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**SENATE BILL 5292**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Keiser, Cleveland, Randall, Hasegawa, Das, Saldaña, Wilson, C., Lias, Conway, Kuderer, Nguyen, Van De Wege, and Wellman

Read first time 01/17/19. Referred to Committee on Health & Long Term Care.

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; 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) "Covered drug" means a drug that:

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

9        (b) (i) Is produced by a covered manufacturer with a price of  
10 forty dollars or more for a one-month supply or for a course of  
11 treatment lasting less than one month; and (ii) the covered  
12 manufacturer intends to increase in price by sixteen percent or more,  
13 including the most current proposed increase and the cumulative  
14 increase that occurred in the two calendar years prior to the date of  
15 the proposed increase.

16        (2) "Covered manufacturer" means a person, corporation, or other  
17 entity engaged in the manufacture of prescription drugs sold in or  
18 into Washington state.

19        (3) "Health care provider," "health plan," and "issuer" have the  
20 same meanings as defined in RCW 48.43.005.

21        (4) "Office" means the office of financial management.

22        (5) "Pharmacy benefit manager" has the same meaning as defined in  
23 RCW 19.340.010.

24        (6) "Prescription drug" means a drug regulated under chapter  
25 69.41 or 69.50 RCW. It includes generic, brand name, and specialty  
26 drugs, as well as biological products.

27        (7) "Price" or "wholesale acquisition cost" means, with respect  
28 to a prescription drug, the covered manufacturer's list price for the  
29 drug to wholesalers or direct purchasers in the United States,  
30 excluding any discounts, rebates, or reductions in price, for the  
31 most recent month for which the information is available, as reported  
32 in wholesale price guides or other publications of prescription drug  
33 pricing.

34        (8) "Purchaser" means a public or private purchaser of  
35 prescription drugs in the state including, but not limited to:

36        (a) The health care authority;

37        (b) The department of labor and industries;

38        (c) The department of corrections;

39        (d) The department of social and health services;

40        (e) Health plans; and

1 (f) Pharmacy benefit managers.

2 NEW SECTION. **Sec. 3.** ISSUER REPORTING. (1) Beginning October 1,  
3 2019, and on a yearly basis thereafter, an issuer must submit to the  
4 office the following prescription drug cost and utilization data for  
5 the previous calendar year:

6 (a) The twenty-five prescription drugs most frequently prescribed  
7 by health care providers participating in the issuer's network;

8 (b) The twenty-five costliest prescription drugs by total health  
9 plan spending, and the issuer's total spending for each of these  
10 prescription drugs;

11 (c) The twenty-five drugs with the highest year-over-year  
12 increase in spending, excluding drugs made available for the first  
13 time that plan year, and the percentages of the increases for each of  
14 these prescription drugs; and

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

20 (2) An employer-sponsored self-funded health plan or a Taft-  
21 Hartley trust health plan may voluntarily provide the data described  
22 in subsection (1) of this section.

23 (3) Except for aggregated information produced by the office  
24 pursuant to section 7 of this act, the information collected pursuant  
25 to section 7 of this act is not subject to public disclosure.

26 NEW SECTION. **Sec. 4.** MANUFACTURER REPORTING. (1) Beginning  
27 October 1, 2019, and on a yearly basis thereafter, a covered  
28 manufacturer must report the following data to the office for each  
29 covered drug:

30 (a) A description of the specific financial and nonfinancial  
31 factors used to make the decision to set or 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 initial wholesale acquisition cost or increase in the  
35 wholesale acquisition cost of the drug;

36 (b) If the drug was produced by the manufacturer during the  
37 previous five years, a schedule of wholesale acquisition cost  
38 increases for the drug over that time;

1 (c) If the drug was acquired by the manufacturer within the  
2 previous five years, 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) Whether the drug is a multiple source drug, an innovator  
11 multiple source drug, a noninnovator multiple source drug, or a  
12 single source 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, if  
17 applicable; and

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

20 (2) Except for aggregated information produced by the office  
21 pursuant to section 7 of this act, the information collected pursuant  
22 to section 7 of this act is not subject to public disclosure.

23 NEW SECTION. **Sec. 5.** MANUFACTURER REPORTING TO PURCHASERS. (1)  
24 Beginning October 1, 2019, a covered manufacturer must notify  
25 purchasers and the office sixty days in advance of the introduction  
26 or price increase of a covered drug.

27 (2) In the event of a price increase, the notice must include:

28 (a) The date of the increase, the current price of the  
29 prescription drug, and the dollar amount of the future increase;

30 (b) A statement regarding whether a change or improvement in the  
31 drug necessitates the price increase. If so, the manufacturer must  
32 describe the change or improvement.

33 (3) If a pharmacy benefit manager receives a notice of a price  
34 increase, it must notify its contracting public and private  
35 purchasers that provide coverage to more than five hundred covered  
36 lives.

37 (4) The data submitted under this section must be made publicly  
38 available on the office's web site.

1        NEW SECTION.    **Sec. 6.**    ENFORCEMENT. The office may assess a fine  
2 of up to one thousand dollars per day for failure to comply with the  
3 requirements of section 3, 4, or 5 of this act. The assessment of a  
4 fine under this section is subject to review under the administrative  
5 procedure act, chapter 34.05 RCW. Fines collected under this section  
6 must be deposited in the medicaid fraud penalty account created in  
7 RCW 74.09.215.

8        NEW SECTION.    **Sec. 7.**    DATA REPORT. (1) The office shall compile  
9 and analyze the data submitted by issuers and manufacturers under  
10 sections 3 and 4 of this act and prepare an annual report for the  
11 public and the legislature synthesizing the data to demonstrate the  
12 overall impact of drug costs on health care premiums. The data in the  
13 report must be aggregated and must not reveal information specific to  
14 individual health insurers.

15        (2) Beginning January 1, 2020, and by each January 1st  
16 thereafter, the office must publish the report on its web site.

17        (3) Except for the report, the office shall keep confidential all  
18 of the information provided pursuant to sections 3 and 4 of this act,  
19 and the information is not subject to public disclosure under chapter  
20 42.56 RCW.

21        NEW SECTION.    **Sec. 8.**    RULE MAKING. The office may adopt any  
22 rules necessary to implement the requirements of this chapter.

23        **Sec. 9.**    RCW 74.09.215 and 2013 2nd sp.s. c 4 s 1902, 2013 2nd  
24 sp.s. c 4 s 997, and 2013 2nd sp.s. c 4 s 995 are each reenacted and  
25 amended to read as follows:

26        The medicaid fraud penalty account is created in the state  
27 treasury. All receipts from civil penalties collected under RCW  
28 74.09.210, all receipts received under judgments or settlements that  
29 originated under a filing under the federal false claims act, all  
30 receipts from fines received pursuant to section 6 of this act, and  
31 all receipts received under judgments or settlements that originated  
32 under the state medicaid fraud false claims act, chapter 74.66 RCW,  
33 must be deposited into the account. Moneys in the account may be  
34 spent only after appropriation and must be used only for medicaid  
35 services, fraud detection and prevention activities, recovery of  
36 improper payments, for other medicaid fraud enforcement activities,  
37 and the prescription monitoring program established in chapter 70.225

1 RCW. For the 2013-2015 fiscal biennium, moneys in the account may be  
2 spent on inpatient and outpatient rebasing and conversion to the  
3 tenth version of the international classification of diseases. For  
4 the 2011-2013 fiscal biennium, moneys in the account may be spent on  
5 inpatient and outpatient rebasing.

6 NEW SECTION. **Sec. 10.** Sections 1 through 8 of this act  
7 constitute a new chapter in Title 43 RCW.

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