

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5892**

Chapter 575, Laws of 2009

61st Legislature  
2009 Regular Session

STATE PURCHASED HEALTH CARE--PRESCRIPTION DRUGS

EFFECTIVE DATE: 05/19/09

Passed by the Senate April 24, 2009  
YEAS 29 NAYS 15

BRAD OWEN

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**President of the Senate**

Passed by the House April 21, 2009  
YEAS 54 NAYS 43

FRANK CHOPP

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**Speaker of the House of Representatives**

Approved May 19, 2009, 4:09 p.m.

CHRISTINE GREGOIRE

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5892** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

FILED

May 20, 2009

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5892**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser and Shin; by request of Governor Gregoire)

READ FIRST TIME 03/02/09.

1            AN ACT Relating to authorizing state purchased health care programs  
2 to maximize appropriate prescription drug use in a cost-effective  
3 manner; amending RCW 69.41.190; and declaring an emergency.

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

5            **Sec. 1.** RCW 69.41.190 and 2006 c 233 s 1 are each amended to read  
6 as follows:

7            (1)(a) Except as provided in subsection (2) of this section, any  
8 pharmacist filling a prescription under a state purchased health care  
9 program as defined in RCW 41.05.011(2) shall substitute, where  
10 identified, a preferred drug for any nonpreferred drug in a given  
11 therapeutic class, unless the endorsing practitioner has indicated on  
12 the prescription that the nonpreferred drug must be dispensed as  
13 written, or the prescription is for a refill of an antipsychotic,  
14 antidepressant, antiepileptic, chemotherapy, antiretroviral, or  
15 immunosuppressive drug, or for the refill of a  
16 immunomodulator/antiviral treatment for hepatitis C for which an  
17 established, fixed duration of therapy is prescribed for at least  
18 twenty-four weeks but no more than forty-eight weeks, in which case the  
19 pharmacist shall dispense the prescribed nonpreferred drug.

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

5        (2)(a) A state purchased health care program may impose limited  
6 restrictions on an endorsing practitioner's authority to write a  
7 prescription to dispense as written only under the following  
8 circumstances:

9        (i) There is statistical or clear data demonstrating the endorsing  
10 practitioner's frequency of prescribing dispensed as written for  
11 nonpreferred drugs varies significantly from the prescribing patterns  
12 of his or her peers;

13        (ii) The medical director of a state purchased health program has:  
14 (A) Presented the endorsing practitioner with data that indicates the  
15 endorsing practitioner's prescribing patterns vary significantly from  
16 his or her peers, (B) provided the endorsing practitioner an  
17 opportunity to explain the variation in his or her prescribing patterns  
18 to those of his or her peers, and (C) if the variation in prescribing  
19 patterns cannot be explained, provided the endorsing practitioner  
20 sufficient time to change his or her prescribing patterns to align with  
21 those of his or her peers; and

22        (iii) The restrictions imposed under (a) of this subsection (2)  
23 must be limited to the extent possible to reduce variation in  
24 prescribing patterns and shall remain in effect only until such time as  
25 the endorsing practitioner can demonstrate a reduction in variation in  
26 line with his or her peers.

27        (b) A state purchased health care program may immediately designate  
28 an available, less expensive, equally effective generic product in a  
29 previously reviewed drug class as a preferred drug, without first  
30 submitting the product to review by the pharmacy and therapeutics  
31 committee established pursuant to RCW 70.14.050.

32        (c) For a patient's first course of treatment within a therapeutic  
33 class of drugs, a state purchased health care program may impose  
34 limited restrictions on endorsing practitioners' authority to write a  
35 prescription to dispense as written, only under the following  
36 circumstances:

37        (i) There is a less expensive, equally effective therapeutic  
38 alternative generic product available to treat the condition;

1       (ii) The drug use review board established under WAC 388-530-4000  
2 reviews and provides recommendations as to the appropriateness of the  
3 limitation;

4       (iii) Notwithstanding the limitation set forth in (c)(ii) of this  
5 subsection (2), the endorsing practitioner shall have an opportunity to  
6 request as medically necessary, that the brand name drug be prescribed  
7 as the first course of treatment;

8       (iv) The state purchased health care program may provide, where  
9 available, prescription, emergency room, diagnosis, and hospitalization  
10 history with the endorsing practitioner; and

11       (v) Specifically for antipsychotic restrictions, the state  
12 purchased health care program shall effectively guide good practice  
13 without interfering with the timeliness of clinical decision making.  
14 Department of social and health services prior authorization programs  
15 must provide for responses within twenty-four hours and at least a  
16 seventy-two hour emergency supply of the requested drug.

17       (d) If, within a therapeutic class, there is an equally effective  
18 therapeutic alternative over-the-counter drug available, a state  
19 purchased health care program may designate the over-the-counter drug  
20 as the preferred drug.

21       (e) A state purchased health care program may impose limited  
22 restrictions on endorsing practitioners' authority to prescribe  
23 pharmaceuticals to be dispensed as written for a purpose outside the  
24 scope of their approved labels only under the following circumstances:

25       (i) There is a less expensive, equally effective on-label product  
26 available to treat the condition;

27       (ii) The drug use review board established under WAC 388-530-4000  
28 reviews and provides recommendations as to the appropriateness of the  
29 limitation; and

30       (iii) Notwithstanding the limitation set forth in (e)(ii) of this  
31 subsection (2), the endorsing practitioner shall have an opportunity to  
32 request as medically necessary, that the drug be prescribed for a  
33 covered off-label purpose.

34       (f) The provisions of this subsection related to the definition of  
35 medically necessary, prior authorization procedures and patient appeal  
36 rights shall be implemented in a manner consistent with applicable  
37 federal and state law.

1       (3) Notwithstanding the limitations in subsection (2) of this  
2 section, for refills for an antipsychotic, antidepressant,  
3 antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug,  
4 or for the refill of an immunomodulator antiviral treatment for  
5 hepatitis C for which an established, fixed duration of therapy is  
6 prescribed for at least twenty-four weeks by no more than forty-eight  
7 weeks, the pharmacist shall dispense the prescribed nonpreferred drug.

8       NEW SECTION. Sec. 2. This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 immediately.

Passed by the Senate April 24, 2009.

Passed by the House April 21, 2009.

Approved by the Governor May 19, 2009.

Filed in Office of Secretary of State May 20, 2009.