

SB 5445, to lower drug costs by allowing consumers to benefit from pharmaceutical manufacturer rebates

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Key Findings

1. **Drug manufacturers often provide rebates to health insurance companies.**
2. **Rebates lower the cost of drugs but these savings are often not passed on to consumers.**
3. **SB 5445 would require that consumer costs reflect the true post-rebate price so they can gain the benefit of lower drug costs.**

Introduction

Developing, manufacturing and distributing prescription medications that cure diseases, promote health, and reduce human suffering requires enormous investment and massive high-tech research facilities. Unlike most other consumer goods, the work of producing reliable, safe, and effective medications operates at the most advanced edge of scientific knowledge.

Since it occupies the frontiers of science, most drug research does not pay off. Only about seven percent of possible drugs survive the research phase, make it through clinical trials, and are approved for sale.¹ Only then are they available to provide practical benefit to human health. Over 90 percent of research on new drugs fails to produce treatments and lose money.

Once these vital medications are created, however, policymakers should ensure they are easily and widely available to doctors to treat disease and then provided to consumers at the lowest market price possible.

One practice that reduces costs is that drug manufacturers negotiate with Pharmacy Benefit Managers (PBMs) to provide significant rebates to health insurance companies. The value of

these rebates, however, is not generally passed on to consumers, meaning consumers do not benefit from reduced prices provided by drug manufacturers. This Legislative Memo examines one positive reform, SB 5445, which would reduce drug prices by ensuring consumers share in savings provided to health insurers through manufacturer rebates.

How SB 5445 would lower drug costs

SB 5445 is bipartisan legislation introduced by Senators Rivers, Cleveland, Hasagawa, Keiser, Kuderer and Lovelett.² It would require health insurance companies to share with consumers the price-reduction benefits they receive from drug manufactures.

Beginning with health plans issued or re-issued after January 1, 2025, members of the plan who are in the deductible phase or owe a co-insurance payment would pay a cost-sharing amount based on an amount equal to 100 percent of the rebates the insurance carrier would receive. Co-pays collected through the year would be based on estimates. Cost sharing reductions would be reconciled at the end of the year and a refund provided to plan members if sufficient savings had not been provided through the year.

Pharmacists and pharmacies would not be held liable or be subject to penalty for making the calculations or complying with the act. Providing reduced costs to consumers would be the responsibility to the insurance carrier and the Pharmacy Benefit Manager.

As noted, most consumers are unaware of the role of Pharmacy Benefit Managers and don't realize that insurers may receive significant cost reductions from drug manufacturers to

1 "Success rates for experimental drugs falls: study," by bill Berkrot, Reuters News, February 14, 2011, at <https://www.reuters.com/article/us-pharmaceuticals-success-idUSTRE71D2U920110214>

2 SB 5445, "An act relating to cost-sharing fairness," Washington State Legislature, introduced January 18, 2023, at <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Bills/5445.pdf?q=20230209150942>. The companion bill in the House is HB 1465.

reduce the net cost of covering the drug in their health care plans. The reform proposed by SB 5445 would allow consumers to pay less for medications that are essential to their health and well-being.

Protecting trade secrets

The bill provides that no insurance carrier or its agents may publicize internal information about price negotiations or rebate amounts received from pharmaceutical manufacturers. The bill specifies that such information involves the terms of negotiated contracts and are not public records. This is similar to the protection of sensitive internal business information that exists in other industries.

Conclusion

Unlike many government rules related to health care, the provisions of SB 5445 are not complicated. Most government intervention into health care distorts incentives, adds complexity, and drives up costs. SB 5445 seeks to do the opposite by making the cost of drugs provided through insurance plans more transparent.

The bill simply provides that consumers receive the cost savings that pharmaceutical companies have negotiated with Pharmacy Benefit Managers or health insurers. The result of the bill is that consumer would see a reduction in their out-of-pocket medication prices, and would realize more of the true price of the medications on which they depend.

For that reason the bill would serve the public interest by lowering the cost of health care, increasing patient access to needed medicines, and would recognize that when drug manufacturers provide price breaks consumers should share in the benefit.

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