

CERTIFICATION OF ENROLLMENT

SENATE BILL 6088

Chapter 29, Laws of 2003

58th Legislature
2003 1st Special Session

PRESCRIPTION DRUGS

EFFECTIVE DATE: 6/26/03

Passed by the Senate June 5, 2003
YEAS 43 NAYS 5

BRAD OWEN

President of the Senate

Passed by the House June 5, 2003
YEAS 95 NAYS 2

FRANK CHOPP

Speaker of the House of Representatives

Approved June 26, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SENATE BILL 6088 as passed by the
Senate and the House of
Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

June 26, 2003 - 11:37 a.m.

**Secretary of State
State of Washington**

SENATE BILL 6088

Passed Legislature - 2003 1st Special Session

State of Washington 58th Legislature 2003 1st Special Session

By Senators Deccio, Thibaudeau, Winsley, Swecker and Franklin

Read first time . Referred to .

1 AN ACT Relating to making prescription drugs more affordable to
2 seniors, the disabled, and state health care programs; amending RCW
3 69.41.150 and 70.14.050; adding new sections to chapter 74.09 RCW;
4 adding new sections to chapter 41.05 RCW; adding a new section to
5 chapter 69.41 RCW; adding new sections to chapter 43.131 RCW; creating
6 new sections; prescribing penalties; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that prescription
9 drugs are an effective and important part of efforts to maintain and
10 improve the health of Washington state residents. However, their
11 increased cost and utilization is straining the resources of many state
12 health care programs, and is particularly hard on low-income elderly
13 people who lack insurance coverage for such drugs. Furthermore,
14 inappropriate use of prescription drugs can result in unnecessary
15 expenditures and lead to serious health consequences. It is therefore
16 the intent of the legislature to support the establishment by the state
17 of an evidence-based prescription drug program that identifies
18 preferred drugs, develop programs to provide prescription drugs at an

1 affordable price to those in need, and increase public awareness
2 regarding their safe and cost-effective use.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.09 RCW
4 to read as follows:

5 (1) To the extent funds are appropriated specifically for this
6 purpose, and subject to any conditions placed on appropriations made
7 for this purpose, the department shall design a medicaid prescription
8 drug assistance program. Neither the benefits of, nor eligibility for,
9 the program is considered to be an entitlement.

10 (2) The department shall request any federal waiver necessary to
11 implement this program. Consistent with federal waiver conditions, the
12 department may charge enrollment fees, premiums, or point-of-service
13 cost-sharing to program enrollees.

14 (3) Eligibility for this program is limited to persons:

15 (a) Who are eligible for medicare or age sixty-five and older;

16 (b) Whose family income does not exceed two hundred percent of the
17 federal poverty level as adjusted for family size and determined
18 annually by the federal department of health and human services;

19 (c) Who lack insurance that provides prescription drug coverage;
20 and

21 (d) Who are not otherwise eligible under Title XIX of the federal
22 social security act.

23 (4) The department shall use a cost-effective prescription drug
24 benefit design. Consistent with federal waiver conditions, this
25 benefit design may be different than the benefit design offered under
26 the medical assistance program. The benefit design may include a
27 deductible benefit that provides coverage when enrollees incur higher
28 prescription drug costs as defined by the department. The department
29 also may offer more than one benefit design.

30 (5) The department shall limit enrollment of persons who qualify
31 for the program so as to prevent an overexpenditure of appropriations
32 for this program or to assure necessary compliance with federal waiver
33 budget neutrality requirements. The department may not reduce existing
34 medical assistance program eligibility or benefits to assure compliance
35 with federal waiver budget neutrality requirements.

36 (6) Premiums paid by medicaid enrollees not in the medicaid

1 prescription drug assistance program may not be used to finance the
2 medicaid prescription drug assistance program.

3 (7) This program will be terminated within twelve months after
4 implementation of a prescription drug benefit under Title XVIII of the
5 federal social security act.

6 (8) The department shall provide recommendations to the appropriate
7 committees of the senate and house of representatives by November 15,
8 2003, on financing options available to support the medicaid
9 prescription drug assistance program. In recommending financing
10 options, the department shall explore every opportunity to maximize
11 federal funding to support the program.

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

14 (1) In negotiating price discounts with prescription drug
15 manufacturers for state purchased health care programs, the health care
16 authority shall also negotiate such discounts for any Washington
17 resident:

18 (a) Whose family income does not exceed three hundred percent of
19 the federal poverty level as adjusted for family size and determined
20 annually by the federal department of health and human services;

21 (b) Whose existing prescription drug need is not covered by
22 insurance; and

23 (c) Who is: (i) At least fifty years old; or (ii) between the ages
24 of nineteen and forty-nine and is otherwise eligible for benefits under
25 Title II of the social security act, federal old age, survivors, and
26 disability insurance benefits.

27 (2)(a) An attestation, which shall be submitted to the
28 administrator, from an individual that the individual's family income
29 does not exceed three hundred percent of the federal poverty level is
30 sufficient to satisfy the eligibility requirement of subsection (1)(a)
31 of this section.

32 (b) Any person willfully making a false statement in order to
33 qualify for discounts under this section is guilty of a misdemeanor.
34 Notice of such shall be included on the program enrollment form.

35 (3) The administrator shall charge participants in this program an
36 annual enrollment fee sufficient to offset the cost of program
37 administration.

1 (4) Any rebate or discount provided by a pharmaceutical
2 manufacturer and made available to individuals under this section shall
3 not be at the expense of retail pharmacies. This does not prohibit
4 participating state agencies from using discounted pharmacy
5 reimbursements for services or ingredients provided by the pharmacies.

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

8 The consolidated prescription drug purchasing account is created in
9 the custody of the state treasurer. All fees collected under section
10 3(3) of this act shall be deposited into the account. Expenditures
11 from the account may be used only for the purposes of section 3 of this
12 act. Only the administrator or the administrator's designee may
13 authorize expenditures from the account. The account is subject to
14 allotment procedures under chapter 43.88 RCW, but an appropriation is
15 not required for expenditures.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 69.41 RCW
17 to read as follows:

18 (1) Any pharmacist filling a prescription under a state purchased
19 health care program as defined in RCW 41.05.011(2) shall substitute,
20 where identified, a preferred drug for any nonpreferred drug in a given
21 therapeutic class, unless the endorsing practitioner has indicated on
22 the prescription that the nonpreferred drug must be dispensed as
23 written, or the prescription is for a refill of an antipsychotic,
24 antidepressant, chemotherapy, antiretroviral, or immunosuppressive
25 drug, in which case the pharmacist shall dispense the prescribed
26 nonpreferred drug.

27 (2) When a substitution is made under subsection (1) of this
28 section, the dispensing pharmacist shall notify the prescribing
29 practitioner of the specific drug and dose dispensed.

30 **Sec. 6.** RCW 69.41.150 and 1979 c 110 s 5 are each amended to read
31 as follows:

32 (1) A practitioner who authorizes a prescribed drug shall not be
33 liable for any side effects or adverse reactions caused by the manner
34 or method by which a substituted drug product is selected or dispensed.

1 (2) A pharmacist who substitutes an equivalent drug product
2 pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended
3 assumes no greater liability for selecting the dispensed drug product
4 than would be incurred in filling a prescription for a drug product
5 prescribed by its established name.

6 (3) A pharmacist who substitutes a preferred drug for a
7 nonpreferred drug pursuant to section 5 of this act assumes no greater
8 liability for substituting the preferred drug than would be incurred in
9 filling a prescription for the preferred drug when prescribed by name.

10 NEW SECTION. Sec. 7. A new section is added to chapter 41.05 RCW
11 to read as follows:

12 (1) The administrator shall establish and advertise a pharmacy
13 connection program through which health care providers and members of
14 the public can obtain information about manufacturer-sponsored
15 prescription drug assistance programs. The administrator shall ensure
16 that the program has staff available who can assist persons in
17 procuring free or discounted medications from manufacturer-sponsored
18 prescription drug assistance programs by:

19 (a) Determining whether an assistance program is offered for the
20 needed drug or drugs;

21 (b) Evaluating the likelihood of a person obtaining drugs from an
22 assistance program under the guidelines formulated;

23 (c) Assisting persons with the application and enrollment in an
24 assistance program;

25 (d) Coordinating and assisting physicians and others authorized to
26 prescribe medications with communications, including applications, made
27 on behalf of a person to a participating manufacturer to obtain
28 approval of the person in an assistance program; and

29 (e) Working with participating manufacturers to simplify the system
30 whereby eligible persons access drug assistance programs, including
31 development of a single application form and uniform enrollment
32 process.

33 (2) Notice regarding the pharmacy connection program shall
34 initially target senior citizens, but the program shall be available to
35 anyone, and shall include a toll-free telephone number, available
36 during regular business hours, that may be used to obtain information.

1 (3) The administrator may apply for and accept grants or gifts and
2 may enter into interagency agreements or contracts with other state
3 agencies or private organizations to assist with the implementation of
4 this program including, but not limited to, contracts, gifts, or grants
5 from pharmaceutical manufacturers to assist with the direct costs of
6 the program.

7 (4) The administrator shall notify pharmaceutical companies doing
8 business in Washington of the pharmacy connection program. Any
9 pharmaceutical company that does business in this state and that offers
10 a pharmaceutical assistance program shall notify the administrator of
11 the existence of the program, the drugs covered by the program, and all
12 information necessary to apply for assistance under the program.

13 (5) For purposes of this section, "manufacturer-sponsored
14 prescription drug assistance program" means a program offered by a
15 pharmaceutical company through which the company provides a drug or
16 drugs to eligible persons at no charge or at a reduced cost. The term
17 does not include the provision of a drug as part of a clinical trial.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.09 RCW
19 to read as follows:

20 Each of the state's area agencies on aging shall implement a
21 program intended to inform and train persons sixty-five years of age
22 and older in the safe and appropriate use of prescription and
23 nonprescription medications. To further this purpose, the department
24 shall award development grants averaging up to twenty-five thousand
25 dollars to each of the agencies upon a showing that:

26 (1) The agency has the ability to effectively administer such a
27 program, including an understanding of the relevant issues and
28 appropriate outreach and follow-up;

29 (2) The agency can bring resources to the program in addition to
30 those funded by the grant; and

31 (3) The program will be a collaborative effort between the agency
32 and other health care programs and providers in the location to be
33 served, including doctors, pharmacists, and long-term care providers.

34 **Sec. 9.** RCW 70.14.050 and 1986 c 303 s 10 are each amended to read
35 as follows:

36 (1) Each agency (~~listed in RCW 70.14.010~~) administering a state

1 purchased health care program as defined in RCW 41.05.011(2) shall
2 ~~((individually or))~~, in cooperation with other agencies, take any
3 necessary actions to control costs without reducing the quality of care
4 when reimbursing for or purchasing drugs. To accomplish this purpose,
5 ~~((each agency shall investigate the feasibility of and))~~ participating
6 agencies may establish ~~((a))~~ an evidence-based prescription drug
7 ~~((formulary designating which drugs may be paid for through their~~
8 ~~health care programs. For purposes of this section, a drug formulary~~
9 ~~means a list of drugs, either inclusive or exclusive, that defines~~
10 ~~which drugs are eligible for reimbursement by the agency))~~ program.

11 (2) In developing the evidence-based prescription drug
12 ~~((formulary))~~ program authorized by this section, agencies:

13 (a) Shall prohibit reimbursement for drugs that are determined to
14 be ineffective by the United States food and drug administration;

15 (b) Shall adopt rules in order to ensure that less expensive
16 generic drugs will be substituted for brand name drugs in those
17 instances where the quality of care is not diminished;

18 (c) Where possible, may authorize reimbursement for drugs only in
19 economical quantities;

20 (d) May limit the prices paid for drugs by such means as negotiated
21 discounts from pharmaceutical manufacturers, central purchasing, volume
22 contracting, or setting maximum prices to be paid;

23 (e) Shall consider the approval of drugs with lower abuse potential
24 in substitution for drugs with significant abuse potential; ~~((and))~~

25 (f) May take other necessary measures to control costs of drugs
26 without reducing the quality of care; and

27 (g) Shall adopt rules governing practitioner endorsement and use of
28 any list developed as part of the program authorized by this section.

29 (3) Agencies ~~((may))~~ shall provide for reasonable exceptions,
30 consistent with section 5 of this act, to ~~((the drug formulary~~
31 ~~required))~~ any list developed as part of the program authorized by this
32 section.

33 (4) Agencies ~~((may))~~ shall establish ~~((medical advisory committees,~~
34 ~~or utilize committees already established, to assist))~~ an independent
35 pharmacy and therapeutics committee to evaluate the effectiveness of
36 prescription drugs in the development of the ~~((drug formulary~~
37 ~~required))~~ program authorized by this section.

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

3 The authority may adopt rules to implement this act.

4 NEW SECTION. **Sec. 11.** By January 1, 2005, the administrator of
5 the health care authority and the secretary of the department of social
6 and health services shall submit to the governor and the legislature a
7 progress report regarding the implementation of the programs created in
8 this act.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.131
10 RCW to read as follows:

11 The discount program under section 3 of this act shall be
12 terminated June 30, 2010, as provided in section 13 of this act.

13 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.131
14 RCW to read as follows:

15 Section 3 of this act, as now existing or hereafter amended, is
16 repealed effective June 30, 2011.

17 NEW SECTION. **Sec. 14.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 15.** If any part of this act is found to be in
22 conflict with federal requirements that are a prescribed condition to
23 the allocation of federal funds to the state, the conflicting part of
24 this act is inoperative solely to the extent of the conflict and with
25 respect to the agencies directly affected, and this finding does not
26 affect the operation of the remainder of this act in its application to
27 the agencies concerned. Rules adopted under this act must meet federal
28 requirements that are a necessary condition to the receipt of federal
29 funds by the state.

30 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

Passed by the Senate June 5, 2003.

Passed by the House June 5, 2003.

Approved by the Governor June 26, 2003.

Filed in Office of Secretary of State June 26, 2003.