provide more data for the Legislature to make policy decisions and allow consumers to see why their prescription drug prices are rising. The lack of access to affordable prescription drugs can lead to people not getting the drugs they need and create more severe medical problems.

CON: The bill is silent on the value of prescription drugs to patients and how they control costs by eliminating the need for more expensive medical intervention. The focus on a manufacturer's list price ignores rebates and other parts of the supply chain. The bill will not lower drug costs and it does not address what consumers actually pay for medications.

Persons Testifying (Health & Long Term Care): PRO: Representative June Robinson, Prime Sponsor; Sybill Hyppolite, SEIU 1199 NW; Dr. David Grossman, Kaiser Foundation Health Plan of Washington; Carolyn Wilson, Patients for Affordable Drugs; Mel Sorensen, America's Health Insurance Plans; Meg Jones, Association of Washington Healthcare Plans.

CON: Lee Newgent, Pharmaceutical Industry Labor-Management Association (PILMA); Bill Clarke, Biotechnology Innovation Organization (BIO); Eric Lohnes, Pharmaceutical Research and Manufacturers of America; Michael Transue, Oregon Biosciences Association.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on Bill as Amended by Health & Long Term Care (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We are asking for information to help care for our 820,000 members. We think you should also care about the 100,000 people in PEB's Kaiser Permanente plan who had prescription costs rise by 14 percent. If you cannot afford health care, what good are expensive prescriptions? We think this bill will help us know where the cost drivers are. This is a critical issue. Drug costs are out of control.

CON: This bill will potentially make drugs cost more. When a patent expires, generic manufacturers rush in to create generics and lower prices. However, ingredient costs can fluctuate and cause price changes that would trigger reporting under this bill. When costs go down, this does not trigger reporting. So, multiple changes in component costs could cause a lot of duplicative and potentially expensive reporting, even if the cost of the drug went down. The bill is silent on the value of prescription drugs to patients and how they control costs by eliminating the need for more expensive medical intervention. The focus on a manufacturer's list price ignores rebates and other parts of the supply chain. The bill will not lower drug costs and it does not address what consumers actually pay for medications.

Persons Testifying (Ways & Means): PRO: Lindsey Grad, SEIU Healthcare 1199NW; Amber Ulvenes, Kaiser Permanente.

CON: Lee Newgent, Pharmaceutical Industry Labor Management Association; Michael Transue, Oregon Biosciences Association & Novo Nordisk; Jeff Gombosky, Pharmaceutical Research and Manufacturers of America; Abby Moore, Association for Accessible Medicine.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.