S-0175.1

SENATE BILL 5020

State of Washington 67th Legislature 2021 Regular Session

By Senators Keiser, Robinson, Conway, Das, Hasegawa, Kuderer, Lovelett, Rolfes, Stanford, Van De Wege, and Wilson, C.

Prefiled 12/17/20. Read first time 01/11/21. Referred to Committee on Health & Long Term Care.

AN ACT Relating to assessing a penalty on unsupported prescription drug price increases to protect the safety, health, and economic well-being of Washington residents; adding a new chapter to Title 69 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec. 1.** (1) The legislature recognizes a need to protect the safety, health, and economic well-being of Washington residents by guarding them from the negative and harmful impact of unsupported price increases for prescription drugs.

(2) The legislature finds that:

(a) Access to prescription drugs is necessary for people to maintain or acquire good health;

(b) Unsupported price increases negatively impact the ability of people to obtain prescription drugs and thereby endanger the health and safety of such people by making it difficult for them to maintain or acquire good health;

(c) Unsupported price increases for prescription drugs threaten the economic well-being of Washington residents and endanger their ability to pay for other necessary and essential goods and services, including housing, food, and utilities;

(d) Unsupported price increases for prescription drugs contribute significantly to a dramatic and unsustainable rise in health care costs and health insurance, which threatens the overall ability of people to obtain health coverage and maintain or acquire good health; and

(e) Unsupported price increases for prescription drugs contribute significantly to rising state costs for health care provided and paid for through state-funded medical assistance programs for Washington residents who are older, are living with disabilities, or have low incomes; and health insurance programs for public employees, including employees of the state, municipalities and counties, school districts, institutions of higher education, and retirees whose health care costs are funded by public programs, thereby threatening the ability of the state to fund those programs adequately and further threatening the ability of the state to fund other programs necessary for the public good and safety, such as public education and public safety.

(3) Analysis of the increase in prices charged by manufacturers of prescription drugs demonstrates that many price increases for high-cost and high-volume prescription drugs are not supported by adequate evidence of improved clinical benefit or by significant increase in costs to the manufacturer related to the production or sale of the product.

(4) Based on the findings contained in this section, the legislature intends to pass this act as an essential means to protect the health and well-being of Washington residents from the negative impacts of unsupported price increases.

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

(1) "Authority" means the state health care authority.

(2) "Consumer price index" means the consumer price index, annual average, for all urban consumers: United States city average, all items, reported by the United States department of labor, bureau of labor statistics, or its successor or, if the index is discontinued, an equivalent index reported by a federal authority or, if no such index is reported, "consumer price index" means a comparable index chosen by the bureau of labor statistics.

(3) "Identified drug" means any prescription drug that has at any time been identified as having an unsupported price increase.

(4) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW, including generic, brand name, specialty drugs, and biological products.

(5) "Unsupported price increase" means an increase in price for a prescription drug for which there was no, or inadequate, new clinical evidence to support the price increase. In order to determine whether a price increase for a prescription drug is unsupported by new clinical evidence, the state must utilize and rely upon the analyses of prescription drugs prepared annually by the institute for clinical and economic review and published in its annual unsupported price increase report.

(6) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price as reported in wholesale price guides or other publications of prescription drug pricing.

NEW SECTION. **Sec. 3.** (1) A penalty may be assessed on the sale in this state of identified drugs and made payable by the manufacturers of such identified drugs. The penalty must be imposed and calculated as described in this section.

(2) The penalty in any calendar year must equal 80 percent of the difference between the revenue generated by sales within the state of the identified drugs and the revenue that would have been generated if the manufacturer had maintained the wholesale acquisition cost from the previous calendar year, adjusted for inflation using the consumer price index.

(3) A manufacturer is subject to the penalty if the manufacturer:

(a) Has at least $250,000 in total annual sales within the state in the calendar year for which the tax is assessed; and

(b) Is required to report the identified drug as a "covered drug" under chapter 43.71C RCW.

(4) Within 60 days of the annual publication by the institute for clinical and economic review of the unsupported price increase report, the authority must identify the manufacturers of identified drugs. The authority must notify each manufacturer that sales within the state of identified drugs must be subject to the penalty assessed under this section for a period of two calendar years following the

identified drug's appearance in the annual publication by the institute for clinical and economic review.

(5) Such penalty must be collected annually. Any manufacturer notified by the authority pursuant to subsection (4) of this section must submit information to the authority, in a form and manner as prescribed by the authority, and pay the penalty by December 31st of the previous calendar year.

(6) The information described in subsection (5) of this section must contain the following:

(a) The total amount of sales of the identified drug within the state;

(b) The total number of units sold of the identified drug within the state;

(c) The wholesale acquisition cost of the identified drug during the reporting period and any changes in the wholesale acquisition cost during the calendar year;

(d) The wholesale acquisition cost during the previous calendar year;

(e) A calculation of the penalty owed; and

(f) Any other information the authority deems necessary to calculate the correct amount of the penalty owed.

(7) Failure by any manufacturer to file the information required in subsection (6) of this section must result in an additional penalty in an amount equal to the greater of 10 percent or $50,000.

(8) All revenues collected from the penalty under this section must be deposited into the foundational public health services account created in RCW 82.25.015.

NEW SECTION. **Sec. 4.** (1) A manufacturer or distributor of an identified drug must not withdraw that drug from sale or distribution within this state in order to avoid the penalty set forth in section 3 of this act.

(2) Any manufacturer or distributor who intends to withdraw an identified drug from sale or distribution from within the state in order to avoid a penalty described in section 3 of this act must provide a notice of withdrawal in writing to the authority at least 180 days before such withdrawal.

(3) The authority must assess a penalty of $500,000 per identified drug on any entity, including any manufacturer or distributor of an identified drug, that it determines has withdrawn

an identified drug from distribution or sale in the state in violation of this section.

NEW SECTION. **Sec. 5.** This act takes effect October 1, 2021.

NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 69 RCW.

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