

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6088**

66th Legislature  
2020 Regular Session

Passed by the Senate March 9, 2020  
Yeas 31 Nays 17

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**President of the Senate**

Passed by the House March 6, 2020  
Yeas 94 Nays 3

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**Speaker of the House of  
Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6088** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6088**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser, Conway, Das, Frockt, Hasegawa, Hunt, Kuderer, Pedersen, Randall, Rolfes, Stanford, and Wilson, C.)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to establishing a prescription drug affordability  
2 board; amending RCW 43.71C.100; adding new sections to chapter 70.14  
3 RCW; and adding a new section to chapter 42.56 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.14  
6 RCW to read as follows:

7 The definitions in this section apply throughout sections 2  
8 through 5 of this act unless the context clearly requires otherwise.

9 (1) "Authority" means the health care authority.

10 (2) "Biological product" has the meaning provided in 42 U.S.C.  
11 Sec. 262(i)(1).

12 (3) "Biosimilar" has the meaning provided in 42 U.S.C. Sec.  
13 262(i)(2).

14 (4) "Board" means the prescription drug affordability board.

15 (5) "Generic drug" has the meaning provided in RCW 69.48.020.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.14  
17 RCW to read as follows:

18 (1) Subject to the availability of amounts appropriated for this  
19 specific purpose, the prescription drug affordability board is

1 established, to include five members who have expertise in health  
2 care economics or clinical medicine appointed by the governor.

3 (2) Board members shall serve for a term of five years.

4 (3) No board member may be an employee of, a board member of, or  
5 consultant to, a prescription drug manufacturer, pharmacy benefit  
6 manager, health carrier, prescription drug wholesale distributor, or  
7 related trade association.

8 (4) The board may establish advisory groups consisting of  
9 relevant stakeholders when the board deems it necessary. Advisory  
10 group members are immune from civil liability for any official act  
11 performed in good faith as a member of the group.

12 (5) The authority shall provide administrative support to the  
13 board and any advisory group and may adopt rules governing their  
14 operation.

15 (6) Board members shall be compensated for participation in the  
16 work of the board in accordance with a personal services contract to  
17 be executed after appointment and before commencement of activities  
18 related to the work of the board.

19 (7) A simple majority of the board's membership constitutes a  
20 quorum for the purpose of conducting business.

21 (8) The board must coordinate with and complement the work of the  
22 authority, other boards, and work groups related to prescription drug  
23 costs and emerging therapies.

24 (9) All meetings of the board must be open and public, except  
25 that the board may hold executive sessions to the extent permitted by  
26 chapter 42.30 RCW.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.14  
28 RCW to read as follows:

29 (1) By May 1, 2021, the board must provide the health care cost  
30 transparency board established in chapter 70.--- RCW (the new chapter  
31 created in Second Substitute House Bill No. 2457, Laws of 2020), with  
32 recommendations for the means and methodologies to establish a cost  
33 growth benchmark related to prescription drugs.

34 (2) By June 30, 2021, and yearly thereafter, using data collected  
35 under chapter 43.71C RCW, or other data deemed relevant by the board,  
36 the board must identify:

37 (a) Brand name prescription drugs and biological products that:

1 (i) Are introduced to the market with a wholesale acquisition  
2 cost of thirty thousand dollars or more per year or course of  
3 treatment lasting less than one year; or

4 (ii) Have a price increase of two thousand dollars or more in any  
5 twelve-month period;

6 (b) Biosimilar products that have a launch wholesale acquisition  
7 cost that is not at least fifteen percent lower than the reference  
8 brand biological product at the time the biosimilar is launched;

9 (c) Generic drugs with a wholesale acquisition cost of one  
10 hundred dollars or more for a thirty-day supply or less that has  
11 increased in price by two hundred percent or more in the preceding  
12 twelve months;

13 (d) Any prescription drug or biological products exceeding the  
14 relevant benchmark established by the health care cost transparency  
15 board established in chapter 70.--- RCW (the new chapter created in  
16 Second Substitute House Bill No. 2457, Laws of 2020); and

17 (e) Any other prescription drug or biological product the board  
18 believes the manufacturer's pricing of may exceed the proposed value  
19 of the prescription drug or biological products.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.14  
21 RCW to read as follows:

22 (1) The board may choose to conduct a cost review of any  
23 prescription drug or biological product identified under section 3 of  
24 this act.

25 (2) For prescription drugs or biological products chosen for a  
26 cost review, the board must determine whether the manufacturer's  
27 pricing of the prescription drug or biological product substantially  
28 exceeds the proposed value of the prescription drug or biological  
29 product. The board may examine publicly available information as well  
30 as collect information from the drug manufacturer and other relevant  
31 sources. When conducting a review, the board may consider:

32 (a) The relevant factors contributing to the price paid by the  
33 state for the prescription drug or biological product, including the  
34 wholesale acquisition cost and discounts, rebates, or other price  
35 concessions provided by the manufacturer to the state;

36 (b) The average patient copay or other cost sharing for the drug;

37 (c) The dollar value of patient assistance programs offered by  
38 the manufacturer for the drug;

39 (d) The price of therapeutic alternatives;

1 (e) The amount of public funding received or provided for the  
2 development of the prescription drug or biological product;

3 (f) The manufacturer's research and development costs, as  
4 indicated on the manufacturer's federal tax filing or information  
5 filed with the federal securities and exchange commission for the  
6 most recent tax year in proportion to the manufacturer's sales in the  
7 state;

8 (g) The portion of direct-to-consumer marketing costs eligible  
9 for favorable federal tax treatment in the most recent tax year that  
10 are specific to the prescription drug under review and that are  
11 multiplied by the ratio of total manufacturer in-state sales to total  
12 manufacturer sales in the United States for the drug under review;

13 (h) The manufacturer's gross and net revenues for the most recent  
14 tax year; and

15 (i) Any other relevant factors as determined by the board.

16 (3) All information collected by the board under this section is  
17 not subject to public disclosure under chapter 42.56 RCW.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.14  
19 RCW to read as follows:

20 (1) If, after the cost review of a prescription drug or  
21 biological product the board determines that the manufacturer's  
22 pricing of the drug or biological product does not substantially  
23 exceed the proposed value of the prescription drug or biological  
24 product, the board shall notify the manufacturer, in writing, of its  
25 determination and shall evaluate other ways to mitigate the eligible  
26 prescription drug or biological product's cost in order to improve  
27 patient access to the eligible prescription drug or biological  
28 product. The board may engage with the manufacturer and other  
29 relevant stakeholders, including, but not limited to, patients,  
30 patient advocacy organizations, providers, provider organizations and  
31 payers, to explore options for mitigating the cost of the  
32 prescription drug or biological product. Upon the conclusion of a  
33 stakeholder engagement process under this subsection, the board shall  
34 issue recommendations on ways to reduce the cost of the prescription  
35 drug or biological product for the purpose of improving patient  
36 access to the prescription drug or biological product.  
37 Recommendations must be publicly posted on the authority's web site.  
38 The recommendations may include, but are not be limited to:

39 (a) An alternative payment plan or methodology;

1 (b) A bulk purchasing program;

2 (c) Copayment, coinsurance, deductible, or other cost-sharing  
3 restrictions; and

4 (d) A reinsurance program to subsidize the cost of the eligible  
5 drug.

6 (2) If, after the cost review of a prescription drug or  
7 biological product, the board determines that the manufacturer's  
8 pricing of the prescription drug or biological product substantially  
9 exceeds the proposed value of the prescription drug or biological  
10 product, the board shall request that the manufacturer provide  
11 further information related to the pricing of the prescription drug  
12 or biological product and the manufacturer's reasons for the pricing  
13 not later than sixty days after receiving the request.

14 (3) No later than ninety days after receiving the additional  
15 information from the manufacturer, the board shall confidentially  
16 issue a determination on whether the manufacturer's pricing of a  
17 prescription drug or biological product still substantially exceeds  
18 the board's proposed value of the prescription drug or biological  
19 product and request the manufacturer to enter into negotiations to  
20 reduce the cost of the prescription drug or biological product. If  
21 the manufacturer refuses to enter into negotiations, the authority  
22 shall post the board's proposed value on the authority's web site.

23 (4) Any proprietary information submitted by a prescription drug  
24 or biological product manufacturer pursuant to this section or  
25 section 4 of this act must be kept confidential.

26 **Sec. 6.** RCW 43.71C.100 and 2019 c 334 s 10 are each amended to  
27 read as follows:

28 (1) The authority shall compile and analyze the data submitted by  
29 health carriers, pharmacy benefit managers, manufacturers, and  
30 pharmacy services administrative organizations pursuant to this  
31 chapter and prepare an annual report for the public and the  
32 legislature synthesizing the data to demonstrate the overall impact  
33 that drug costs, rebates, and other discounts have on health care  
34 premiums.

35 (2) The data in the report must be aggregated and must not reveal  
36 information specific to individual health carriers, pharmacy benefit  
37 managers, pharmacy services administrative organizations,  
38 (~~individual prescription drugs, individual classes of prescription~~  
39 ~~drugs,~~) individual manufacturers, except in the case of single

1 source drugs, or discount amounts paid in connection with individual  
2 prescription drugs.

3 (3) Data received under this section must be used only for the  
4 enumerated purposes of this chapter and other statutorily authorized  
5 purposes.

6 (4) Beginning January 1, 2021, and by each January 1st  
7 thereafter, the authority must publish the report on its web site.

8 ~~((4))~~ (5) Except for the report, and as provided in subsection  
9 ~~((5))~~ (6) of this section, the authority shall keep confidential  
10 all data submitted pursuant to RCW 43.71C.020 through 43.71C.080.

11 ~~((5))~~ (6) For purposes of public policy, upon request of ~~((a~~  
12 ~~legislator))~~ the office of the governor, the office of the attorney  
13 general, the prescription drug affordability board established in  
14 section 2 of this act, or a committee or subcommittee of the  
15 legislature with jurisdiction over matters relating to drug  
16 transparency, the authority must provide all data provided pursuant  
17 to RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the  
18 authority. Any information provided pursuant to this subsection must  
19 be kept confidential within the ~~((legislature))~~ office of the  
20 governor, the office of the attorney general, the prescription drug  
21 affordability board established in section 2 of this act, or a  
22 committee or subcommittee of the legislature with jurisdiction over  
23 matters relating to drug transparency and may not be publicly  
24 released.

25 ~~((6))~~ (7) The data collected pursuant to this chapter is not  
26 subject to public disclosure under chapter 42.56 RCW.

27 (8) Recipients of data received under subsection (6) of this  
28 section must:

29 (a) Follow all rules adopted by the authority regarding  
30 appropriate data use and protection; and

31 (b) Sign a nondisclosure agreement that includes acknowledgments  
32 that the recipient is solely responsible for any liability arising  
33 from misuse of the data, that the recipient does not have any  
34 conflicts under the ethics in public service act that would prevent  
35 the recipient from accessing or using the data, and that any  
36 violations of the nondisclosure agreement may result in losing the  
37 right to access or use the data.

38 NEW SECTION. Sec. 7. A new section is added to chapter 42.56  
39 RCW to read as follows:

1        Any data collected by the prescription drug affordability board  
2 under section 4 of this act are exempt from disclosure under this  
3 chapter.

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