
SUBSTITUTE SENATE BILL 5794

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Kuderer, Frockt, Hasegawa, Lovelett, Randall, Van De Wege, and C. Wilson)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to continuity of coverage for prescription drugs
2 prescribed for the treatment of behavioral health conditions;
3 amending RCW 69.41.190; and adding a new section to chapter 48.43
4 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43
7 RCW to read as follows:

8 (1) Except as provided in subsection (2) of this section, for
9 health plans that include prescription drug coverage issued or
10 renewed on or after January 1, 2023, a health carrier may not require
11 the substitution of a nonpreferred drug with a preferred drug in a
12 given therapeutic class, or increase an enrollee's cost-sharing
13 obligation mid-plan year for the drug, if the prescription is for a
14 refill of a prescription drug used for the assessment and treatment
15 of a mental health condition, the enrollee is medically stable on the
16 drug, and a participating provider continues to prescribe the drug.

17 (2) Nothing in this section prohibits:

18 (a) The carrier from requiring generic substitution during the
19 current plan year;

20 (b) The carrier from adding new drugs to its formulary during the
21 current plan year, as long as the changed formulary applies only to

1 new prescriptions and not existing prescriptions in violation of
2 subsection (1) of this section;

3 (c) The carrier from removing a drug from its formulary for
4 reasons of patient safety concerns, drug recall or removal from the
5 market, or medical evidence indicating no therapeutic effect of the
6 drug; or

7 (d) A participating provider from prescribing a different drug
8 that is covered by the plan and medically appropriate for the
9 enrollee.

10 **Sec. 2.** RCW 69.41.190 and 2011 1st sp.s. c 15 s 80 are each
11 amended to read as follows:

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

25 (b) When a substitution is made under (a) of this subsection, the
26 dispensing pharmacist shall notify the prescribing practitioner of
27 the specific drug and dose dispensed.

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

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

36 (ii) The medical director of a state purchased health program
37 has: (A) Presented the endorsing practitioner with data that
38 indicates the endorsing practitioner's prescribing patterns vary
39 significantly from his or her peers, (B) provided the endorsing

1 practitioner an opportunity to explain the variation in his or her
2 prescribing patterns to those of his or her peers, and (C) if the
3 variation in prescribing patterns cannot be explained, provided the
4 endorsing practitioner sufficient time to change his or her
5 prescribing patterns to align with those of his or her peers; and

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

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

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

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

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

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

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

33 (v) Specifically for antipsychotic restrictions, the state
34 purchased health care program shall effectively guide good practice
35 without interfering with the timeliness of clinical decision making.
36 Health care authority prior authorization programs must provide for
37 responses within twenty-four hours and at least a seventy-two hour
38 emergency supply of the requested drug.

39 (d) If, within a therapeutic class, there is an equally effective
40 therapeutic alternative over-the-counter drug available, a state

1 purchased health care program may designate the over-the-counter drug
2 as the preferred drug.

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

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

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

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

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

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

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