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**SECOND SUBSTITUTE HOUSE BILL 1224**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Robinson, Macri, Ryu, Peterson, Frame, Tharinger, Bergquist, Gregerson, Jenkins, Ortiz-Self, Lovick, Doglio, Stanford, Appleton, Slatter, and Wylie)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to prescription drug cost transparency;  
2 reenacting and amending RCW 74.09.215; adding a new chapter to Title  
3 43 RCW; creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that the  
6 state of Washington has substantial public interest in the following:

7 (1) The price and cost of prescription drugs. Washington state is  
8 a major purchaser through the department of corrections, the health  
9 care authority, and other entities acting on behalf of a state  
10 purchaser;

11 (2) Enacting this chapter to provide notice and disclosure of  
12 information relating to the cost and pricing of prescription drugs in  
13 order to provide accountability to the state for prescription drug  
14 pricing;

15 (3) Rising drug costs and consumer ability to access prescription  
16 drugs; and

17 (4) Containing prescription drug costs. It is essential to  
18 understand the drivers and impacts of these costs, as transparency is  
19 typically the first step toward cost containment and greater consumer  
20 access to needed prescription drugs.

1        NEW SECTION.        **Sec. 2.**        DEFINITIONS. The definitions in this  
2 section apply throughout this chapter unless the context clearly  
3 requires otherwise.

4        (1) "Authority" means the health care authority.

5        (2) "Covered drug" means any prescription drug that:

6        (a) A covered manufacturer intends to introduce to the market at  
7 a wholesale acquisition cost of ten thousand dollars or more for a  
8 course of treatment lasting less than one month or a thirty-day  
9 supply, whichever period is longer; or

10       (b) Is currently on the market, is manufactured by a covered  
11 manufacturer, and has a wholesale acquisition cost of more than one  
12 hundred dollars for a course of treatment lasting less than one month  
13 or a thirty-day supply, and the manufacturer increases the wholesale  
14 acquisition cost at least sixteen percent, including the proposed  
15 increase and the cumulative increase that occurred two calendar years  
16 prior to the date of the proposed increase.

17       (3) "Covered manufacturer" means a person, corporation, or other  
18 entity engaged in the manufacture of prescription drugs sold in or  
19 into Washington state. "Covered manufacturer" does not include a  
20 private label distributor or retail pharmacy that sells a drug under  
21 the retail pharmacy's store, or a prescription drug repackager.

22       (4) "Data organization" means an organization selected by the  
23 authority under section 3 of this act to collect and verify  
24 prescription drug pricing data.

25       (5) "Health care provider," "health plan," and "carrier" mean the  
26 same as in RCW 48.43.005.

27       (6) "Pharmacy benefit manager" means the same as in RCW  
28 19.340.010.

29       (7) "Prescription drug" means a drug regulated under chapter  
30 69.41 or 69.50 RCW. It includes generic, brand name, and specialty  
31 drugs, as well as biological products.

32       (8) "Qualifying price increase" means a price increase described  
33 in subsection (2)(b) of this section.

34       (9) "Wholesale acquisition cost" or "price" means, with respect  
35 to a prescription drug, the manufacturer's list price for the drug to  
36 wholesalers or direct purchasers in the United States, excluding any  
37 discounts, rebates, or reductions in price, for the most recent month  
38 for which the information is available, as reported in wholesale  
39 price guides or other publications of prescription drug pricing.

1        NEW SECTION.    **Sec. 3.**    PROCUREMENT PROCESS. The authority shall  
2 use a competitive procurement process in accordance with chapter  
3 39.26 RCW to select a data organization to collect, verify, and  
4 summarize the prescription drug pricing data provided by carriers and  
5 manufacturers under sections 4 and 5 of this act.

6        NEW SECTION.    **Sec. 4.**    CARRIER REPORTING AND DATA. (1) By March  
7 1st of each year, a carrier must submit to the data organization the  
8 following prescription drug cost and utilization data for the  
9 previous calendar year:

10        (a) The twenty-five prescription drugs most frequently prescribed  
11 by health care providers participating in the carrier's network;

12        (b) The twenty-five costliest prescription drugs by total health  
13 plan spending, and the carrier's total spending for each of these  
14 prescription drugs;

15        (c) The twenty-five drugs with the highest year-over-year  
16 increase in prescription drug spending, and the percentages of the  
17 increases for each of these prescription drugs; and

18        (d) A summary analysis of the impact of prescription drug costs  
19 on health plan premiums or on spending per medical assistance  
20 enrollee under chapter 74.09 RCW, as applicable, disaggregated by the  
21 state medicaid program, public employees' benefits board programs,  
22 school employees benefits board programs, and the individual, small  
23 group, and large group markets.

24        (2) An employer-sponsored self-funded health plan or a Taft-  
25 Hartley trust health plan may voluntarily provide the data described  
26 in subsection (1) of this section to the data organization.

27        NEW SECTION.    **Sec. 5.**    MANUFACTURER REPORTING AND DATA. (1)  
28 Beginning October 1, 2019, a covered manufacturer must report the  
29 following data for each covered drug to the data organization:

30        (a) A description of the specific financial and nonfinancial  
31 factors used to make the decision to increase the wholesale  
32 acquisition cost of the drug and the amount of the increase  
33 including, but not limited to, an explanation of how these factors  
34 explain the increase in the wholesale acquisition cost of the drug;

35        (b) A schedule of wholesale acquisition cost increases for the  
36 drug for the previous five years if the drug was manufactured by the  
37 company;

1 (c) If the drug was acquired by the manufacturer within the  
2 previous five years, all of the following information:

3 (i) The wholesale acquisition cost of the drug at the time of  
4 acquisition and in the calendar year prior to acquisition; and

5 (ii) The name of the company from which the drug was acquired,  
6 the date acquired, and the purchase price;

7 (d) The year the drug was introduced to market and the wholesale  
8 acquisition cost of the drug at the time of introduction;

9 (e) The patent expiration date of the drug if it is under patent;

10 (f) If the drug is a multiple source drug, an innovator multiple  
11 source drug, a noninnovator multiple source drug, or a single source  
12 drug;

13 (g) The itemized cost for production and sales, including annual  
14 manufacturing costs, annual marketing and advertising costs, total  
15 research and development costs, total costs of clinical trials and  
16 regulation, and total cost for acquisition for the drug; and

17 (h) The total financial assistance given by the manufacturer  
18 through assistance programs, rebates, and coupons.

19 (2) A covered manufacturer must submit this information:

20 (a) At least sixty days in advance of a qualifying price increase  
21 for a covered drug defined in section 2(2)(b) of this act; and

22 (b) Within thirty days of release of a new covered drug to the  
23 market as defined in section 2(2)(a) of this act.

24 NEW SECTION. **Sec. 6.** REPORTING TO PURCHASERS. (1) A covered  
25 manufacturer must report the information required by subsection (2)  
26 of this section no later than sixty days in advance of a qualifying  
27 price increase for a covered drug defined in section 2(2)(b) of this  
28 act.

29 (2)(a) Beginning October 1, 2019, a manufacturer of a covered  
30 drug shall notify the purchaser of a qualifying price increase in  
31 writing at least sixty days prior to the planned effective date of  
32 the increase. The notice must include:

33 (i) The date of the increase, the current wholesale acquisition  
34 cost of the prescription drug, and the dollar amount of the future  
35 increase in the wholesale acquisition cost of the prescription drug;  
36 and

37 (ii) A statement regarding whether a change or improvement in the  
38 drug necessitates the price increase. If so, the manufacturer shall  
39 describe the change or improvement.

1 (b) If a pharmacy benefit manager receives a notice of an  
2 increase in wholesale acquisition cost consistent with (a) of this  
3 subsection, it shall notify its large contracting public and private  
4 purchasers of the increase. For the purposes of this section, a  
5 "large purchaser" means a purchaser that provides coverage to more  
6 than five hundred covered lives.

7 (3) The data submitted under this section must be made publicly  
8 available on the authority's web site.

9 NEW SECTION. **Sec. 7.** ENFORCEMENT. The authority may assess a  
10 fine of up to one thousand dollars per day for failure to comply with  
11 the requirements of sections 4, 5, and 6 of this act. The assessment  
12 of a fine under this section is subject to review under the  
13 administrative procedure act, chapter 34.05 RCW. Fines collected  
14 under this section must be deposited in the medicaid fraud penalty  
15 account created in RCW 74.09.215. The authority shall report any  
16 fines levied pursuant to this section against a health carrier to the  
17 office of the insurance commissioner.

18 NEW SECTION. **Sec. 8.** DATA REPORT TO AUTHORITY. (1) The data  
19 organization must compile the data submitted by carriers under  
20 section 4 of this act and manufacturers under section 5 of this act  
21 and submit the data to the authority in one report.

22 (2) The authority shall perform an independent analysis of data  
23 submitted by the data organization under sections 4 and 5 of this  
24 act, and prepare a final report for the public and legislators  
25 synthesizing the data under sections 4 and 5 of this act that  
26 demonstrates the overall impact of drug costs on health care  
27 premiums. The data in the report must be aggregated and must not  
28 reveal information specific to individual health plans.

29 (3) Beginning January 1, 2020, and by each January 1st  
30 thereafter, the authority shall publish the report on its web site.

31 (4) The authority shall share the information provided by  
32 carriers to the organization with the office of the insurance  
33 commissioner.

34 (5) Except for the report, the authority and the office of the  
35 insurance commissioner shall keep confidential all of the information  
36 provided pursuant to sections 4 and 5 of this act, and the  
37 information shall not be subject to public disclosure under chapter  
38 42.56 RCW.

1 (6) The authority may only use the data reported under this  
2 chapter for purposes of analyzing and reporting the data to the  
3 public and the legislature. The data may not be used for any other  
4 purpose.

5 (7) The authority must also, using all available claims data from  
6 the statewide all-payer health care claims database established in  
7 RCW 43.371.020, collect data on drugs prescribed and prescription  
8 drug claims submitted to include billed charges and paid charges.

9 (8) By November 1, 2020, the authority must produce a report for  
10 the legislature that includes charts demonstrating the variance in  
11 the billed charges and paid charges among carriers for the twenty-  
12 five drugs with higher than average variances in billed charges and  
13 paid charges based on the data collected in subsection (6) of this  
14 section.

15 NEW SECTION. **Sec. 9.** RULE MAKING. The authority may adopt any  
16 rules necessary to implement the requirements of sections 1 through 8  
17 of this act.

18 NEW SECTION. **Sec. 10.** By March 1st of each year, a pharmacy  
19 benefit manager must submit to the office of the insurance  
20 commissioner the following data from the previous calendar year:

21 (1) All discounts, including the total dollar amount and  
22 percentage discount, and all rebates received from a manufacturer for  
23 each drug on the pharmacy benefit manager's formularies;

24 (2) The total dollar amount of all discounts and rebates that are  
25 retained by the pharmacy benefit manager for each drug on the  
26 pharmacy benefit manager's formularies;

27 (3) Actual total reimbursement amounts for each drug the pharmacy  
28 benefit manager pays retail pharmacies after all direct and indirect  
29 administrative and other fees that have been retrospectively charged  
30 to the pharmacies are applied;

31 (4) The negotiated price health plans pay the pharmacy benefit  
32 manager for each drug on the pharmacy benefit manager's formularies;

33 (5) Disclosure of any ownership interest the pharmacy benefit  
34 manager has in a pharmacy or health plan with which it conducts  
35 business; and

36 (6) The results of any appeal filed pursuant to RCW  
37 19.340.100(3).

1        NEW SECTION.    **Sec. 11.**    (1) No later than March 1st of each  
2 calendar year, each pharmacy benefit manager must file with the  
3 office of the insurance commissioner, in the form and detail as  
4 required by the insurance commissioner, a report for the preceding  
5 calendar year stating that the pharmacy benefit manager is in  
6 compliance with this chapter. The report must fully disclose the  
7 amount, terms, and conditions relating to copayments, reimbursement  
8 options, and other payments or fees associated with a prescription  
9 drug benefit plan.

10        (2) A pharmacy benefit manager has a fiduciary duty to patients  
11 and beneficiaries to perform services in accordance with state and  
12 federal law.

13        (3) An employer-sponsored self-funded health plan or a Taft-  
14 Hartley trust health plan may voluntarily provide the data described  
15 in subsection (1) of this section.

16        NEW SECTION.    **Sec. 12.**    The office of the insurance commissioner  
17 shall have the authority to examine or audit the financial records of  
18 a pharmacy benefit manager. Information the office of the insurance  
19 commissioner acquires in an examination of financial records pursuant  
20 to this section is proprietary and confidential.

21        NEW SECTION.    **Sec. 13.**    The office of the insurance commissioner  
22 may assess a fine of up to one thousand dollars per day for failure  
23 to comply with the requirements of sections 10, 11, and 12 of this  
24 act. The assessment of a fine under this section is subject to review  
25 under the administrative procedure act, chapter 34.05 RCW.

26        NEW SECTION.    **Sec. 14.**    The insurance commissioner may adopt any  
27 rules necessary to implement the requirements of sections 10 through  
28 13 of this act.

29        **Sec. 15.**    RCW 74.09.215 and 2013 2nd sp.s. c 4 s 1902, 2013 2nd  
30 sp.s. c 4 s 997, and 2013 2nd sp.s. c 4 s 995 are each reenacted and  
31 amended to read as follows:

32        The medicaid fraud penalty account is created in the state  
33 treasury. All receipts from civil penalties collected under RCW  
34 74.09.210, all receipts received under judgments or settlements that  
35 originated under a filing under the federal false claims act, all  
36 receipts from fines received pursuant to section 7 of this act, and

1 all receipts received under judgments or settlements that originated  
2 under the state medicaid fraud false claims act, chapter 74.66 RCW,  
3 must be deposited into the account. Moneys in the account may be  
4 spent only after appropriation and must be used only for medicaid  
5 services, fraud detection and prevention activities, recovery of  
6 improper payments, for other medicaid fraud enforcement activities,  
7 and the prescription monitoring program established in chapter 70.225  
8 RCW. For the 2013-2015 fiscal biennium, moneys in the account may be  
9 spent on inpatient and outpatient rebasing and conversion to the  
10 tenth version of the international classification of diseases. For  
11 the 2011-2013 fiscal biennium, moneys in the account may be spent on  
12 inpatient and outpatient rebasing.

13 NEW SECTION. **Sec. 16.** Sections 1 through 13 of this act  
14 constitute a new chapter in Title 43 RCW.

15 NEW SECTION. **Sec. 17.** If specific funding for the purposes of  
16 this act, referencing this act by bill or chapter number, is not  
17 provided by June 30, 2019, in the omnibus appropriations act, this  
18 act is null and void.

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