HOUSE BILL REPORT
HB 1269

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to amending the prescription drug affordability board.

Brief Description: Amending the prescription drug affordability board.

Sponsors: Representatives Riccelli, Stonier and Macri; by request of Health Care Authority.

Brief History:
Committee Activity:
Health Care & Wellness: 2/1/23, 2/10/23 [DP].

Brief Summary of Bill

- Removes the limits on the types of drugs that are eligible for review provided that benchmark criteria are met.
- Makes changes to prescription drug threshold prices and percentage increases on prices that trigger eligibility for review.
- Advances the date that the Prescription Drug Affordability Board is authorized to begin establishing upper payment limits by one year, to January 1, 2026, except for prescription drugs used solely for the treatment of a rare disease or condition.
- Eliminates references to required delays in the adoption of rules upper payment limits.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 9 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Orwall, Simmons, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Schmick, Ranking

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

Minority Member; Hutchins, Assistant Ranking Minority Member; Graham and Harris.

Minority Report: Without recommendation. Signed by 4 members: Representatives Barnard, Maycumber, Mosbrucker and Thai.

Staff: Ingrid Lewis (786-7293).

Background:

The Prescription Drug Affordability Board (Board) is a five-member gubernatorial board within the Health Care Authority (HCA) established in 2022 that is directed to review prescription drug affordability data, perform affordability reviews, and establish prescription drug upper payment limits.

Beginning June 30, 2023, and yearly thereafter, the Board is required to identify drugs that have been on the market for at least seven years; are dispensed at a retail, specialty, or mail order pharmacy; are not designated by the United States Food and Drug Administration as a drug solely for the treatment of a rare disease or condition; and meet the following benchmarks:

- brand name prescription drugs introduced at a price of $60,000 or more per year, or course of treatment, or have a price increase of 15 percent or more in any 12-month period or 50 percent over a three-year period;
- biosimilar products with an initial price less than 15 percent below the reference brand price; and
- generic drugs costing $100 or more for a 30-day supply or less that have increased in price by 200 percent or more in the last 12 months.

The Board may choose to conduct up to 24 affordability reviews each year of drugs it identifies meeting the above thresholds. For any drug chosen for a review, the Board must establish an advisory group consisting of relevant stakeholders, including patients and patient advocates for the condition treated by the drug and a representative from the pharmaceutical industry. Affordability review must consider determinants of cost, availability of alternatives, and a variety of market characteristics.

Beginning January 1, 2027, and followed each year thereafter, the Board may set an upper payment limit for up to 12 prescription drugs. An upper payment limit for a prescription drug applies to all purchases of the drug by any entity and reimbursements for a claim for the drug by a health carrier when the drug is dispensed or administered to an individual in the state. Employer sponsored self-funded plans may elect to be subject to the upper payment limits.

The Board must establish an effective date for each upper payment limit which may not go into effect until at least 90 days after the next regular legislative session following the adoption of the limit, and at least six months after the adoption of the limit. The Board may

reassess the upper payment limit for any drug annually, based on current economic factors.

Any individual denied coverage by a health carrier for a prescription drug because the drug was unavailable due to an upper payment limit established by the Board, may seek review of a denial through the carrier's grievance and appeal process, or through an independent review organization following the grievance and appeal process. If it is determined that the prescription drug should be covered based on medical necessity, the carrier may disregard the upper payment limit and must provide coverage for the drug.

If a manufacturer chooses to withdraw a drug from the market due to an upper payment limit for that drug, it must provide written notice to the state at least 180 days in advance. If a manufacturer withdraws a drug, it will be prohibited from selling the drug in the state for three years, unless it petitions the HCA to reenter the market on the condition that it will make the drug available in compliance with the upper payment limit.

Any savings generated for a health plan that are attributable to the establishment of an upper payment limit must be used to reduce costs to consumers, prioritizing the reduction of out-of-pocket costs for prescription drugs. By January 1, 2024, the Board must establish a formula for calculating savings for complying with this section.

Any rules adopted by the HCA and any upper payment limits adopted by the Board may not go into effect until at least 90 days after the next regular legislative session.

Summary of Bill:

All references to required delays in the adoption of rules and upper payment limits are eliminated.

The criteria limiting the types of prescription drugs that are eligible for review are removed; all prescription drugs are eligible for review provided that threshold criteria is met. The threshold for brand name prescription drug prices is lowered to $25,000 or more per year, or course of treatment, or price increases of 10 percent or more in any 12-month period or 25 percent over a three-year period.

The date that the Board is authorized to begin establishing upper payment limits is advanced by one year, to January 1, 2026, except for prescription drugs used solely for the treatment of a rare disease or condition, which the Board may begin establishing upper payment limits January 1, 2027.

If an individual is denied coverage by a health carrier for a prescription drug because the drug was unavailable due to an upper payment limit and it is determined that the prescription drug should be covered based on medical necessity, the carrier may disregard the upper payment limit and must provide coverage for the drug if all other covered

therapeutic alternatives are ineffective or have intolerable side effects, or the drug is designated as a drug solely for the treatment of a rare disease or condition by the United States Food and Drug Administration.

The date that the Board must establish a formula to calculate savings is extended to July 1, 2025.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) People are paying more for cost of living, especially seniors. We should not have to spend time worrying about the cost of care. Even with the best insurance, families spend up to $500,000 a year for access to life saving drugs. People skip doses, ration medication, and forgo basic needs like food and rent to pay for their prescriptions. While insurance and copay assistance programs may help, this is still too high for families to afford. Pharmaceutical corporations continue to raise prices on medications and there is no effective way to stop them from price gouging consumers.

There are real costs to safely manufacture, package, and distribute prescription drugs. However, the price to the consumer also includes advertising, lobbying, large administrator salaries, and corporate profit. There needs to be a balance to come up with reasonable prices for these drugs.

The Prescription Drug Affordability Board (Board) is a tool to address transparency around affordability of the cost of prescription drugs and apply downward pressure on the cost of prescription drugs. The work done last year removed some of the tools the Health Care Authority could use to scrutinize the full scope of high-cost drugs. The bill would remove technical barriers around when rules and upper payment limits can be set and broaden the scope of drugs eligible for review, especially orphan drugs. This bill would not jeopardize access to those high-cost drugs. Patients were not a part of negotiations last year.

Life-saving drugs are priceless to those who need them to survive. There must be a limit on the price that a profit-seeking entity places on a life-saving drug. Pharmaceutical manufacturers cannot be allowed to continue to raise prices without accountability.

(Opposed) Last year's bill was highly negotiated. The pharmaceutical industry worked hard and in good faith to develop an agreed to Board. Please respect that process and let its

implementation move as adopted.

No state has implemented an upper payment limit as envisioned by the Board. Six states have established Boards and only two have upper payment limit authority. Colorado has been rulemaking for over a year and has not established a methodology for determining upper payment limits. Establishing a Board is turning out to be a more complicated process than anticipated. Expanding the statute would be a mistake.

Currently, reviews are limited to drugs that are dispensed mostly by retail and mail order pharmacies which make up 86 percent of the medicine. This covers most of the medicines utilized by patients. Office and hospital administered medicines are products that are reimbursed and covered differently by insurance companies because they are part of a medical benefit.

Washington has become one of the top 10 life science clusters in the country. It is headquarters for some of the world's most innovative and complex medical therapies. These therapies are developed here, brought to market by local biotech companies, and are manufactured here. Companies that bring new products to market are provided with a limited opportunity to make up for losses. They have to try and turn a profit before their product becomes a public good. This bill will chill investments.

Those who receive health care in Washington enjoy a level of quality and advanced treatment not found anywhere else in the world. This issue requires a realistic approach that does not stymie research and innovation in health care delivery.

(Other) Washington has invested significant resources in drug cost transparency and data analytics. The state is well-positioned to leverage resources for use by a Board.

Persons Testifying: (In support) Representative Marcus Riccelli, prime sponsor; Ronnie Shure, Health Care for All Washington; Jessie Polin, Washington Cancer Action Network; Cathy McCaul, American Association of Retired Persons; Claire Symons, Bleeding Disorder Foundation of Washington; Linda Moran; Jessica Allston, Insulin4all Washington; Seth Greiner, National Multiple Sclerosis Society; Jim Freeburg, Patient Coalition of Washington; and Evan Klein, Health Care Authority.

(Opposed) Dharia McGrew, Pharmaceutical Research and Manufacturers of America; Marc Cummings, Life Science Washington; Brian Warren, Biotechnology Innovation Organization; Michael Transue, Oregon Biosciences Association; and Amy Anderson, Association of Washington Business.

(Other) Drew Gattine, National Academy for State Health Policy.

Persons Signed In To Testify But Not Testifying: None.