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HOUSE BILL 1091

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State of Washington

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By Representatives Cody, Campbell, Morrell, Schual-Berke, Edwards, Kessler, Fromhold, Kenney, Dickerson, Conway, Pettigrew, Wallace, Lovick, Cooper, Voloria, Romero, Hudgins, Sullivan, Upthegrove, Chase, McDermott, Simpson, Darneille, Wood, Moeller and Kagi

Read first time 01/15/2003. Referred to Committee on Health Care.

1 AN ACT Relating to prescription drugs; amending RCW 41.05.011;  
2 adding new sections to chapter 41.05 RCW; adding a new section to  
3 chapter 69.41 RCW; adding a new section to chapter 43.60A RCW; creating  
4 new sections; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that prescription  
7 drugs are an effective and important part of efforts to maintain and  
8 improve the health of Washington state residents. Yet prescription  
9 drug expenditures in both the public and private sectors are growing at  
10 rates far in excess of consumer or medical inflation, placing a strain  
11 on the ability of public and private health care purchasers to continue  
12 to offer comprehensive health benefits coverage. In addition,  
13 inappropriate use of prescription drugs can have serious health  
14 consequences for Washington state residents.

15 (2) It is the intent of the legislature to develop a comprehensive  
16 prescription drug education and utilization system in Washington state  
17 that will ensure best prescribing practices and pharmaceutical use,  
18 reduce administrative burdens on providers, increase consumer  
19 understanding of and compliance with appropriate use of prescription

1 drugs, help to control increases in consumer and state health care  
2 spending, and improve prescription drug purchasing through a sound  
3 evidence-based process that evaluates the therapeutic value and cost-  
4 effectiveness of prescription drugs.

5 **Sec. 2.** RCW 41.05.011 and 2001 c 165 s 2 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section shall apply throughout this chapter.

9 (1) "Administrator" means the administrator of the authority.

10 (2) "State purchased health care" or "health care" means medical  
11 and health care, pharmaceuticals, and medical equipment purchased with  
12 state and federal funds by the department of social and health  
13 services, the department of health, the basic health plan, the state  
14 health care authority, the department of labor and industries, the  
15 department of corrections, the department of veterans affairs, and  
16 local school districts.

17 (3) "Authority" means the Washington state health care authority.

18 (4) "Insuring entity" means an insurer as defined in chapter 48.01  
19 RCW, a health care service contractor as defined in chapter 48.44 RCW,  
20 or a health maintenance organization as defined in chapter 48.46 RCW.

21 (5) "Flexible benefit plan" means a benefit plan that allows  
22 employees to choose the level of health care coverage provided and the  
23 amount of employee contributions from among a range of choices offered  
24 by the authority.

25 (6) "Employee" includes all full-time and career seasonal employees  
26 of the state, whether or not covered by civil service; elected and  
27 appointed officials of the executive branch of government, including  
28 full-time members of boards, commissions, or committees; and includes  
29 any or all part-time and temporary employees under the terms and  
30 conditions established under this chapter by the authority; justices of  
31 the supreme court and judges of the court of appeals and the superior  
32 courts; and members of the state legislature or of the legislative  
33 authority of any county, city, or town who are elected to office after  
34 February 20, 1970. "Employee" also includes: (a) Employees of a  
35 county, municipality, or other political subdivision of the state if  
36 the legislative authority of the county, municipality, or other  
37 political subdivision of the state seeks and receives the approval of

1 the authority to provide any of its insurance programs by contract with  
2 the authority, as provided in RCW 41.04.205; (b) employees of employee  
3 organizations representing state civil service employees, at the option  
4 of each such employee organization, and, effective October 1, 1995,  
5 employees of employee organizations currently pooled with employees of  
6 school districts for the purpose of purchasing insurance benefits, at  
7 the option of each such employee organization; and (c) employees of a  
8 school district if the authority agrees to provide any of the school  
9 districts' insurance programs by contract with the authority as  
10 provided in RCW 28A.400.350.

11 (7) "Board" means the public employees' benefits board established  
12 under RCW 41.05.055.

13 (8) "Retired or disabled school employee" means:

14 (a) Persons who separated from employment with a school district or  
15 educational service district and are receiving a retirement allowance  
16 under chapter 41.32 or 41.40 RCW as of September 30, 1993;

17 (b) Persons who separate from employment with a school district or  
18 educational service district on or after October 1, 1993, and  
19 immediately upon separation receive a retirement allowance under  
20 chapter 41.32, 41.35, or 41.40 RCW;

21 (c) Persons who separate from employment with a school district or  
22 educational service district due to a total and permanent disability,  
23 and are eligible to receive a deferred retirement allowance under  
24 chapter 41.32, 41.35, or 41.40 RCW.

25 (9) "Benefits contribution plan" means a premium only contribution  
26 plan, a medical flexible spending arrangement, or a cafeteria plan  
27 whereby state and public employees may agree to a contribution to  
28 benefit costs which will allow the employee to participate in benefits  
29 offered pursuant to 26 U.S.C. Sec. 125 or other sections of the  
30 internal revenue code.

31 (10) "Salary" means a state employee's monthly salary or wages.

32 (11) "Participant" means an individual who fulfills the eligibility  
33 and enrollment requirements under the benefits contribution plan.

34 (12) "Plan year" means the time period established by the  
35 authority.

36 (13) "Separated employees" means persons who separate from  
37 employment with an employer as defined in:

38 (a) RCW 41.32.010(11) on or after July 1, 1996; or

1 (b) RCW 41.35.010 on or after September 1, 2000; or

2 (c) RCW 41.40.010 on or after March 1, 2002;

3 and who are at least age fifty-five and have at least ten years of  
4 service under the teachers' retirement system plan 3 as defined in RCW  
5 41.32.010(40), the Washington school employees' retirement system plan  
6 3 as defined in RCW 41.35.010, or the public employees' retirement  
7 system plan 3 as defined in RCW 41.40.010.

8 (14) "Emergency service personnel killed in the line of duty" means  
9 law enforcement officers and fire fighters as defined in RCW 41.26.030,  
10 and reserve officers and fire fighters as defined in RCW 41.24.010 who  
11 die as a result of injuries sustained in the course of employment as  
12 determined consistent with Title 51 RCW by the department of labor and  
13 industries.

14 (15) "Prescription drug board" means the prescription drug quality  
15 improvement and purchasing board created in section 3 of this act.

16 NEW SECTION. Sec. 3. A new section is added to chapter 41.05 RCW  
17 to read as follows:

18 (1) The prescription drug quality improvement and purchasing board  
19 is created within the authority. The function of the prescription drug  
20 board is to design and approve policies and programs related to  
21 prescription drugs for public and private participants in the  
22 purchasing consortium established under section 4 of this act.

23 (2) The prescription drug board shall be composed of eleven members  
24 selected as provided in this subsection.

25 (a) The governor shall select one member of the prescription drug  
26 board from each list of three nominees submitted by statewide  
27 organizations representing each of the following:

28 (i) One representative of state employees, who represents an  
29 employee union certified as exclusive representative of at least one  
30 bargaining unit of classified employees;

31 (ii) One member who is a licensed physician;

32 (iii) One member who is a licensed pharmacist;

33 (iv) One member representing a health carrier licensed under Title  
34 48 RCW; and

35 (v) One member representing a private union;

36 (b) The governor shall select two members of the prescription drug  
37 board from a list of nominees submitted by statewide organizations

1 representing consumers, one of whom shall represent individuals under  
2 age sixty-five without insurance coverage for prescription drugs and  
3 one of whom shall represent individuals over age sixty-five without  
4 insurance coverage for prescription drugs;

5 (c) The governor shall select two members of the prescription drug  
6 board from a list of nominees submitted by statewide organizations  
7 representing business, one of whom shall represent small businesses who  
8 employ fifty or fewer employees and one of whom shall represent large  
9 businesses;

10 (d) One member shall be the secretary of the department of social  
11 and health services; and

12 (e) One member shall be the administrator.

13 (3) The members who represent the organizations appointed pursuant  
14 to subsection (2) (a)(v), (b), and (c) of this section shall be  
15 nonvoting members until such time as there are no less than twelve  
16 thousand participants enrolled with the authority for prescription drug  
17 purchasing from the organizations they are appointed to represent.

18 (4) The governor shall appoint the initial members of the  
19 prescription drug board to staggered terms not to exceed four years.  
20 Members appointed thereafter shall serve two-year terms. Members of  
21 the prescription drug board shall be compensated in accordance with RCW  
22 43.03.250 and shall be reimbursed for their travel expenses while on  
23 official business in accordance with RCW 43.03.050 and 43.03.060. The  
24 prescription drug board shall prescribe rules for the conduct of its  
25 business. The administrator shall serve as chair of the prescription  
26 drug board. Meetings of the prescription drug board shall be at the  
27 call of the chair.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.05 RCW  
29 to read as follows:

30 (1) The prescription drug board shall, directly or by contract:

31 (a) Establish a new, or contract with an existing, pharmacy and  
32 therapeutics committee to develop a preferred drug list for use by  
33 participants in the purchasing consortium.

34 (i) The pharmacy and therapeutics committee shall be comprised of  
35 licensed physicians, licensed pharmacists, and pharmacoeconomists. At  
36 least one physician and one pharmacist must have demonstrated  
37 experience in serving women and people of color.

1 (ii) Decisions of the pharmacy and therapeutics committee must be  
2 based on an evidence-based evaluation of the efficacy of prescription  
3 drugs, considering safety, efficacy, and outcomes, and any unique  
4 circumstances regarding women, people of color, elderly, children, and  
5 those with special diseases. Decisions of the pharmacy and  
6 therapeutics committee related to the preferred drug list are binding  
7 on the prescription drug board.

8 (iii) State purchased health care programs shall adopt the  
9 preferred drug list established by the prescription drug board for  
10 those components of their programs that purchase prescription drugs  
11 directly or through reimbursement of retail pharmacies. In  
12 administering prescription drug benefits under state purchased health  
13 care programs, agencies shall honor a prescriber's direction to  
14 dispense a prescription drug as written on the prescription order;

15 (b) Establish drug utilization review policies. State purchased  
16 health care programs shall adopt these drug utilization review policies  
17 consistent with the scope of benefits offered through programs  
18 administered by that agency and may implement the policies directly or  
19 by contract or interagency agreement;

20 (c) Develop and distribute prescriber and consumer education  
21 materials and processes. State purchased health care programs shall  
22 adopt these prescriber and consumer education materials and processes  
23 and may implement the policies directly or by contract or interagency  
24 agreement;

25 (d) Establish a prescription drug purchasing consortium. State  
26 purchased health care programs shall purchase prescription drugs  
27 through the consortium for those prescription drugs that are purchased  
28 directly by the state and those that are purchased through  
29 reimbursement of retail pharmacies, unless exempted under section 10 or  
30 11 of this act.

31 (2) Participation in the purchasing consortium and other  
32 prescription drug board activities is purely voluntary for units of  
33 local government, private entities, and individuals who lack  
34 prescription drug coverage. A private entity may limit its  
35 participation to one or more of the prescription drug board's program  
36 components. The prescription drug board may set reasonable fees,  
37 including enrollment fees for participating individuals, to cover

1 administrative costs attributable to participation of private entities  
2 in prescription drug board activities.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.05 RCW  
4 to read as follows:

5 No member of the prescription drug board, the pharmacy and  
6 therapeutics committee, or any committee that may be established to  
7 develop utilization review or prescriber and consumer education  
8 policies may be employed by a pharmaceutical manufacturer, or be  
9 employed by any agency administering state purchased health care  
10 programs. As a condition of appointment to the prescription drug board  
11 or any committee, each member must disclose any potential conflict of  
12 interest, including receipt of any remuneration, grants, or other  
13 compensation from a pharmaceutical manufacturer.

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.05 RCW  
15 to read as follows:

16 The prescription drug consortium account is created in the custody  
17 of the state treasurer. All receipts from the fees from the  
18 prescription drug purchasing consortium created in section 4 of this  
19 act must be deposited into the account. Expenditures from the account  
20 may be used only for the purposes of this act. Only the administrator  
21 or the administrator's designee may authorize expenditures from the  
22 account. The account is subject to allotment procedures under chapter  
23 43.88 RCW, but an appropriation is not required for expenditures.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.05 RCW  
25 to read as follows:

26 The prescription drug board and the administrator may solicit and  
27 accept grants or other funds from public and private sources to support  
28 consumer and provider education and other related activities under this  
29 act. Any grants or funds received may be used to enhance these  
30 activities as long as program standards established by the prescription  
31 drug board and the administrator are maintained.

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.05 RCW  
33 to read as follows:

1 The administrator shall contract with an independent entity to  
2 evaluate the implementation and impacts of the prescription drug  
3 board's activities under this act.

4 (1) The evaluation shall assess:

5 (a) The degree to which the program has influenced prescription  
6 drug prescribing practices among health care providers in Washington,  
7 including a description of how prescribing practices may have changed;

8 (b) The impact of the program on quality of care and clinical  
9 outcomes for persons enrolled in state purchased health care programs;

10 (c) The extent to which the program has lessened administrative  
11 burdens on health care providers participating in state purchased  
12 health care programs;

13 (d) The impact of the program on prescription drug expenditures  
14 across state purchased health care programs; and

15 (e) The impact of the program on the utilization of, and  
16 expenditures for, other health care services funded by state purchased  
17 health care programs.

18 (2) The administrator shall make every effort to pursue and obtain  
19 federal or private foundation funding for the evaluation from entities  
20 such as the federal agency for health care research and quality or the  
21 milbank memorial fund. To ensure that results of the evaluation are  
22 objective and unbiased, private foundation funds derived from the  
23 pharmaceutical industry may not be used to fund the evaluation.

24 (3) The results of the evaluation must be submitted to the governor  
25 and the legislature by January 1, 2007.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 69.41 RCW  
27 to read as follows:

28 Any pharmacist filling a prescription under the preferred drug list  
29 program established under section 4 of this act shall substitute the  
30 preferred drug for any nonpreferred drug in a given therapeutic  
31 category, unless the prescriber has indicated on the prescription that  
32 the nonpreferred drug must be dispensed as written, in which case the  
33 pharmacist shall dispense the nonpreferred drug as written. When a  
34 substitution is made, or a preferred drug within a therapeutic class  
35 changes, the prescriber must be notified in writing by the dispensing  
36 pharmacist of the specific drug and dose dispensed.



1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 41.05 RCW  
2 to read as follows:

3        Nothing in this act preempts state-owned or managed hospitals  
4 licensed under chapter 70.41 RCW from aggregate purchasing through  
5 other programs.    These hospitals may choose to participate in the  
6 preferred drug list program under section 4 of this act if drugs can be  
7 obtained at lower cost.

8        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 43.60A  
9 RCW to read as follows:

10       Nothing in this act preempts state-owned facilities and programs  
11 operated by the department of veterans affairs from aggregate  
12 purchasing through other programs.    The department may choose to  
13 participate in the preferred drug list program under section 4 of this  
14 act if drugs can be obtained at lower cost.

15       NEW SECTION.    **Sec. 12.**    The therapeutic consultation service  
16 operated by the department of social and health services expires on  
17 January 1, 2004.

18       NEW SECTION.    **Sec. 13.**    A new section is added to chapter 41.05 RCW  
19 to read as follows:

20       The prescription drug board and agencies that administer state  
21 purchased health care programs are authorized to adopt rules  
22 implementing this act.

23       NEW SECTION.    **Sec. 14.**    If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27       NEW SECTION.    **Sec. 15.**    If any part of this act is found to be in  
28 conflict with federal requirements that are a prescribed condition to  
29 the allocation of federal funds to the state, the conflicting part of  
30 this act is inoperative solely to the extent of the conflict and with  
31 respect to the agencies directly affected, and this finding does not  
32 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal  
2 requirements that are a necessary condition to the receipt of federal  
3 funds by the state.

4 NEW SECTION. **Sec. 16.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of the  
6 state government and its existing public institutions, and takes effect  
7 immediately.

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