

HOUSE BILL REPORT

SSB 5300

As Passed House - Amended:

April 6, 2023

Title: An act relating to continuity of coverage for prescription drugs prescribed for the treatment of behavioral health conditions.

Brief Description: Concerning continuity of coverage for prescription drugs prescribed for the treatment of behavioral health conditions.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Dhingra, Billig, Cleveland, Frame, Hasegawa, Hunt, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Randall, Rivers, Robinson, Shewmake, Valdez, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Health Care & Wellness: 3/21/23, 3/28/23 [DPA].

Floor Activity:

Passed House: 4/6/23, 98-0.

Brief Summary of Substitute Bill (As Amended by House)

- Prohibits health carriers and their health care benefit managers from requiring substitution of a prescribed nonpreferred drug with a preferred drug or increasing an enrollee's cost sharing obligation when the prescription is for a refill of an antipsychotic, antidepressant, or antiepileptic drug, or any other drug prescribed to treat a serious mental illness.
- Adds other drugs prescribed to treat serious mental illness to the drugs for which a pharmacist may not substitute a nonpreferred drug with a preferred drug for state purchased health care programs.

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.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 17 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Barnard, Bronoske, Davis, Graham, Harris, Macri, Maycumber, Mosbrucker, Orwall, Simmons, Stonier, Thai and Tharinger.

Staff: Kim Weidenaar (786-7120).

Background:

State Purchased Health Care Programs.

"State purchased health care" is the medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the Department of Social and Health Services, the Department of Health, the Basic Health Plan, the Health Care Authority, the Department of Labor and Industries, the Department of Corrections, the Department of Veterans Affairs, and local school districts. Any pharmacist filling a prescription under a state purchased health care program must substitute a preferred drug for any nonpreferred drug in a given therapeutic class unless the practitioner had indicated that the nonpreferred drug must be dispensed as written or the prescription is for a refill of antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an antiviral treatment for hepatitis C for which an established therapy is prescribed for 24 to 48 weeks, in which case the pharmacist must dispense the prescribed nonpreferred drug.

If a substitution is made, the pharmacist must notify the prescribing practitioner of the drug and dose dispensed. A state purchased health care program may impose restrictions on a practitioner's authority to write a prescription to dispense as written only under circumstances when the practitioner's frequency of prescribing dispensed as written for a nonpreferred drug varies significantly from other prescribers and the restrictions are limited to reduce the variation.

Health Plans Offered by Health Carriers.

Under the Affordable Care Act, small group and individual market health plans must cover certain categories of essential health benefits, one of which is prescription drugs. A plan must ensure that a prescription drug benefit covers Federal Food and Drug Administration approved prescribed drugs, medications, or drug therapies that are the sole prescription drug available for a covered medical condition. The prescription drug benefit may include cost control measures, including requiring a preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition, and the benefit design may create incentive for the use of generic drugs.

Under state insurance regulations, a health plan is not required to use a formulary as part of

its prescription drug benefit design. If a formulary is used, a health plan must meet certain requirements when a formulary change occurs. A plan must not exclude or remove a medication from its formulary if the drug is the sole drug option available to treat a disease or condition for which the health benefit plan, policy, or agreement otherwise provides coverage, unless the drug is removed because it becomes available over-the-counter, is proven to be medically ineffective, or is a documented medical risk to patient health. If a drug is removed from the formulary for any other reason, a carrier must continue to cover the drug for the time period required for an enrollee to use the carrier's substitution process to request continuation of coverage for the drug, and receive a decision through that process, unless patient safety requires swifter replacement.

Formularies and related preauthorization information must be posted on the health plan or health plan's contracted pharmacy benefit manager website. Unless the removal is done on an immediate or emergency basis, or because a generic equivalent becomes available without prior notice, formulary changes must be posted 60 days before the effective date of the change. In the case of an emergency removal, the change must be posted as soon as practicable, without unreasonable delay.

Summary of Amended Bill:

For health plans that include prescription drug coverage that are issued or renewed on or after January 1, 2025, a health carrier or the health carrier's health care benefit manager may not require the substitution of a nonpreferred drug with a preferred drug in a given therapeutic class or increase an enrollee's cost-sharing obligation for the drug mid-plan-year, if the prescription:

- is for a refill of an antipsychotic, antidepressant, antiepileptic, or other drugs prescribed to the enrollee to treat a serious mental illness;
- the enrollee is medically stable on the drug; and
- a participating provider continues to prescribe the drug.

These requirements do not prohibit:

- the carrier from:
 - requiring generic substitution during the current plan year;
 - adding new drugs to its formulary during the current plan year;
 - removing a drug from its formulary for reasons of patient safety concerns, drug recall or removal from the market, or medical evidence indicating no therapeutic effect of the drugs; or
- a participating provider from prescribing a different drug that is covered by the plan and medically appropriate for the enrollee.

"Serious mental illness" is defined as a mental disorder, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, that results in serious functional impairment that substantially interferes with or limits one or more major life activities. "Refill" means a

second or subsequent filling of a previously issued prescription.

Beginning January 1, 2025, other drugs prescribed to a patient to treat a serious mental illness are added to the drugs that a pharmacist must dispense without substituting for a preferred drug in a given therapeutic class for refill prescriptions filled under a state-purchased health care program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) This bill has passed the Senate unanimously twice and is about continuity of care. When individuals are stable on their medications for years and the medication is changed without notice or their consent it can begin a spiral when the person may lose their job and their stability. Medication is an essential ingredient in recovery and stability. It can be a very frustrating process to find the right medication as it takes time to fully take effect and to balance side effects. This bill tries to say that if you have a diagnosis for a severe mental illness you can continue to stay on your medications.

Medication adherence is incredibly important. Current law allows consumers to request an exception to a formulary, but that process is too burdensome for these situations. There is a proposed amendment that would only allow health plans to change their formulary once per year. Individuals pick their plans based on what medications are covered. All medications within a drug class are not created equal and are not necessarily interchangeable. There is also a concern that patients that use coupons will be disqualified from these protections.

Mental health conditions affect every family and community. Washington has the highest rate of people living with a serious mental illness. Decisions on medications should be made between patients and providers, not insurers. The cost of medications compared to the cost to the individual, their life, the health plan for the patient to become stable again is minimal and requiring these medication changes is very foolish. The cost must be looked at in balance and consider the whole cost to the person.

(Opposed) None.

(Other) Some other individuals share many of the underlying policy goals of the bill. The existing exceptions for prescriptions do not really fit this context. However, there are concerns about the formulary issue and there there is a possibility that samples could be considered an established therapy. The definition of "refill" in the proposed amendment provides some clarity.

It is difficult to balance choice, medical management, and cost. Balancing costs of health care by not shifting patients off drugs that they are established on is important and this amendment achieves this balance.

Persons Testifying: (In support) Senator Manka Dhingra, prime sponsor; Debbie Plotnick, Mental Heath America; Robin Berger, Washington State Psychiatric Association; Jaime Fazzone, Washington State Pharmacy Association Behavioral Health Special Interest Group; Jane Beyer, Office of the Insurance Commissioner; and Anna Nepomuceno, National Alliance on Mental Illness Washington.

(Other) Jennifer Ziegler, Association of Washington Health Care Plans; and Christine Brewer, Premera Blue Cross.

Persons Signed In To Testify But Not Testifying: None.