

## SB 5532 to establish a state board with authority to impose price and access control on essential medicines

By Elizabeth Hovde, Director, Center for Health Care and Center for Worker Rights  
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### Key findings

1. **Establishing a drug affordability board doesn't guarantee lower prices for patients. It will limit the availability of life-saving drugs in Washington.**
2. **To help them craft responsible policy on a complex issue it doesn't fully understand, lawmakers passed drug transparency legislation. A required report is overdue.**
3. **Under SB 5532, a government-appointed board of five members would be authorized to arbitrarily set price controls on prescription drugs and impose penalties.**
4. **This is not patient-centered legislation. It could result in drug manufacturers withdrawing medicines from the state market, leaving Washingtonians without access to them.**
5. **Price controls lead to rationing and limited supply. In this case, policymakers would control the supply of vital medications that people want and need.**

### Introduction

State lawmakers want a government-appointed, five-person board to impose price controls on prescription drugs sold in Washington state. The board could also assess penalties. It is considering Senate Bill 5532.<sup>1</sup> The price controls proposed in this legislation could make some medicines inaccessible to patients.

This Legislative Memo reviews the text of SB 5532 and assesses its impact on affordability, access to care and quality of care patients receive in the practice of medicine in Washington state.

### Text of SB 5532

Summarized from the bill report for SB 5532<sup>2</sup>, this legislation would create a state-run prescription drug affordability board within the state Health Care Authority (HCA). The price-control board would be comprised of five members appointed by the governor. Members would have expertise in health care economics or clinical medicine and could not be an employee or board member of, or contractor to, a prescription drug manufacturer, pharmacy benefit manager, health carrier, prescription drug wholesale distributor or related trade association.<sup>3</sup> Members from unions, political groups or social advocacy groups would not be barred. The board could convene one year after the HCA publishes its first drug-price transparency report, a previously authorized report that is now overdue.

1 "SB 5532 — 2021-22 Establishing a prescription drug affordability board." <https://app.leg.wa.gov/billsummary?BillNumber=5532&Initiative=false&Year=2021>.

2 "Senate Bill Report SB 5532." <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5532%20SBR%20HLTC%20OC%2022.pdf?q=20220202134008>.

3 "Senate Bill Report SB 5532." <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5532%20SBR%20HLTC%20OC%2022.pdf?q=20220131133343>.

The board would identify medicines that have been on the market for 10 years and sold at a retail pharmacy, that are not treatments for a rare disease or condition, and that meet several cost benchmarks. The board could choose to conduct its own price review of drugs.<sup>4</sup>

Beginning in 2027, the board would have the power to set prices for up to 12 essential medicines. The state price control would be imposed on all patients treated under state and federal healthcare programs. Employer-sponsored, self-funded plans may elect to be subject to the upper pay limit prescribed.

The board can force manufacturers to give it confidential and proprietary information. The manufacturer must submit all requests for information to the board within 30 days or be fined.

If a drug manufacturer chooses to withdraw a drug from Washington state because of a price control imposed on the drug, it must give the state 180 days' notice and would be prohibited from selling the drug here for five years.

In addition, the board would have the power to impose stiff penalties if its members decided its directives are not being followed.

The Senate Health and Long Term Care Committee<sup>5</sup> held a hearing on SB 5532 on January 19th. The bill passed the committee on January 28th and was referred to the Senate Ways and Means Committee for further consideration.<sup>6</sup>

## Policy analysis

The steady rise in health care costs is caused in large part by government policies that restrict supply, limit choices and interfere with normal market competition. Yet many

lawmakers feel anxious to show the public they are searching for solutions, regardless of whether proposals really lower patient costs or actually limit access to life-saving drugs for patients.

In a recent meeting of the Senate Health and Long Term Care Committee, Senator Ann Rivers, R-La Center, said, "We should resist the urge to do something even if it's wrong." She explained the bill is "premature" and "not fully baked," because it assumes answers about drug pricing that the Legislature does not have.<sup>7</sup>

"We are left waiting for the data we should have had a couple years ago," she said, referring to the drug transparency report that the HCA was supposed to produce in 2020. She urged the committee to hold the decision on a drug affordability board at least until the HCA has completed its report.

## *Transparency legislation not fulfilled*

Price transparency is a promising direction in which the Legislature was headed. Transparency would give patients more information as consumers to make better health care decisions. However, a 2019 drug transparency bill<sup>8</sup> did not deliver promised data collection nor a report to help lawmakers with decisions about drug pricing.

Since the HCA has not even completed its report on transparency and drug prices, some lawmakers expressed concern about giving the agency even more power over the health care services that would be available to the public. As noted, under the bill, a five-person, governor-appointed board would be authorized to set arbitrary price limits and impose stiff penalties.

## *Price controls don't work*

Price controls never work as lawmakers intend. They inevitably lead to rationing and limited supply. When policymakers control

4 "Senate Bill Report SB 5532." <https://lawfilesex.t.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5532%20SBR%20HLTC%20OC%2022.pdf?q=20220131133343>.

5 "Senate Health & Long Term Care Committee" website: <https://leg.wa.gov/Senate/Committees/HLTC/Pages/default.aspx>.

6 "Senate Ways & Means Committee" website: <https://leg.wa.gov/Senate/Committees/WM/Pages/default.aspx>.

7 Jan. 28 Executive Session of the Senate Health & Long Term Care Committee on TVW: <https://www.tvw.org/video/watch/?eventID=2022011535>.

8 Final Bill Report, E2SHB 1224: <https://lawfilesex.t.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/1224-S2.E%20HBR%20FBR%2019.pdf?q=20220201120546>

the price of a product, they also control the supply. In this case, the policy would control the supply of vital medications that sick people want and need. SB 5532's sponsors say they want to help patients, but the proposed bill would deny life-giving treatments to sick patients in Washington state.

able to decide which drugs are best for their needs, not a state-run price control board.

Good public policy and universal experience show that open market competition, not government controls, are most effective at driving down costs. The rapid development of COVID-19 vaccines and the success of the federal government's Operation Warp Speed demonstrated that. The program removed government barriers to innovation, and several private companies worked to provide new vaccines and innovative treatments in a global health crisis.

Private firms create new medicines, and lawmakers should promote ways to streamline the drug-approval process, modify patent laws, promote investment in pharmaceutical research, and encourage patient choice, competition and price transparency. This price-control legislation would create a less competitive environment and hamper patient access to needed medications. As Senator Mike Padden, R-Spokane Valley, stated in committee, "Wage and price controls – you look through history – they never work. And that's really what we have here."

## Conclusion

Drug pricing is already overly complex. This bill would add another complication that would reduce patient access to life-changing drugs in Washington state. For this reason, SB 5532 is not patient centered. Threats of penalty authorized by politicians, when drug increases are arbitrarily declared excessive, would create a chilling environment for drug innovators and limit drugs available. Lawmakers should look for competitive ways to improve the drug innovation pipeline, not erect more barriers.

Throughout our economy, a free market, without third-party interference, limits and regulations, brings a wide range of products and benefits for people to choose from, as well as greater affordability. Patients, in consultation with care providers, should be

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