SENATE BILL REPORT
ESSB 5892

As Amended by House, April 21, 2009

Title: An act relating to authorizing state purchased health care programs to maximize appropriate prescription drug use in a cost-effective manner.

Brief Description: Concerning prescription drug use in state purchased health care programs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser and Shin; by request of Governor Gregoire).

Brief History:
Committee Activity: Ways & Means: 3/02/09 [DPS, DNP, w/oRec].
Passed Senate: 3/11/09, 33-16.
Passed House: 4/21/09, 54-43.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5892 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Keiser, Kline, Kohl-Welles, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Carrell and Hewitt.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Parlette and Schoesler.

Staff: Mich'l Needham (786-7442)

Background: The 2003 Legislature created an evidence-based prescription drug program for state agencies that purchase prescription drugs directly or through reimbursement to pharmacies. Currently, the Department of Social and Health Services medical assistance program, the Health Care Authority's self-insured program, and the Department of Labor and Industries participate in the program's preferred drug list (PDL). The PDL is a list of prescription drug classes that have gone through an evidence-based review process to determine the safety, efficacy, and effectiveness of drug classes. Washington State contracts

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with the Center for Evidence-Based Policy, Oregon Health and Science University, to independently review the prescription drug classes, and their recommendations are reviewed by the Washington State Pharmacy and Therapeutics (P&T) Committee, an independent group of pharmacy doctors and medical doctors, which then makes recommendations regarding the preferred drugs on the PDL.

The evidence-based prescription program includes provisions that allow the substitution of a preferred drug for a nonpreferred drug in a given therapeutic class, except where a practitioner has indicated the prescription for the nonpreferred drug must be dispensed as written, or if the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunodulator/antiviral treatment for hepatitis C. When a substitution is made, the pharmacist must notify the prescriber of the specific drug and dose dispensed.

The PDL process currently requires that new generic drugs await an updated P&T Committee review of the drug classes before being designated as preferred drugs. Additionally there are some drug classes where both brand-name and generic drugs are included as preferred. Although federal law precludes drug manufacturers from marketing drugs for non-Food and Drug Administration (FDA) approved use, prescribers are allowed to prescribe drugs for non-FDA approved use, or off-label use, at their discretion.

Summary of Engrossed Substitute Bill: The preferred drug substitution provisions of the evidence-based prescription drug program are amended in order to increase generic utilization, maximize appropriate drug usage, and reduce pharmaceutical expenditures. The state purchasing program may impose limited restrictions on an endorsing practitioner's authority to write a prescription dispense as written in cases where there is evidence the prescriber's frequency of using dispense as written varies significantly from other prescribers. The medical director must discuss the data with the prescriber and allow sufficient time for the prescribing patterns to align with other prescribers.

When a less expensive generic product , in a drug class previously reviewed by the P&T Committee, becomes available, the state program may immediately designate the generic drug as a preferred drug. Within a therapeutic class, if an over-the-counter drug becomes available, the program may designate the over-the-counter drug as a preferred drug.

The program may impose limited restrictions on endorsing practitioners' authority to write dispense as written for a patient's first course of treatment within a therapeutic class of drugs. The generic may be provided for the first course if there is a therapeutic alternative generic product and the Drug Use Review Board has reviewed the appropriateness. The endorsing practitioner may request the brand name drug for the first course of treatment when medically necessary through the prior authorization process.

The program may impose limited restrictions on endorsing practitioners' authority to write dispense as written for off-label use of a product, when there is a less expensive FDA approved product to the treat the condition and the Drug Use Review Board has reviewed the appropriateness. The endorsing practitioner may request the off-label drug when medically necessary through the prior authorization process.

The act has an emergency clause and takes effect immediately.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: The PDL is working well, but the market has changed and there are more generics available now. Dispense as written is working well for most providers, but there are a few who use dispense as written 80 percent of the time. This bill achieves the goals of improving prescribing practices and reducing drug costs.

CON: Not all generics are alike. We have concerns with using generics as the first course of treatment as it would handicap the progress we have made in mental health treatment. We should look at the cost of ongoing care if someone receives the wrong drug as a result of the generic as first course of treatment provision of the bill.

OTHER: We need to make sure state employees have access to prescription refills. The Washington State Medical Association does not yet have a formal position on this bill but we will have a position by Friday morning.

Persons Testifying: PRO: Christina Hulet, Governor's Office; Duane Thurman, Health Care Authority; Jeff Thompson, Department of Social and Health Services; Dedi Hitchens, Washington State Pharmacy Association; Ann Christian, Washington Community Mental Health Council.

CON: Jim Adams, National Alliance on Mental Illness, Washington; Jeff Gombosky, Amgen, Inc; Cliff Webster, Pharmaceutical Research & Manufacturers of America; Melanie Stewart, Washington Osteopathic Medical Association; Janet Varon, Northwest Health Law Associates.

OTHER: Greg Devereux, Washington Federation of State Employees; Len Eddinger, Washington Medical Association.

House Amendment(s): Generic drugs in a previously reviewed drug class must be equally effective for a state purchased health care program to designate them as preferred drugs without review by the P&T Committee. The same standard applies to designating therapeutic alternative over-the-counter drugs as preferred drugs and for imposing limitations on a prescriber's ability to write dispense as written for initial prescriptions or for off-label uses of drugs. Pharmacies must dispense prescribed non-preferred drugs for refills of antipsychotic, antidepressant, chemotherapy, antiretroviral, immunosuppressive, and antiepileptic drugs, or for a specific treatment of Hepatitis C. The Department of Social and Health Services prior authorization program must provide a response within 24 hours and allow at least a 72 hour emergency supply of the requested drug.