
SENATE BILL 5030

State of Washington

57th Legislature

2001 Regular Session

By Senator Thibaudeau

Read first time 01/08/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the Washington pharmacy access program;
2 adding a new chapter to Title 70 RCW; creating a new section; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Administrator" means the Washington pharmacy access
9 program administrator, who also holds the position of
10 administrator of the Washington state health care authority.

11 (2) "Eligible person" means a resident of the state who is:

12 (a) Ineligible for medicaid prescription drug benefits;

13 (b) Ineligible for, or not receiving, or both, a prescription
14 drug benefit under a medicare supplemental policy or any other
15 third-party payer prescription drug benefit;

16 (c) Not confined or residing in a government-operated
17 institution, unless he or she meets eligibility criteria adopted
18 by the administrator; and

1 (d)(i) At least sixty-five years old; or (ii) between the ages
2 of nineteen and sixty-four who is otherwise eligible for benefits
3 under Title II of the social security act (federal old age,
4 survivors, and disability insurance benefits).

5 (3) "Mail order program" means a program to dispense
6 prescription drugs by postal delivery service designated and
7 administered by the Washington state health care authority, and
8 any entity with which it contracts, upon an enrollee's submission
9 of a prescription and the applicable copayment.

10 (4) "Maintenance drug" means a prescription drug prescribed to
11 an individual for a chronic condition, the use of which is
12 medically necessary for a consecutive period of ninety days or
13 longer.

14 (5) "Nonsubsidized enrollee" means an eligible person who has
15 applied and been accepted in the Washington prescription drug
16 insurance plan established in sections 3 through 9 of this act
17 whose gross family income at the time of enrollment exceeds two
18 hundred percent of the federal poverty level as adjusted for
19 family size and determined annually by the federal department of
20 health and human services and who pays or on whose behalf is paid
21 the full costs for participation in the plan, without any subsidy
22 from the plan.

23 (6) "Participating manufacturer" means a pharmaceutical
24 manufacturer that offers prescription medications or
25 nonprescription medications at a reduced cost or free of charge to
26 low-income persons pursuant to a voluntary drug assistance
27 program.

28 (7) "Pharmacy benefit manager" means an entity under contract
29 with the Washington state health care authority, whether organized
30 on a for-profit or a not-for-profit basis, contracted to manage
31 the Washington prescription drug insurance plan established by
32 sections 3 through 9 of this act.

33 (8) "Pharmacy services" means services provided by a
34 pharmacist, consistent with chapter 18.64 RCW, intended to assist
35 an enrollee in the safe, appropriate, and cost-effective use of
36 drugs that he or she has been prescribed. These services may
37 include but are not limited to disease management, case

1 management, education and counseling, special pharmaceutical
2 packaging, and medication compliance programs.

3 (9) "Premium" means a periodic payment, based upon gross family
4 income, that an individual or a financial sponsor makes to the
5 plan as consideration for enrollment in the plan as a subsidized
6 enrollee or a nonsubsidized enrollee.

7 (10) "Prescription drug" means any drug required by state or
8 federal law or regulation to be dispensed only by a prescription,
9 including finished dosage forms and active ingredients subject to
10 section 503(b) of the federal food, drug, and cosmetic act.

11 (11) "Subsidized enrollee" means an eligible person who has
12 applied and been accepted in the Washington prescription drug
13 insurance plan whose gross family income at the time of enrollment
14 does not exceed two hundred percent of the federal poverty level
15 as adjusted for family size and determined annually by the federal
16 department of health and human services.

17 (12) "Subsidy" means the difference between the full cost of
18 participation in the plan and the amount determined to be the
19 subsidized enrollee's responsibility under section 4(3) of this
20 act.

21 (13) "Washington pharmacy access program" or "program" means
22 the system of education, assistance, and payment for prescription
23 drug and pharmacy services created by this chapter.

24 (14) "Washington prescription drug insurance plan" or "plan"
25 means the self-funded plan for providing coverage for prescription
26 drugs and pharmacy services established in sections 3 through 9 of
27 this act.

28 NEW SECTION. **Sec. 2.** (1) The Washington pharmacy access program
29 is created within the Washington state health care authority. The
30 administrative head and appointing authority of the program is the
31 administrator of the Washington state health care authority. The
32 program includes the following components:

33 (a) A self-funded prescription drug insurance plan, designed
34 and implemented pursuant to sections 3 through 9 of this act;

35 (b) Prescription drug information and education grants awarded
36 to local organizations pursuant to section 10 of this act; and

1 (c) Assistance to eligible individuals in obtaining free or low
2 cost prescription drugs from existing public and private sources
3 pursuant to section 11 of this act.

4 (2) The administrator shall employ other staff as are necessary
5 to fulfill the responsibilities and duties of this chapter. In
6 addition, the administrator may contract with third parties for
7 services necessary to carry out its activities where this will
8 promote economy, avoid duplication of effort, and make best use of
9 available expertise. Any such contractor or consultant is
10 prohibited from releasing, publishing, or otherwise using any
11 information made available to it under its contractual
12 responsibility without specific permission of the plan. The
13 administrator may call upon other agencies of the state to provide
14 available information as necessary to assist the administrator in
15 meeting its responsibilities under this chapter, which information
16 shall be supplied as promptly as circumstances permit.

17 (3) The administrator may appoint technical or advisory
18 committees as he or she deems necessary. Individuals appointed to
19 any technical or other advisory committee shall serve without
20 compensation for their services as members, but may be reimbursed
21 for their travel expenses under RCW 43.03.050 and 43.03.060.

22 (4) The administrator may apply for, receive, and accept
23 grants, gifts, and other payments, including property and service,
24 from any governmental or other public or private entity or person,
25 and may make arrangements as to the use of these receipts,
26 including the undertaking of special studies and other projects
27 relating to the cost of and access to prescription drugs and
28 pharmacy services.

29 NEW SECTION. **Sec. 3.** The Washington prescription drug insurance
30 plan is created within the Washington pharmacy access program. The
31 plan shall be actuarially sound and designed to provide eligible
32 persons with coverage for prescription drugs and pharmacy
33 services. Enrollment in the plan is voluntary.

34 NEW SECTION. **Sec. 4.** In implementing the Washington
35 prescription drug insurance plan, the administrator shall take all

1 necessary steps to ensure that the plan is structured in a way
2 that maximizes savings, efficiencies, affordability, benefits, and
3 coverage, and in so doing, has the following powers and duties:

4 (1) To design and from time to time revise a schedule of
5 covered prescription drugs and pharmacy services. No prescription
6 drug shall be excluded from any formulary established for the plan
7 unless another prescription drug is available on the formulary
8 that is therapeutically equivalent to the excluded prescription
9 drug. All subsidized and nonsubsidized enrollees are entitled to
10 receive covered drugs and services in return for premium payments
11 to the plan. In designing and revising the schedule of drugs and
12 services, the administrator's decisions shall be based on
13 scientific evidence and be intended to optimize patient care,
14 discourage prescribing that is not medically indicated, and
15 encourage the most cost-effective selection of medications;

16 (2) To negotiate price discounts and rebates from
17 pharmaceutical manufacturers for prescription drugs covered under
18 the plan;

19 (3)(a) To determine the periodic premiums due the plan from
20 subsidized enrollees, based upon gross family income;

21 (b) To determine the periodic premiums due the plan from
22 nonsubsidized enrollees. Premiums due from nonsubsidized enrollees
23 must be in an amount equal to the per-enrollee cost of the plan
24 plus the administrative cost of providing the plan to those
25 enrollees;

26 (c) To establish a surcharge for any nonsubsidized enrollee who
27 fails to enroll within his or her first year of eligibility;

28 (d) A financial sponsor may, with the prior approval of the
29 administrator, pay the premium, rate, or any other amount on
30 behalf of a subsidized or nonsubsidized enrollee, by arrangement
31 with the enrollee and through a mechanism acceptable to the
32 administrator;

33 (4) Subject to section 5 of this act, to design and implement a
34 structure of enrollee cost-sharing. The structure shall discourage
35 inappropriate enrollee utilization of drugs and services, and may
36 utilize copayments, deductibles, and other cost-sharing
37 mechanisms, but shall not be so costly to enrollees as to

1 constitute a barrier to appropriate utilization of necessary drugs
2 and services;

3 (5) To limit enrollment of persons who qualify for subsidies so
4 as to prevent an overexpenditure of appropriations for such
5 purposes. Whenever the administrator finds that there is danger of
6 such an overexpenditure, the administrator shall close enrollment
7 until the administrator finds the danger no longer exists;

8 (6) To limit the payment of subsidies to subsidized enrollees;

9 (7) To enter into a competitively procured contract with one or
10 more entities including, but not limited to, a pharmacy benefit
11 manager, to administer benefits under the plan. The procurement
12 shall explicitly be made a part of, or the contract shall be
13 performed in conjunction with, any established state agency
14 aggregate purchasing program. The health care authority may
15 contract with entities to perform marketing, enrollment, billing,
16 claims processing, claims management, or any other function it
17 deems necessary;

18 (8) To offer a mail order program and require the use of a mail
19 order program for maintenance drugs. No mail order program for
20 maintenance drugs may be required unless the administrator
21 determines in writing that material savings will result to the
22 state or enrollees without compromising the health or safety of
23 enrollees. In making such a determination, the administrator shall
24 consider the impact of a mail order program on the value of the
25 retail pharmacy services in the communities. Prior to making such a
26 determination, the administrator shall hold at least one public
27 hearing in order to hear testimony from members of the public. Any
28 mail order program must be administered by the Washington state
29 health care authority, and the contracted pharmacy benefit
30 manager;

31 (9) To receive periodic premiums from or on behalf of
32 subsidized and nonsubsidized enrollees, deposit them in the
33 prescription drug insurance plan operating account, and keep
34 records of enrollee status;

35 (10) To accept applications from individuals for enrollment in
36 the Washington prescription drug insurance plan as subsidized or
37 nonsubsidized enrollees, to establish appropriate minimum-
38 enrollment periods for enrollees as may be necessary, and to

1 determine, upon application and on a reasonable schedule defined
2 by the health care authority, or at the request of any enrollee,
3 eligibility due to current gross family income for sliding scale
4 premiums. Funds received by a family as part of participation in
5 the adoption support program authorized under RCW 26.33.320 and
6 74.13.100 through 74.13.145 shall not be counted toward a family's
7 current gross family income for the purposes of this chapter. When
8 an enrollee fails to report income or income changes accurately,
9 the administrator shall have the authority either to bill the
10 enrollee for the amounts overpaid by the state or to impose civil
11 penalties of up to two hundred percent of the amount of subsidy
12 overpaid due to the enrollee incorrectly reporting income. The
13 administrator shall adopt rules to define the appropriate
14 application of these sanctions and the processes to implement the
15 sanctions provided in this subsection, within available resources.
16 No subsidy may be paid with respect to any enrollee whose current
17 gross family income exceeds twice the federal poverty level or who
18 is a recipient of medical assistance or medical care services
19 under chapter 74.09 RCW. If a number of enrollees drop their
20 enrollment for no apparent good cause, the administrator may
21 establish appropriate rules or requirements that are applicable to
22 such individuals before they are allowed to reenroll in the plan;

23 (11) To establish a time period, not to exceed nine months from
24 the effective date of coverage, within which benefits will not be
25 provided for any condition for which a health care provider
26 recommended or provided treatment within six months of a person's
27 application for enrollment. A process to waive the preexisting
28 condition waiting period in appropriate circumstances may also be
29 established;

30 (12) To evaluate the effects this chapter has on private
31 employer-based prescription drug coverage and to take appropriate
32 measures consistent with state and federal statutes that will
33 discourage the reduction of such coverage in the state;

34 (13) To design and implement prescriber education programs and
35 other interventions directed at health care providers intended to
36 promote the safest, most appropriate, and cost-effective use of
37 prescription drugs by plan enrollees;

38 (14) In consultation with appropriate state and local

1 government agencies, to establish criteria defining eligibility
2 for persons confined or residing in government-operated
3 institutions.

4 NEW SECTION. **Sec. 5.** The plan shall pay the costs of all
5 generic and preferred prescription drugs and pharmacy services for
6 an enrollee once that enrollee's out-of-pocket expenditures in a
7 calendar year on prescription drugs and pharmacy services exceeds
8 the lesser of: (1) Ten percent of the enrollee's gross annual
9 household income; or (2) two thousand dollars. For purposes of this
10 section, out-of-pocket expenditures do not include monthly
11 premiums, for which an enrollee remains responsible.

12 NEW SECTION. **Sec. 6.** (1) The Washington state health care
13 authority, and any entity with which it contracts, shall inform
14 enrollees in writing of the plan's scope, coverage, cost-sharing
15 requirements, and any limitations on access to prescription
16 drugs. The Washington state health care authority, and any entity
17 with which it contracts, shall provide for a clear and timely
18 process by which enrollees can appeal a decision by the health
19 care authority or any contracted entity to deny or limit coverage
20 or benefits under this section.

21 (2) The appeal process shall, at a minimum, provide enrollees
22 with: (a) The opportunity to obtain a nonpreferred drug at the
23 copayment level of a preferred drug, or to obtain any prescription
24 drug excluded by the plan, upon a separate written certification
25 by the enrollee's physician, satisfactory to the health care
26 authority, that the nonpreferred or excluded drug is medically
27 necessary and there is no therapeutically equivalent preferred
28 drug available to the enrollee; (b) a provision allowing enrollees
29 to appeal the exclusion of any prescription drug from any
30 formulary established for the plan. An enrollee may apply to be
31 exempt from any mail order requirement of the plan upon a separate
32 written certification by the enrollee's physician, satisfactory to
33 the health care authority, that due to a disability or other
34 significant limiting factor, the use of such a mail order program
35 would be medically inappropriate for the enrollee. A retail

1 pharmacy may not be required to dispense a prescription upon the
2 failure of an enrollee to make the required copayment.

3 NEW SECTION. **Sec. 7.** Any enrollee whose premium payments to the
4 plan are delinquent or who moves his or her residence out of the
5 state may be dropped from enrollment status. The administrator
6 shall provide delinquent enrollees with advance written notice of
7 their removal from the plan and shall provide for a hearing under
8 chapters 34.05 and 34.12 RCW for any enrollee who contests the
9 decision to drop the enrollee from the plan.

10 NEW SECTION. **Sec. 8.** The activities and operations of the
11 Washington prescription drug insurance plan under this chapter,
12 including those of pharmacy benefit managers to the extent of
13 their participation in the plan, are exempt from the provisions
14 and requirements of Title 48 RCW, except that persons appointed or
15 authorized to solicit applications for enrollment in the plan,
16 including employees of the health care authority, must comply with
17 chapter 48.17 RCW. For the purposes of this section, "solicit" does
18 not include distributing information and applications for the plan
19 and responding to questions.

20 NEW SECTION. **Sec. 9.** (1) The prescription drug insurance plan
21 trust account is hereby established in the state treasury. All
22 nongeneral fund-state funds collected for this program shall be
23 deposited in the prescription drug insurance plan trust
24 account. Moneys in the account shall be used exclusively for the
25 purposes of sections 3 through 9 of this act. Only the
26 administrator or the administrator's designee may authorize
27 expenditures from the account. The account is subject to allotment
28 procedures under chapter 43.88 RCW, but an appropriation is not
29 required for expenditures.

30 (2) The prescription drug insurance plan subscription account
31 is created in the custody of the state treasurer. All receipts from
32 amounts due from or on behalf of nonsubsidized enrollees shall be
33 deposited into the account. Expenditures from the account shall be
34 used exclusively for the purposes of sections 3 through 9 of this
35 act. Only the administrator or the administrator's designee may

1 authorize expenditures from the account. The account is subject to
2 allotment procedures under chapter 43.88 RCW, but no appropriation
3 is required for expenditures.

4 (3) The administrator shall take every precaution to see that
5 none of the funds in the separate accounts created in this section
6 or that any premiums paid either by subsidized or nonsubsidized
7 enrollees are commingled in any way, except that the administrator
8 may combine funds designated for administration of the plan into a
9 single administrative account.

10 NEW SECTION. **Sec. 10.** (1) The Washington pharmacy access program
11 shall award prescription drug information and education grants to
12 local government or nonprofit organizations for the design and
13 implementation of programs intended to inform and train persons
14 age sixty-five and older in the safe and appropriate use of
15 prescription and nonprescription medications.

16 (2) The grants shall be awarded on a competitive basis, using
17 the following criteria:

18 (a) The demonstrated ability of the applicant organization to
19 effectively administer such a program, including appropriate
20 outreach and follow-up;

21 (b) The financial and in-kind resources that the applicant
22 organization will bring to the program in addition to those funded
23 by the grant;

24 (c) The extent to which the proposed program design reflects a
25 comprehensive understanding of issues related to the safe and
26 appropriate use of prescription drugs by seniors, and how to
27 effectively communicate with the target audience;

28 (d) The extent to which the proposed program reflects a
29 collaborative effort between the applicant organization and other
30 health care providers and programs in the location to be served,
31 including doctors, pharmacists, and long-term care providers;

32 (e) The extent to which the proposed program will serve as a
33 model that can be replicated by other organizations around the
34 state; and

35 (f) Any other criteria deemed appropriate by the administrator
36 to ensure the quality and cost-effectiveness of the programs
37 funded.

1 In awarding the grants, the administrator shall make every
2 effort to ensure that the programs are geographically dispersed
3 around the state.

4 NEW SECTION. **Sec. 11.** The Washington medications outreach
5 initiative is created within the Washington pharmacy access
6 program. The initiative shall:

7 (1) In cooperation with the department of social and health
8 services, identify and assist eligible persons age sixty-five and
9 older in enrolling in the state medical assistance program under
10 chapter 74.09 RCW;

11 (2) Engage in outreach marketing efforts to maximize enrollment
12 in the Washington prescription drug insurance plan;

13 (3) Assist persons in procuring free or low-cost medications
14 from the drug assistance programs of pharmaceutical manufacturers
15 by:

16 (a) Evaluating the likelihood of success of a person obtaining
17 free or low-cost medications from a participating manufacturer
18 under the guidelines formulated;

19 (b) Assisting persons with the preparation of an application
20 for medications to a participating manufacturer; and

21 (c) Coordinating and assisting physicians and others authorized
22 to prescribe medications with communications, including
23 applications, made on behalf of a person to a participating
24 manufacturer for the purpose of obtaining approval of the person
25 in any voluntary drug assistance program; and

26 (4) Work with participating manufacturers to simplify the
27 system whereby persons access voluntary drug assistance
28 programs. Components of the simplified system may include a uniform
29 application process common to all manufacturers, a voucher system
30 for dispensing drugs through local pharmacies, and coordination
31 with and supplementation of the Washington prescription drug
32 insurance plan.

33 NEW SECTION. **Sec. 12.** Notwithstanding the provisions of chapter
34 42.17 RCW, records obtained, reviewed by, or on file with the
35 Washington pharmacy access program containing information

1 concerning medical treatment of individuals is exempt from public
2 inspection and copying.

3 NEW SECTION. **Sec. 13.** The legislature reserves the right to
4 amend or repeal all or any part of this chapter at any time and
5 there shall be no vested private right of any kind against such
6 amendment or repeal. All the rights, privileges, or immunities
7 conferred by this chapter or any acts done pursuant thereto shall
8 exist subject to the power of the legislature to amend or repeal
9 this chapter at any time.

10 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
11 constitute a new chapter in Title 70 RCW.

12 NEW SECTION. **Sec. 15.** If specific funding for the purposes of
13 this act, referencing this act by bill or chapter number, is not
14 provided by June 30, 2001, in the omnibus appropriations act, this
15 act is null and void.

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