
SUBSTITUTE HOUSE BILL 1214

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody, Pflug, Conway, Cooper, McCoy, Berkey, Voloria, Schual-Berke, Bush, Lovick, Hunt, Campbell, Kirby, Hudgins, Dickerson, Pettigrew, Pearson, Wood, Fromhold, Upthegrove, Schindler, McDermott, Wallace, Rockefeller, Morrell, Simpson, Anderson, McMahan, Darneille, Chase, Woods and Clements; by request of Governor Locke)

READ FIRST TIME 01/27/03.

1 AN ACT Relating to prescription drugs; amending RCW 41.05.011;
2 adding new sections to chapter 41.05 RCW; adding a new section to
3 chapter 74.09 RCW; adding a new section to chapter 69.41 RCW; creating
4 new sections; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that prescription
7 drugs are an effective and important part of efforts to maintain and
8 improve the health of Washington state residents. Yet prescription
9 drug expenditures in both the public and private sectors are growing at
10 rates far in excess of consumer or medical inflation, placing a strain
11 on the ability of public and private health care purchasers to continue
12 to offer comprehensive health benefits coverage. In addition,
13 inappropriate use of prescription drugs can have serious health
14 consequences for Washington state residents.

15 (2) It is the intent of the legislature to:

16 (a) Develop a comprehensive prescription drug education and
17 utilization system in Washington state that will ensure best
18 prescribing practices and pharmaceutical use, reduce administrative
19 burdens on providers, increase consumer understanding of and compliance

1 with appropriate use of prescription drugs, help to control increases
2 in consumer and state health care spending, and improve prescription
3 drug purchasing through a sound evidence-based process that evaluates
4 the therapeutic value and cost-effectiveness of prescription drugs; and

5 (b) Develop a program to promote access to affordable prescription
6 drug coverage to low-income aged or disabled persons who do not
7 otherwise have adequate coverage to purchase necessary and appropriate
8 prescription drugs.

9 **Sec. 2.** RCW 41.05.011 and 2001 c 165 s 2 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section shall apply throughout this chapter.

13 (1) "Administrator" means the administrator of the authority.

14 (2) "State purchased health care" or "health care" means medical
15 and health care, pharmaceuticals, and medical equipment purchased with
16 state and federal funds by the department of social and health
17 services, the department of health, the basic health plan, the state
18 health care authority, the department of labor and industries, the
19 department of corrections, the department of veterans affairs, and
20 local school districts.

21 (3) "Authority" means the Washington state health care authority.

22 (4) "Insuring entity" means an insurer as defined in chapter 48.01
23 RCW, a health care service contractor as defined in chapter 48.44 RCW,
24 or a health maintenance organization as defined in chapter 48.46 RCW.

25 (5) "Flexible benefit plan" means a benefit plan that allows
26 employees to choose the level of health care coverage provided and the
27 amount of employee contributions from among a range of choices offered
28 by the authority.

29 (6) "Employee" includes all full-time and career seasonal employees
30 of the state, whether or not covered by civil service; elected and
31 appointed officials of the executive branch of government, including
32 full-time members of boards, commissions, or committees; and includes
33 any or all part-time and temporary employees under the terms and
34 conditions established under this chapter by the authority; justices of
35 the supreme court and judges of the court of appeals and the superior
36 courts; and members of the state legislature or of the legislative
37 authority of any county, city, or town who are elected to office after

1 February 20, 1970. "Employee" also includes: (a) Employees of a
2 county, municipality, or other political subdivision of the state if
3 the legislative authority of the county, municipality, or other
4 political subdivision of the state seeks and receives the approval of
5 the authority to provide any of its insurance programs by contract with
6 the authority, as provided in RCW 41.04.205; (b) employees of employee
7 organizations representing state civil service employees, at the option
8 of each such employee organization, and, effective October 1, 1995,
9 employees of employee organizations currently pooled with employees of
10 school districts for the purpose of purchasing insurance benefits, at
11 the option of each such employee organization; and (c) employees of a
12 school district if the authority agrees to provide any of the school
13 districts' insurance programs by contract with the authority as
14 provided in RCW 28A.400.350.

15 (7) "Board" means the public employees' benefits board established
16 under RCW 41.05.055.

17 (8) "Retired or disabled school employee" means:

18 (a) Persons who separated from employment with a school district or
19 educational service district and are receiving a retirement allowance
20 under chapter 41.32 or 41.40 RCW as of September 30, 1993;

21 (b) Persons who separate from employment with a school district or
22 educational service district on or after October 1, 1993, and
23 immediately upon separation receive a retirement allowance under
24 chapter 41.32, 41.35, or 41.40 RCW;

25 (c) Persons who separate from employment with a school district or
26 educational service district due to a total and permanent disability,
27 and are eligible to receive a deferred retirement allowance under
28 chapter 41.32, 41.35, or 41.40 RCW.

29 (9) "Benefits contribution plan" means a premium only contribution
30 plan, a medical flexible spending arrangement, or a cafeteria plan
31 whereby state and public employees may agree to a contribution to
32 benefit costs which will allow the employee to participate in benefits
33 offered pursuant to 26 U.S.C. Sec. 125 or other sections of the
34 internal revenue code.

35 (10) "Salary" means a state employee's monthly salary or wages.

36 (11) "Participant" means an individual who fulfills the eligibility
37 and enrollment requirements under the benefits contribution plan.

1 (12) "Plan year" means the time period established by the
2 authority.

3 (13) "Separated employees" means persons who separate from
4 employment with an employer as defined in:

- 5 (a) RCW 41.32.010(11) on or after July 1, 1996; or
- 6 (b) RCW 41.35.010 on or after September 1, 2000; or
- 7 (c) RCW 41.40.010 on or after March 1, 2002;

8 and who are at least age fifty-five and have at least ten years of
9 service under the teachers' retirement system plan 3 as defined in RCW
10 41.32.010(40), the Washington school employees' retirement system plan
11 3 as defined in RCW 41.35.010, or the public employees' retirement
12 system plan 3 as defined in RCW 41.40.010.

13 (14) "Emergency service personnel killed in the line of duty" means
14 law enforcement officers and fire fighters as defined in RCW 41.26.030,
15 and reserve officers and fire fighters as defined in RCW 41.24.010 who
16 die as a result of injuries sustained in the course of employment as
17 determined consistent with Title 51 RCW by the department of labor and
18 industries.

19 (15) "Prescription drug board" means the prescription drug quality
20 improvement and purchasing board created in section 3 of this act.

21 NEW SECTION. Sec. 3. A new section is added to chapter 41.05 RCW
22 to read as follows:

23 (1) The prescription drug quality improvement and purchasing board
24 is created within the authority. The function of the prescription drug
25 board is to design and approve policies and programs related to
26 prescription drugs for public and private participants in the
27 purchasing consortium established under section 4 of this act.

28 (2) The prescription drug board shall be composed of twelve members
29 selected as provided in this subsection.

30 (a) The governor shall select one member of the prescription drug
31 board from lists of three nominees submitted by statewide organizations
32 representing each of the following:

- 33 (i) One representative of state employees, who represents an
34 employee union certified as exclusive representative of at least one
35 bargaining unit of classified employees;
- 36 (ii) One member who is a licensed physician;
- 37 (iii) One member who is a licensed pharmacist;

1 (iv) One member representing a health carrier licensed under Title
2 48 RCW; and
3 (v) One member representing a private union;
4 (b) The governor shall select two members of the prescription drug
5 board from a list of nominees submitted by statewide organizations
6 representing consumers, one of whom shall represent individuals under
7 age sixty-five without insurance coverage for prescription drugs and
8 one of whom shall represent individuals over age sixty-five without
9 insurance coverage for prescription drugs;
10 (c) The governor shall select two members of the prescription drug
11 board from a list of nominees submitted by statewide organizations
12 representing business, one of whom shall represent small businesses who
13 employ fifty or fewer employees and one of whom shall represent large
14 businesses;
15 (d) One member shall be the secretary of the department of social
16 and health services or his or her designee;
17 (e) One member shall be the director of the department of labor and
18 industries or his or her designee; and
19 (f) One member shall be the administrator.
20 (3) The members who represent the organizations appointed pursuant
21 to subsection (2)(a)(v) and (c) of this section shall be nonvoting
22 members until such time as there are no less than twelve thousand
23 participants enrolled with the authority for prescription drug
24 purchasing from each of the organizations they are appointed to
25 represent.
26 (4) The governor shall appoint the initial members of the
27 prescription drug board to staggered terms not to exceed four years.
28 Members appointed thereafter shall serve two-year terms. Members of
29 the prescription drug board shall be compensated in accordance with RCW
30 43.03.250 and shall be reimbursed for their travel expenses while on
31 official business in accordance with RCW 43.03.050 and 43.03.060. The
32 administrator, on behalf of the prescription drug board, shall
33 prescribe rules for the conduct of its business. The administrator
34 shall serve as chair of the prescription drug board. Meetings of the
35 prescription drug board shall be at the call of the chair.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.05 RCW
37 to read as follows:

1 (1) The prescription drug board shall, directly or by contract:

2 (a) Adopt a preferred drug list for use as provided in this act
3 through the establishment of a pharmacy and therapeutics committee.

4 (i) The pharmacy and therapeutics committee shall be comprised of
5 practicing licensed physicians, other practicing licensed health
6 professionals with prescriptive authority, practicing licensed
7 pharmacists, and pharmacoeconomists. At least one licensed health
8 professional with prescriptive authority and one pharmacist must have
9 demonstrated experience in serving women, children, and people of
10 color. The membership composition must be consistent with applicable
11 federal requirements under Title XIX of the federal social security act
12 to allow full participation by the department of social and health
13 services or other state agencies in activities under this act.

14 (ii) The pharmacy and therapeutics committee shall review
15 nationally recognized therapeutic drug classes. The committee must use
16 an evidence-based process that evaluates the efficacy of prescription
17 drugs, considering safety, efficacy, likelihood of compliance,
18 outcomes, and any unique impacts on specific populations based upon
19 factors such as sex, age, ethnicity, race, or disability. For each
20 therapeutic class reviewed, the committee must identify the
21 prescription drugs determined to be most clinically effective, and if
22 applicable, equally effective. Decisions of the pharmacy and
23 therapeutics committee regarding the clinical effectiveness of drugs
24 within a therapeutic class are binding on the prescription drug board.

25 (iii) State purchased health care programs shall adopt the
26 preferred drug list established by the prescription drug board for
27 those components of their programs that purchase prescription drugs
28 directly or through reimbursement of retail pharmacies consistent with
29 the scope of benefits offered through those programs. In administering
30 prescription drug benefits under state purchased health care programs,
31 agencies shall honor an endorsing prescriber's direction to dispense a
32 prescription drug as written on the prescription order.

33 (iv) Within one hundred twenty days following establishment of the
34 pharmacy and therapeutics committee, the drug utilization and education
35 council within the department of social and health services shall be
36 disbanded and its functions transferred to the pharmacy and
37 therapeutics committee.

1 (v) If a particular class of drugs is being used in a disease
2 management program sponsored by a state purchased health care program,
3 efforts shall be made to ensure that the preferred drugs in that class
4 are consistent with protocols or algorithms used in the disease
5 management program;

6 (b) Establish drug utilization management policies. State
7 purchased health care programs shall adopt these drug utilization
8 management policies consistent with the scope of benefits offered and
9 populations served through programs administered by that program and
10 may implement the policies directly or by contract or interagency
11 agreement. To ensure full participation by the department of social
12 and health services in drug utilization management activities under
13 this act, the policies must be consistent with drug utilization review
14 requirements of Title XIX of the federal social security act. The
15 pharmacy and therapeutics committee shall conduct drug utilization
16 management activities for state purchased health care programs and the
17 consortium as directed by the prescription drug board;

18 (c) Develop prescriber and consumer education policies. State
19 purchased health care programs shall adopt these prescriber and
20 consumer policies and implement them directly or by contract or
21 interagency agreement. Effective prescriber education policies are
22 intended to result in better compliance of prescribers with the
23 preferred drug list and increased cost savings. Prescriber education
24 policies should be adequately funded and designed to educate
25 prescribers to prevent use of more expensive prescription drugs of no
26 greater clinical benefit, to increase prescribers' awareness of the
27 preferred drug list and the credible evidence-based process used to
28 develop it, and the ability to direct that prescriptions be dispensed
29 as written;

30 (d) Adopt policies necessary for establishment of a prescription
31 drug purchasing consortium. The administrator shall implement the
32 prescription drug purchasing consortium policies adopted by the board,
33 and shall coordinate state purchased health care programs'
34 participation in the consortium. State purchased health care programs
35 shall purchase prescription drugs through the consortium for those
36 prescription drugs that are purchased directly by the state and those
37 that are purchased through reimbursement of retail pharmacies, unless
38 exempted under section 13 of this act. The prescription drug board and

1 the administrator shall explore joint purchasing opportunities with
2 other states to achieve quality cost-effective prescription drug
3 coverage for those participating in the consortium.

4 (2) Participation in the purchasing consortium and other
5 prescription drug board activities is purely voluntary for units of
6 local government, private entities, and individuals who lack or are
7 underinsured for prescription drug coverage. Unaffiliated individuals
8 who participate in the consortium shall receive reduced costs
9 comparable to those negotiated by the consortium for its preferred
10 prescription drugs. The prescription drug board may set reasonable
11 fees, including enrollment fees for participating individuals, to cover
12 administrative costs attributable to participation of private entities
13 in prescription drug board activities. A private entity may limit its
14 participation to one or more of the prescription drug board's program
15 components.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.05 RCW
17 to read as follows:

18 Members of the prescription drug board, the pharmacy and
19 therapeutics committee, or any committee that may be established to
20 carry out activities under this act are prohibited from being employed
21 by a pharmaceutical manufacturer, a pharmacy benefits management
22 company, or be employed by any agency administering state purchased
23 health care programs, except as specified in section 3(2)(d), (e), and
24 (f) of this act. As a condition of appointment to the prescription
25 drug board or any committee, each member must disclose any potential
26 conflict of interest, including receipt of any remuneration, grants, or
27 other compensation from a pharmaceutical manufacturer or pharmaceutical
28 benefits management company.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.05 RCW
30 to read as follows:

31 The administrator shall:

32 (1) Directly or by interagency agreement or contract, distribute
33 the initial preferred drug list and any subsequent revisions to every
34 provider with prescriptive authority, including with it a description
35 of how the list was developed, how it will be used, and requesting his
36 or her endorsement;

1 (2) Obtain in writing from all prescribers either: (a) An
2 affirmative statement endorsing the preferred drug list and
3 acknowledging the therapeutic substitution authority granted to
4 pharmacists when there is no direction to dispense the prescription as
5 written, or (b) a statement declining to endorse the preferred drug
6 list; and

7 (3) Provide each pharmacy with a listing of the prescribers who
8 have not endorsed the preferred drug list.

9 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.09 RCW
10 to read as follows:

11 (1) There is established a program to be known as the medicaid
12 prescription drug assistance program. Neither the benefits of, nor
13 eligibility for, the program is considered to be an entitlement. To
14 the extent funds are appropriated specifically for this purpose, and
15 subject to any conditions placed on appropriations made for this
16 purpose, the department shall design and administer the medicaid
17 prescription drug assistance program.

18 (2) The department is directed to obtain necessary federal waivers
19 to implement this program. Consistent with federal waiver conditions,
20 the department is authorized to charge enrollment fees, premiums, or
21 point-of-service cost-sharing to enrollees of the program.

22 (3) Eligibility for this program is limited to persons: (a) Who
23 are eligible for medicare or age sixty-five and older; (b) whose family
24 income does not exceed two hundred percent of the federal poverty level
25 as adjusted for family size and determined annually by the federal
26 department of health and human services; (c) who do not otherwise have
27 insurance that provides prescription drug coverage; and (d) who are not
28 otherwise eligible under Title XIX of the federal social security act.

29 (4) The department is authorized to use a cost-effective
30 prescription drug benefit design. Consistent with federal waiver
31 conditions, this benefit design can be different than the benefit
32 design offered under the medical assistance program. The benefit
33 design may include a deductible benefit that provides coverage when
34 enrollees incur higher prescription drug costs as defined by the
35 department. The department also may offer more than one benefit
36 design.

1 (5) The department is authorized to limit enrollment of persons who
2 qualify for the program so as to prevent an overexpenditure of
3 appropriations for this program or to assure necessary compliance with
4 federal waiver budget neutrality requirements. The department shall
5 not reduce existing medical assistance program eligibility or benefits
6 to assure compliance with federal waiver budget neutrality
7 requirements.

8 (6) Implementation of this section is subject to obtaining an
9 approved federal waiver that allows for the collection of premiums from
10 medicaid clients.

11 (7) This program will be terminated within twelve months after
12 implementation of a prescription drug benefit under Title XVIII of the
13 social security act.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.05 RCW
15 to read as follows:

16 The administrator shall, directly or by interagency agreement or
17 contract, establish and operate a statewide senior prescription drug
18 information clearinghouse. The clearinghouse shall:

19 (1) Promote access to necessary prescription drugs for persons over
20 age sixty-five who reside in Washington state;

21 (2) Make information available on a statewide basis regarding
22 private and public programs that provide financial assistance to
23 seniors for the purchase of prescription drugs;

24 (3) Provide educational information about the preferred drug list
25 and methods to purchase prescription drugs most cost-effectively and
26 efficiently, including information about generic drugs and the
27 potential for dangerous drug interactions; and

28 (4) Provide individual education and assistance regarding
29 prescription drug financial assistance programs.

30 Prior to July 1, 2005, the administrator shall provide for an
31 evaluation of the effectiveness and potential continuation of the
32 clearinghouse.

33 NEW SECTION. **Sec. 9.** A new section is added to chapter 41.05 RCW
34 to read as follows:

35 The prescription drug consortium account is created in the custody
36 of the state treasurer. All receipts from the fees from the

1 prescription drug purchasing consortium created in section 4 of this
2 act must be deposited into the account. Expenditures from the account
3 may be used only for the purposes of section 4 of this act. Only the
4 administrator or the administrator's designee may authorize
5 expenditures from the account. The account is subject to allotment
6 procedures under chapter 43.88 RCW, but an appropriation is not
7 required for expenditures.

8 NEW SECTION. **Sec. 10.** A new section is added to chapter 41.05 RCW
9 to read as follows:

10 The prescription drug board and the administrator may solicit and
11 accept grants or other funds from public and private sources to support
12 activities under this act, including but not limited to consumer and
13 provider education. Any grants or funds received may be used to
14 enhance these activities as long as program standards established by
15 the prescription drug board and the administrator are maintained.

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.05 RCW
17 to read as follows:

18 The administrator shall contract with an independent entity to
19 evaluate the implementation and impacts of the prescription drug
20 board's activities under this act.

21 (1) The evaluation shall assess:

22 (a) The degree to which the program has influenced prescription
23 drug prescribing practices among health care providers in Washington,
24 including a description of how prescribing practices may have changed;

25 (b) The impact of the program on quality of care and clinical
26 outcomes for persons enrolled in state purchased health care programs;

27 (c) The extent to which the program has lessened administrative
28 burdens on health care providers participating in state purchased
29 health care programs;

30 (d) The impact of the program on prescription drug expenditures
31 across state purchased health care programs; and

32 (e) The impact of the program on the utilization of, and
33 expenditures for, other health care services funded by state purchased
34 health care programs.

35 (2) The administrator shall make every effort to pursue and obtain
36 federal or private foundation funding for the evaluation from entities

1 such as the federal agency for health care research and quality or the
2 milbank memorial fund. To ensure that results of the evaluation are
3 objective and unbiased, private foundation funds derived from the
4 pharmaceutical industry may not be used to fund the evaluation.

5 (3) The results of the evaluation must be submitted to the governor
6 and the legislature by January 1, 2007.

7 NEW SECTION. **Sec. 12.** A new section is added to chapter 69.41 RCW
8 to read as follows:

9 Any pharmacist filling a prescription under the preferred drug list
10 program established under section 4 of this act shall substitute the
11 preferred drug for any nonpreferred drug in a given therapeutic
12 category, unless the endorsing prescriber has indicated on the
13 prescription that the nonpreferred drug must be dispensed as written,
14 in which case the pharmacist shall dispense the nonpreferred drug as
15 written. When a substitution is made, whether for a new prescription
16 or a refill, the prescriber must be notified in writing by the
17 dispensing pharmacist of the specific drug and dose dispensed.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 41.05 RCW
19 to read as follows:

20 Nothing in this act preempts state-owned or managed hospitals
21 licensed under chapter 70.41 RCW from aggregate purchasing through
22 other programs. These hospitals may choose to participate in the
23 preferred drug list program under section 4 of this act if drugs can be
24 obtained at lower cost.

25 NEW SECTION. **Sec. 14.** The therapeutic consultation service
26 operated by the department of social and health services, with the
27 exception of the intensive benefits management and academic detailing
28 components of the program, expires on July 1, 2004.

29 NEW SECTION. **Sec. 15.** A new section is added to chapter 41.05 RCW
30 to read as follows:

31 The health care authority, on behalf of the prescription drug
32 board, and agencies that administer state purchased health care
33 programs are authorized to adopt rules implementing this act.

1 NEW SECTION. **Sec. 16.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 17.** If any part of this act is found to be in
6 conflict with federal requirements that are a prescribed condition to
7 the allocation of federal funds to the state, the conflicting part of
8 this act is inoperative solely to the extent of the conflict and with
9 respect to the agencies directly affected, and this finding does not
10 affect the operation of the remainder of this act in its application to
11 the agencies concerned. Rules adopted under this act must meet federal
12 requirements that are a necessary condition to the receipt of federal
13 funds by the state.

14 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 immediately.

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