

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5300

Chapter 325, Laws of 2023

68th Legislature
2023 Regular Session

PRESCRIPTION DRUGS FOR BEHAVIORAL HEALTH—CONTINUITY OF COVERAGE

EFFECTIVE DATE: July 23, 2023—Except for section 2, which takes effect January 1, 2025.

Passed by the Senate April 17, 2023
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 6, 2023
Yeas 98 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Approved May 4, 2023 4:05 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5300** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 5, 2023

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5300

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Dhingra, Billig, Cleveland, Frame, Hasegawa, Hunt, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Randall, Rivers, Robinson, Shewmake, Valdez, Wellman, and C. Wilson)

READ FIRST TIME 02/10/23.

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; adding a new section to chapter 48.43 RCW;
4 and providing an effective date.

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, 2025, a health carrier or its health
11 care benefit manager may not require the substitution of a
12 nonpreferred drug with a preferred drug in a given therapeutic class,
13 or increase an enrollee's cost-sharing obligation mid-plan year for
14 the drug, if the prescription is for a refill of an antipsychotic,
15 antidepressant, antiepileptic, or other drug prescribed to the
16 enrollee to treat a serious mental illness, the enrollee is medically
17 stable on the drug, and a participating provider continues to
18 prescribe the drug.

19 (2) Nothing in this section prohibits:

20 (a) The carrier from requiring generic substitution during the
21 current plan year;

1 (b) The carrier from adding new drugs to its formulary during the
2 current plan year;

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 (3) For the purposes of this section:

11 (a) "Refill" means a second or subsequent filling of a previously
12 issued prescription.

13 (b) "Serious mental illness" means a mental disorder, as defined
14 in the most recent edition of the diagnostic and statistical manual
15 of mental disorders published by the American psychiatric
16 association, that results in serious functional impairment that
17 substantially interferes with or limits one or more major life
18 activities.

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

21 (1)(a) Except as provided in subsection (2) of this section, any
22 pharmacist filling a prescription under a state purchased health care
23 program as defined in RCW 41.05.011(~~((2))~~) shall substitute, where
24 identified, a preferred drug for any nonpreferred drug in a given
25 therapeutic class, unless the endorsing practitioner has indicated on
26 the prescription that the nonpreferred drug must be dispensed as
27 written, or the prescription is for a refill of an antipsychotic,
28 antidepressant, antiepileptic, or other drug prescribed to the
29 patient to treat a serious mental illness, chemotherapy,
30 antiretroviral, or immunosuppressive drug, or for the refill of a
31 immunomodulator/antiviral treatment for hepatitis C for which an
32 established, fixed duration of therapy is prescribed for at least
33 (~~((twenty-four))~~) 24 weeks but no more than (~~((forty-eight))~~) 48 weeks,
34 in which case the pharmacist shall dispense the prescribed
35 nonpreferred drug.

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

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

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

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

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

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

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

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

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

38 (iii) Notwithstanding the limitation set forth in (c)(ii) of this
39 subsection (2), the endorsing practitioner shall have an opportunity

1 to request as medically necessary, that the brand name drug be
2 prescribed as the first course of treatment;

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

6 (v) Specifically for antipsychotic restrictions, the state
7 purchased health care program shall effectively guide good practice
8 without interfering with the timeliness of clinical decision making.
9 Health care authority prior authorization programs must provide for
10 responses within (~~(twenty-four)~~) 24 hours and at least a (~~(seventy-~~
11 ~~two)~~) 72 hour emergency supply of the requested drug.

12 (d) If, within a therapeutic class, there is an equally effective
13 therapeutic alternative over-the-counter drug available, a state
14 purchased health care program may designate the over-the-counter drug
15 as the preferred drug.

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

21 (i) There is a less expensive, equally effective on-label product
22 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; and

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

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

34 (3) Notwithstanding the limitations in subsection (2) of this
35 section, for refills for an antipsychotic, antidepressant,
36 antiepileptic, or other drug prescribed to the patient to treat a
37 serious mental illness, chemotherapy, antiretroviral, or
38 immunosuppressive drug, or for the refill of an immunomodulator
39 antiviral treatment for hepatitis C for which an established, fixed
40 duration of therapy is prescribed for at least (~~(twenty-four)~~) 24

1 weeks by no more than (~~forty-eight~~) 48 weeks, the pharmacist shall
2 dispense the prescribed nonpreferred drug.

3 (4) For the purposes of this section, "serious mental illness"
4 means a mental disorder, as defined in the most recent edition of the
5 diagnostic and statistical manual of mental disorders published by
6 the American psychiatric association, that results in serious
7 functional impairment that substantially interferes with or limits
8 one or more major life activities.

9 NEW SECTION. Sec. 3. Section 2 of this act takes effect January
10 1, 2025.

Passed by the Senate April 17, 2023.

Passed by the House April 6, 2023.

Approved by the Governor May 4, 2023.

Filed in Office of Secretary of State May 5, 2023.

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