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**SENATE BILL 5300**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Dhingra

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; adding a new section to chapter 48.43 RCW;  
4 and providing an effective date.

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, 2024, 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 an  
14 initial or subsequent refill of an antipsychotic, antidepressant,  
15 antiepileptic, or other drug prescribed to the enrollee to treat a  
16 serious mental illness, the enrollee is medically stable on the drug,  
17 and a participating provider continues to prescribe the drug.

18 (2) Nothing in this section prohibits:

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

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

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

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

10 (3) For the purposes of this section "serious mental illness"  
11 means a mental disorder, as defined in the most recent edition of the  
12 diagnostic and statistical manual of mental disorders published by  
13 the American psychiatric association, that results in serious  
14 functional impairment that substantially interferes with or limits  
15 one or more major life activities.

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

18 (1)(a) Except as provided in subsection (2) of this section, any  
19 pharmacist filling a prescription under a state purchased health care  
20 program as defined in RCW 41.05.011(~~((2))~~) shall substitute, where  
21 identified, a preferred drug for any nonpreferred drug in a given  
22 therapeutic class, unless the endorsing practitioner has indicated on  
23 the prescription that the nonpreferred drug must be dispensed as  
24 written, or the prescription is for ~~((a))~~ an initial or subsequent  
25 refill of an antipsychotic, antidepressant, antiepileptic, other drug  
26 prescribed to the enrollee to treat a serious mental illness,  
27 chemotherapy, antiretroviral, or immunosuppressive drug, or for the  
28 refill of a immunomodulator/antiviral treatment for hepatitis C for  
29 which an established, fixed duration of therapy is prescribed for at  
30 least ~~((twenty-four))~~ 24 weeks but no more than ~~((forty-eight))~~ 48  
31 weeks, in which case the pharmacist shall dispense the prescribed  
32 nonpreferred drug.

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

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

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

5 (ii) The medical director of a state purchased health program  
6 has: (A) Presented the endorsing practitioner with data that  
7 indicates the endorsing practitioner's prescribing patterns vary  
8 significantly from his or her peers, (B) provided the endorsing  
9 practitioner an opportunity to explain the variation in his or her  
10 prescribing patterns to those of his or her peers, and (C) if the  
11 variation in prescribing patterns cannot be explained, provided the  
12 endorsing practitioner sufficient time to change his or her  
13 prescribing patterns to align with those of his or her peers; and

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

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

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

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

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

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

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

1 (v) Specifically for antipsychotic restrictions, the state  
2 purchased health care program shall effectively guide good practice  
3 without interfering with the timeliness of clinical decision making.  
4 Health care authority prior authorization programs must provide for  
5 responses within (~~twenty-four~~) 24 hours and at least a (~~seventy-~~  
6 ~~two~~) 72 hour emergency supply of the requested drug.

7 (d) If, within a therapeutic class, there is an equally effective  
8 therapeutic alternative over-the-counter drug available, a state  
9 purchased health care program may designate the over-the-counter drug  
10 as the preferred drug.

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

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

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

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

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

29 (3) Notwithstanding the limitations in subsection (2) of this  
30 section, for initial or subsequent refills for an antipsychotic,  
31 antidepressant, antiepileptic, chemotherapy, antiretroviral, or  
32 immunosuppressive drug, or for the refill of an immunomodulator  
33 antiviral treatment for hepatitis C for which an established, fixed  
34 duration of therapy is prescribed for at least (~~twenty-four~~) 24  
35 weeks by no more than (~~forty-eight~~) 48 weeks, the pharmacist shall  
36 dispense the prescribed nonpreferred drug.

37 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2024.

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