
ENGROSSED SUBSTITUTE SENATE BILL 5794

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Kuderer, Frockt, Hasegawa, Lovelett, Randall, Van De Wege, and C. Wilson)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to continuity of coverage for prescription drugs
2 prescribed for the treatment of behavioral health conditions;
3 amending RCW 69.41.190; and adding a new section to chapter 48.43
4 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43
7 RCW to read as follows:

8 (1) Except as provided in subsection (2) of this section, for
9 health plans that include prescription drug coverage issued or
10 renewed on or after January 1, 2023, a health carrier may not require
11 the substitution of a nonpreferred drug with a preferred drug in a
12 given therapeutic class, or increase an enrollee's cost-sharing
13 obligation mid-plan year for the drug, if the prescription is for a
14 refill of an antipsychotic, antidepressant, or antiepileptic drug,
15 the enrollee is medically stable on the drug, and a participating
16 provider continues to prescribe the drug.

17 (2) Nothing in this section prohibits:

18 (a) The carrier from requiring generic substitution during the
19 current plan year;

20 (b) The carrier from adding new drugs to its formulary during the
21 current plan year;

1 (c) The carrier from removing a drug from its formulary for
2 reasons of patient safety concerns, drug recall or removal from the
3 market, or medical evidence indicating no therapeutic effect of the
4 drug; or

5 (d) A participating provider from prescribing a different drug
6 that is covered by the plan and medically appropriate for the
7 enrollee.

8 **Sec. 2.** RCW 69.41.190 and 2011 1st sp.s. c 15 s 80 are each
9 amended to read as follows:

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

23 (b) When a substitution is made under (a) of this subsection, the
24 dispensing pharmacist shall notify the prescribing practitioner of
25 the specific drug and dose dispensed.

26 (2)(a) A state purchased health care program may impose limited
27 restrictions on an endorsing practitioner's authority to write a
28 prescription to dispense as written only under the following
29 circumstances:

30 (i) There is statistical or clear data demonstrating the
31 endorsing practitioner's frequency of prescribing dispensed as
32 written for nonpreferred drugs varies significantly from the
33 prescribing patterns of his or her peers;

34 (ii) The medical director of a state purchased health program
35 has: (A) Presented the endorsing practitioner with data that
36 indicates the endorsing practitioner's prescribing patterns vary
37 significantly from his or her peers, (B) provided the endorsing
38 practitioner an opportunity to explain the variation in his or her
39 prescribing patterns to those of his or her peers, and (C) if the

1 variation in prescribing patterns cannot be explained, provided the
2 endorsing practitioner sufficient time to change his or her
3 prescribing patterns to align with those of his or her peers; and

4 (iii) The restrictions imposed under (a) of this subsection (2)
5 must be limited to the extent possible to reduce variation in
6 prescribing patterns and shall remain in effect only until such time
7 as the endorsing practitioner can demonstrate a reduction in
8 variation in line with his or her peers.

9 (b) A state purchased health care program may immediately
10 designate an available, less expensive, equally effective generic
11 product in a previously reviewed drug class as a preferred drug,
12 without first submitting the product to review by the pharmacy and
13 therapeutics committee established pursuant to RCW 70.14.050.

14 (c) For a patient's first course of treatment within a
15 therapeutic class of drugs, a state purchased health care program may
16 impose limited restrictions on endorsing practitioners' authority to
17 write a prescription to dispense as written, only under the following
18 circumstances:

19 (i) There is a less expensive, equally effective therapeutic
20 alternative generic product available to treat the condition;

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

24 (iii) Notwithstanding the limitation set forth in (c)(ii) of this
25 subsection (2), the endorsing practitioner shall have an opportunity
26 to request as medically necessary, that the brand name drug be
27 prescribed as the first course of treatment;

28 (iv) The state purchased health care program may provide, where
29 available, prescription, emergency room, diagnosis, and
30 hospitalization history with the endorsing practitioner; and

31 (v) Specifically for antipsychotic restrictions, the state
32 purchased health care program shall effectively guide good practice
33 without interfering with the timeliness of clinical decision making.
34 Health care authority prior authorization programs must provide for
35 responses within twenty-four hours and at least a seventy-two hour
36 emergency supply of the requested drug.

37 (d) If, within a therapeutic class, there is an equally effective
38 therapeutic alternative over-the-counter drug available, a state
39 purchased health care program may designate the over-the-counter drug
40 as the preferred drug.

1 (e) A state purchased health care program may impose limited
2 restrictions on endorsing practitioners' authority to prescribe
3 pharmaceuticals to be dispensed as written for a purpose outside the
4 scope of their approved labels only under the following
5 circumstances:

6 (i) There is a less expensive, equally effective on-label product
7 available to treat the condition;

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

11 (iii) Notwithstanding the limitation set forth in (e)(ii) of this
12 subsection (2), the endorsing practitioner shall have an opportunity
13 to request as medically necessary, that the drug be prescribed for a
14 covered off-label purpose.

15 (f) The provisions of this subsection related to the definition
16 of medically necessary, prior authorization procedures and patient
17 appeal rights shall be implemented in a manner consistent with
18 applicable federal and state law.

19 (3) Notwithstanding the limitations in subsection (2) of this
20 section, for refills for an antipsychotic, antidepressant,
21 antiepileptic, chemotherapy, antiretroviral, or immunosuppressive
22 drug, or for the refill of an immunomodulator antiviral treatment for
23 hepatitis C for which an established, fixed duration of therapy is
24 prescribed for at least twenty-four weeks by no more than forty-eight
25 weeks, the pharmacist shall dispense the prescribed nonpreferred
26 drug.

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