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**SUBSTITUTE SENATE BILL 5892**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By Senate Ways & Means** (originally sponsored by Senators Keiser and Shin; by request of Governor Gregoire)

READ FIRST TIME 03/02/09.

1       AN ACT Relating to authorizing state purchased health care programs  
2 to maximize appropriate prescription drug use in a cost-effective  
3 manner; and amending RCW 69.41.190.

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

5       **Sec. 1.** RCW 69.41.190 and 2006 c 233 s 1 are each amended to read  
6 as follows:

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

1           ~~((2))~~ (b) When a substitution is made under subsection (1) of  
2 this section, the dispensing pharmacist shall notify the prescribing  
3 practitioner of the specific drug and dose dispensed.

4           (2)(a) A state purchased health care program may impose limited  
5 restrictions on an endorsing practitioner's authority to dispense as  
6 written, as provided for in subsection (1)(a) of this section, only  
7 under the following circumstances:

8           (i) There is statistical or clear data demonstrating the endorsing  
9 practitioner's frequency of prescribing dispensed as written for  
10 nonpreferred drugs is in significant noncompliance when compared to the  
11 prescribing patterns of his or her peers; and

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

21           (b) The restrictions imposed under (a) of this subsection (2) must  
22 be limited in nature such that the endorsing practitioner may  
23 demonstrate a reduction in variation in line with his or her peers.

24           (c) A state purchased health care program may immediately designate  
25 an available, less expensive generic product in a previously reviewed  
26 drug class as preferred, without first submitting the product to review  
27 by the pharmacy and therapeutics committee established pursuant to RCW  
28 70.14.050.

29           (d) For a patient's first course of treatment within a therapeutic  
30 class of drugs, a state purchased health care program may impose  
31 limited restrictions on endorsing practitioners' authority to write a  
32 prescription to dispense as written, under subsection (1)(a) of this  
33 section, only under the following circumstances:

34           (i) There is a less expensive therapeutic alternative generic  
35 product available to treat the condition;

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

1 (iii) Prescription, emergency room, diagnosis, and hospitalization  
2 history are shared with the endorsing practitioner; and

3 (iv) The endorsing practitioner has sufficient time to explain that  
4 his or her prescription is medically necessary, consistent with WAC  
5 388-501-0165.

6 (e) If, within a therapeutic class, there is a therapeutic  
7 alternative over-the-counter drug available, a state purchased health  
8 care program may automatically designate the over-the-counter drug as  
9 the preferred drug.

10 (f) A state purchased health care program may impose limited  
11 restrictions on endorsing practitioners' authority to prescribe  
12 pharmaceuticals to be dispensed as written, as provided in subsection  
13 (1)(a) of this section, for a purpose outside the scope of their  
14 approved labels only under the following circumstances:

15 (i) There is a less expensive on label product available to treat  
16 the condition;

17 (ii) There is statistical or clear data demonstrating that the  
18 endorsing practitioner's frequency of prescribing certain  
19 pharmaceuticals to be dispensed as written for a purpose outside the  
20 scope of their approved labels is in significant noncompliance compared  
21 to approved label indications or standards as outlined by the drug use  
22 review board established under WAC 388-530-4000;

23 (iii) 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 (iv) The medical director or his or her agent of the state  
27 purchased health program has: (A) Communicated to the endorsing  
28 practitioner data that indicates the endorsing practitioner's off-label  
29 prescribing is significantly not in compliance with the off-label  
30 prescribing patterns offered in the Washington preferred drug list, (B)  
31 provided the endorsing practitioner community an opportunity to explain  
32 their variation in off-label prescribing patterns, and (C) if the  
33 variation in off-label prescribing patterns cannot be explained,  
34 provided the endorsing practitioners sufficient time to change their  
35 off-label prescribing patterns to align with those of their peers; and

36 (v) The endorsing practitioner has sufficient time to explain  
37 prescribing a pharmaceutical to be dispensed as written for a purpose

1 outside the scope of its approved label is medically necessary,  
2 consistent with WAC 388-501-0165.

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