S-1290.1

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**SECOND SUBSTITUTE SENATE BILL 5195**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Liias, Muzzall, Das, Dhingra, Nguyen, and Wilson, C.)

AN ACT Relating to opioid overdose reversal medication; amending RCW 70.41.480; adding a new section to chapter 70.41 RCW; adding a new section to chapter 71.24 RCW; adding a new section to chapter 74.09 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Opioid use disorder is a treatable brain disease from which people recover;

(b) Individuals living with opioid use disorder are at high risk for fatal overdose;

(c) Overdose deaths are preventable with lifesaving opioid overdose reversal medications like naloxone;

(d) Just as individuals with life-threatening allergies should carry an EpiPen, individuals with opioid use disorder should carry opioid overdose reversal medication;

(e) There are 53,000 individuals in Washington enrolled in apple health, Washington's medicaid program, that have a diagnosis of opioid use disorder and yet there are alarmingly few medicaid claims for opioid overdose reversal medication; and

(f) Most of the opioid overdose reversal medication distributed in Washington is currently paid for with flexible federal and state dollars and distributed in bulk, rather than appropriately billed to a patient's insurance. Those finite flexible funds should instead be used for nonmedicaid eligible expenses or for opioid overdose reversal medication distributed in nonmedicaid eligible settings or to nonmedicaid eligible persons. The state's current methods for acquisition and distribution of opioid overdose reversal medication are not sustainable and insufficient to reach all Washingtonians living with opioid use disorder.

(2) Therefore, it is the intent of the legislature to increase access for all individuals with opioid use disorder to opioid overdose reversal medication so that if they experience an overdose, they will have a second chance. As long as there is breath, there is hope for recovery.

**Sec.**  RCW 70.41.480 and 2019 c 314 s 18 are each amended to read as follows:

(1) The legislature finds that high quality, safe, and compassionate health care services for patients of Washington state must be available at all times. The legislature further finds that there is a need for patients being released from hospital emergency departments to maintain access to emergency medications when community or hospital pharmacy services are not available, including medication for opioid overdose reversal and for the treatment for opioid use disorder as appropriate. It is the intent of the legislature to accomplish this objective by allowing practitioners with prescriptive authority to prescribe limited amounts of prepackaged emergency medications to patients being discharged from hospital emergency departments when access to community or outpatient hospital pharmacy services is not otherwise available.

(2) A hospital may allow a practitioner to prescribe prepackaged emergency medications and allow a practitioner or a registered nurse licensed under chapter 18.79 RCW to distribute prepackaged emergency medications to patients being discharged from a hospital emergency department in the following circumstances:

(a) During times when community or outpatient hospital pharmacy services are not available within fifteen miles by road;

(b) When, in the judgment of the practitioner and consistent with hospital policies and procedures, a patient has no reasonable ability to reach the local community or outpatient pharmacy; or

(c) When((~~, in the judgment of the practitioner and consistent with hospital policies and procedures, a patient is at risk of opioid overdose and the prepackaged emergency medication being distributed is an opioid overdose reversal medication. The labeling requirements of RCW 69.41.050 and 18.64.246 do not apply to opioid overdose reversal medications dispensed, distributed, or delivered pursuant to a prescription, collaborative drug therapy agreement, standing order, or protocol issued in accordance with this section. The individual or entity that dispenses, distributes, or delivers an opioid overdose reversal medication as authorized by this section must ensure that directions for use are provided.~~)) the hospital is distributing opioid overdose reversal medication under section 3 of this act.

(3) A hospital may only allow this practice if: The director of the hospital pharmacy, in collaboration with appropriate hospital medical staff, develops policies and procedures regarding the following:

(a) Development of a list, preapproved by the pharmacy director, of the types of emergency medications to be prepackaged and distributed;

(b) Assurances that emergency medications to be prepackaged pursuant to this section are prepared by a pharmacist or under the supervision of a pharmacist licensed under chapter 18.64 RCW;

(c) Development of specific criteria under which emergency prepackaged medications may be prescribed and distributed consistent with the limitations of this section;

(d) Assurances that any practitioner authorized to prescribe prepackaged emergency medication or any nurse authorized to distribute prepackaged emergency medication is trained on the types of medications available and the circumstances under which they may be distributed;

(e) Procedures to require practitioners intending to prescribe prepackaged emergency medications pursuant to this section to maintain a valid prescription either in writing or electronically in the patient's records prior to a medication being distributed to a patient;

(f) Establishment of a limit of no more than a forty-eight hour supply of emergency medication as the maximum to be dispensed to a patient, except when community or hospital pharmacy services will not be available within forty-eight hours. In no case may the policy allow a supply exceeding ninety-six hours be dispensed;

(g) Assurances that prepackaged emergency medications will be kept in a secure location in or near the emergency department in such a manner as to preclude the necessity for entry into the pharmacy; and

(h) Assurances that nurses or practitioners will distribute prepackaged emergency medications to patients only after a practitioner has counseled the patient on the medication.

(4) The delivery of a single dose of medication for immediate administration to the patient is not subject to the requirements of this section.

(5) Nothing in this section restricts the authority of a practitioner in a hospital emergency department to distribute opioid overdose reversal medication under RCW 69.41.095.

(6) For purposes of this section:

(a) "Emergency medication" means any medication commonly prescribed to emergency department patients, including those drugs, substances or immediate precursors listed in schedules II through V of the uniform controlled substances act, chapter 69.50 RCW, as now or hereafter amended.

(b) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(c) "Opioid overdose reversal medication" has the same meaning as provided in RCW 69.41.095.

(d) "Practitioner" means any person duly authorized by law or rule in the state of Washington to prescribe drugs as defined in RCW 18.64.011(29).

((~~(d)~~)) (e) "Nurse" means a registered nurse as defined in RCW 18.79.020.

NEW SECTION. **Sec.**  A new section is added to chapter 70.41 RCW to read as follows:

(1) A hospital shall provide a person who presents to an emergency department with symptoms of an opioid overdose, opioid use disorder, or other adverse event related to opioid use with opioid overdose reversal medication upon discharge, unless the treating practitioner determines in their clinical and professional judgment that dispensing opioid overdose reversal medication is not appropriate or is not needed. If the hospital dispenses opioid overdose reversal medication it shall provide directions for use.

(2) The opioid overdose reversal medication may be dispensed with technology used to dispense medications.

(3) Effective January 1, 2022, a person who is provided opioid overdose reversal medication under this section must be provided information and resources about medication for opioid use disorder and harm reduction strategies and services which may be available, such as substance use disorder treatment services and substance use disorder peer counselors. This information should be available in all languages relevant to the communities that the hospital serves.

(4) The labeling requirements of RCW 69.41.050 and 18.64.246 do not apply to opioid overdose reversal medications dispensed or delivered in accordance with this section.

(5)(a) If the patient is enrolled in medical assistance programs under chapter 74.09 RCW, the hospital must bill the patient's medicaid benefit for the patient's opioid overdose reversal medication utilizing the appropriate billing codes established by the health care authority. This billing shall be separate from and in addition to the payment for the other services provided during the hospital visit.

(b) If the patient has available insurance coverage other than medical assistance under chapter 74.09 RCW, the hospital shall bill the patient's insurance for the cost of the opioid overdose reversal medication.

(c) Medicaid managed care organizations shall reimburse hospitals for dispensing opioid overdose reversal medication under this section to patients enrolled in medical assistance under chapter 74.09 RCW. If the person is not enrolled in medical assistance and does not have any other available insurance coverage, the Washington state health care authority shall reimburse the hospital.

(d) This section does not prohibit a hospital from dispensing opioid overdose reversal medication to a patient at no cost to the patient out of the hospital's prepurchased supply.

(6) Nothing in this section prohibits or modifies a hospital's ability or responsibility to bill a patient's health insurance or to provide financial assistance as required by state or federal law.

(7) A hospital, its employees, and its practitioners are immune from suit in any action, civil or criminal, or from professional or other disciplinary action, for action or inaction in compliance with this section.

(8) For purposes of this section:

(a) "Opioid overdose reversal medication" has the meaning provided in RCW 69.41.095.

(b) "Practitioner" has the meaning provided in RCW 18.64.011.

NEW SECTION. **Sec.**  A new section is added to chapter 71.24 RCW to read as follows:

(1) During an intake, discharge, or outpatient treatment plan review for any client presenting with symptoms of an opioid use disorder, or who reports recent use of opioids outside legal authority, all outpatient community mental health agencies that provide individual treatment, outpatient substance use disorder providers, residential substance use disorder providers, withdrawal management providers, secure withdrawal management and stabilization facility providers, and opioid treatment programs shall:

(a) Confirm that the client has opioid overdose reversal medication; or

(b) If a client does not possess opioid overdose reversal medication, unless the behavioral health agency determines using clinical and professional judgment that opioid overdose reversal medication is not appropriate or not needed, prescribe the client opioid overdose reversal medication or utilize the statewide naloxone standing order and assist the client in directly obtaining opioid overdose reversal medication as soon as practical by:

(i) Directly dispensing the opioid overdose reversal medication, if authorized by state law;

(ii) Partnering with a pharmacy to obtain the opioid overdose reversal medication on the client's behalf and distributing the opioid overdose reversal medication to the client;

(iii) Assisting the client in utilizing a mail order pharmacy or pharmacy that mails prescription drugs directly to the facility, provider, or client and distributing the opioid overdose reversal medication to the client, if necessary; or

(iv) Any other means authorized by state law to ensure that the client has opioid overdose reversal medication.

(2) If a behavioral health agency listed in subsection (1) of this section prescribes opioid overdose reversal medication or utilizes the statewide naloxone standing order and assists the client in directly obtaining the opioid overdose reversal medication, the program or provider shall bill the client's insurance to the extent possible if the client has health insurance coverage.

(3) The labeling requirements of RCW 69.41.050 and 18.64.246 do not apply to opioid overdose reversal medications dispensed or delivered in accordance with this section.

(4) The individual or entity that dispenses, distributes, or delivers an opioid reversal medication in accordance with this section shall ensure that the directions for use are provided.

(5) A behavioral health agency, and its employees and practitioners, are immune from suit in any action, civil or criminal, or from professional or other disciplinary action, for action or inaction in compliance with this section.

(6) For purposes of this section, "opioid overdose reversal medication" has the meaning provided in RCW 69.41.095.

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

(1) The authority, in consultation with the department of health and the office of the insurance commissioner, shall provide technical assistance to hospitals and community behavioral health agencies to assist these entities and providers in complying with sections 3 and 4 of this act.

(2) The authority shall develop written materials in all relevant languages for each hospital to comply with section 3 of this act, including directions for the use of opioid overdose reversal medication, and provide them to all hospitals by January 1, 2022.

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