SENATE BILL REPORT
SSB 6088

As Amended by House, March 6, 2020

Title: An act relating to establishing a prescription drug affordability board.

Brief Description: Establishing a prescription drug affordability board.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Conway, Das, Frockt, Hasegawa, Hunt, Kuderer, Pedersen, Randall, Rolfes, Stanford and Wilson, C.).

Brief History:
Committee Activity: Health & Long Term Care: 1/17/20, 1/29/20 [DP-WM, w/oRec].
Ways & Means: 2/06/20, 2/11/20 [DPS, DNP].
Floor Activity:
Passed Senate: 2/17/20, 28-20.
Passed House: 3/06/20, 94-3.

Brief Summary of First Substitute Bill

- Establishes the prescription drug affordability board (board).
- Requires the board to identify prescription drugs priced above a certain threshold.
- Authorizes the board to conduct cost reviews of drugs and set upper payment limits for state purchasers.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Cleveland, Chair; Randall, Vice Chair; Conway, Dhingra, Frockt, Keiser and Van De Wege.

Minority Report: That it be referred without recommendation.
Signed by Senator O'Ban, Ranking Member.

Staff: Greg Attanasio (786-7410)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6088 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Muzzall, Rivers, Schoesler, Wagoner, Warnick and Wilson, L..

Staff: Sandy Stith (786-7710)

Background: In 2003 the Legislature created an evidence-based prescription drug program for state agencies purchasing prescription drugs directly or through reimbursement to pharmacies. The program is part of the Washington Prescription Drug Program (WPDP) and uses a preferred drug list (PDL), which is a list of prescription drug classes having gone through an evidence-based review process to determine their safety, efficacy, and effectiveness.

Washington contracts with the Oregon Health and Science University Center for Evidence-Based Policy to independently review drug classes. Their recommendations are reviewed by the Pharmacy and Therapeutics Committee, an independent group of pharmacists and physicians, which then makes recommendations regarding the drugs on the PDL.

In 2005, the Legislature directed the Health Care Authority (HCA) to establish a prescription drug purchasing consortium. Also part of the WPDP, the Northwest Prescription Drug Consortium allows state agencies, local governments, businesses, labor organizations, and uninsured consumers to pool their purchasing power to purchase prescription drugs at lower prices. The consortium offers access to retail pharmacy discounts, pharmacy benefit management services, rebate management services, and a prescription discount card for uninsured residents.

Statutory authority allows for drug purchasing cost controls including negotiating discounts with manufacturers, central purchasing, volume contracting, and setting maximum prices to be paid.

Summary of First Substitute Bill: The prescription drug affordability board is established with five members who have expertise in health care economics or clinical medicine appointed by the governor. By June 30, 2021, and yearly thereafter, the board must identify:

- brand name prescription drugs introduced costing $30,000 or more per year, or course of treatment, or have a price increase of $3,000 or more in any 12-month period;
- biosimilar products with a price less than 15 percent below the reference brand price; and
- generic drugs costing $100 or more for a 30-day supply or less that have increased in price by 200 percent or more in the last 12 months.

The board may choose to conduct a cost review of any drug it identifies as meeting the above thresholds. Cost reviews must determine if the drug has led or will lead to excess costs, defined as costs exceeding therapeutic benefit relative to other treatments or are not sustainable to the health care system over a 10-year period. Reviews should consider:

- the price of the drug, including discounts, rebates, and other price concessions;
- cost sharing for patients;
- the dollar value of manufacturer patient assistance programs;
- the price of therapeutic alternatives; and
- any other relevant factors determined by the board.

If the board is unable to make a determination based on the above factors, the board may also consider the manufacturer's research and development costs, direct-to-consumer marketing costs, and gross and net revenue from the most recent year.

The board must establish a process for setting upper payment limits for drugs it determines will lead to excess costs for the state or patients. The payment limits will apply to all state purchasers. When setting payment limits, the board must consider the cost of delivering and administering the drug to patients and any other relevant factors.

The process must allow for suspension of the payment limit if a drug is placed on the Food and Drug Administration's drug shortage list, and the board may suspend the payment limit if there is a drug shortage within Washington. Any entity affected by a board decision may request an appeal in accordance with the Administrative Procedure Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Health & Long Term Care): PRO: Residents are facing a crisis on drug affordability. Americans pay the highest prices among all countries. The purpose is to makes sure the prices are justifiable and reasonable. Other countries are already doing this type of work and it keeps prices down.

CON: The bill will not lower patient costs because it does not address out of pocket costs. Manufacturers operate patient assistance programs to help with costs. The bill is premature given that the drug transparency bill is not fully implemented. The bill fails to look at all the components of the market. Many patients would not be able to access drugs if the state could not negotiate down to the price cap.

OTHER: Carriers approve of most aspects of the bill, but cannot support price setting policies. It is a good intention but does not help in practice.

Persons Testifying (Health & Long Term Care): PRO: Senator Karen Keiser, Prime Sponsor; Dr. Sherry Weinberg, Physicians for a National Health Plan; Cathy MacCaul, AARP.

CON: Cliff Webster, Pharmaceutical Research & Manufacturers of America; Brian Warren, Biotechnology Innovation Organization.

OTHER: Chris Bandoli, Association of Washington Healthcare Plans; Mel Sorensen, America's Health Insurance Plans.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): No one.

Staff Summary of Public Testimony on Original Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We have twice the rate of multiple sclerosis (MS) as the rest of the country. The price of MS drugs is up to $80,000 to $90,000 per year. One of the most popular drugs went from $10,000 per year in 1996, to $90,000 per year over 30 years. This is an attempt to contain the cost of prescription drugs. We have a crisis for people with chronic, expensive diseases. Washington State is far ahead on drug purchasing. There are national tools available for price transparency that are voluntary. Drug companies and insurers set up mechanisms that do not benefit everyone. Other countries will give us models. It is time for us to look at a way for health insurers and pharmaceutical manufacturers to work together like they do in other countries. This will help us be prepared when the information comes in from the previous transparency bill. Nearly a century ago, the insulin patent was sold to the public domain for $1. Today, the three major manufacturers of insulin make billions of dollars from the sale of insulin. Life should not be dependent upon what you can pay or whether you can afford insurance. We can save a lot of money if we can keep people on life saving drugs and out of the hospital.

CON: This bill is premature. Last year the Legislature passed a drug transparency research bill. The Health Care Authority (HCA) is doing rule making later this month and is holding stakeholder meetings later this month with members of the drug purchasing supply chain. Pharma believes that Washington has a robust drug purchasing strategy. Washington has put various strategies in place over the last decade including the preferred drug list and the Consortium. Washington probably has as an effective a drug purchasing program as any state in the country. We believe the Legislature should delay on this bill until HCA can complete its work on last years' bill.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, Prime Sponsor; Ronnie Shure, Pharmacist, Health Care for All Washington; Cindi Laws, Health Care for All Washington.

CON: Cliff Webster, Pharmaceutical Research and Manufacturers of America.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes the authority of the board to set the upper payment limit for state purchased health care.
- Removes the definition of excess costs and any references to excess costs.
- Requires the board to coordinate and complement the work of HCA, other boards, and work groups related to prescription drug costs and emerging therapies.
- Requires the board to provide the Health Care Cost Transparency Board with recommendations for the means and methodologies to establish a cost growth benchmark for prescription drugs.
- Modifies the price and price increase thresholds for the drugs the board must identify and includes any drug or biological product that exceeds the relevant benchmark set by the Health Care Cost Transparency Board.
- Authorizes the board to perform a cost review of identified drugs to determine whether the manufacturer's pricing of the prescription drug or biological product substantially exceeds the proposed value of the drug or biological products.
- Modifies the board's cost review process and allows the board to consider the amount of public funding received for the development of the prescription drug or biological product.
- Authorizes the board to make recommendations to mitigate the cost of certain prescription drugs, to request that drug manufacturers provide further information, to enter into negotiations to reduce the cost of certain prescription drugs, and to post the board's proposed value on HCA's website.
- Requires the board to keep proprietary information submitted by a prescription drug or biological product manufacturer confidential.
- Allows the drug price transparency data to be used only for enumerated and statutorily authorized purposes.
- Allows the Office of the Governor, the Office of the Attorney General, the board, and legislative committees to obtain prescription drug price data submitted through a nondisclosure agreement.