S-3688.2

SENATE BILL 6200

State of Washington 60th Legislature 2008 Regular Session

By Senators Keiser, Kohl-Welles, and Murray

Read first time 01/14/08. Referred to Committee on Health & Long-Term Care.

AN ACT Relating to prescription drug marketing; and adding a new chapter to Title 70 RCW.

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

NEW SECTION. **Sec. 1.** The purpose of this chapter is to assure that persons or entities authorized to prescribe, dispense, or purchase prescription drugs in Washington use an evidence-based approach.

NEW SECTION. **Sec. 2.** The legislature finds that:

(1) The state of Washington has an interest in maximizing the well-being of its residents and in containing health care costs;

(2) To further its legitimate interest in the well-being of its residents and containing health care costs, the state of Washington has shown, through numerous legislative and executive branch activities, a strong commitment to evidence-based care and cost-effective health purchasing. The commitment is demonstrated through establishment of the Washington evidence-based prescription drug program and the state preferred drug list under RCW 70.14.050, establishment of the prescription drug purchasing consortium under RCW 70.14.060, and both generic and therapeutic drug substitution under chapter 69.41 RCW. The

Washington state health technology assessment program, established under chapter 70.14 RCW, is applying the principles of evidence-based care and cost-effective purchasing to the review of medical devices and procedures for state-purchased health care programs. Finally, the state of Washington is an active participant in the Puget Sound health alliance, whose goal is to improve the quality and transparency of health services provided across the public and private sectors;

(3) In 2004, the pharmaceutical industry spent twenty-seven billion dollars marketing pharmaceuticals in the United States and spent more than any other sector in the United States on its sales force and media advertising. Pharmaceutical manufacturers spend twice as much on marketing as on research and development;

(4) Marketing programs are designed to increase sales, income, and profit. Frequently, progress toward these goals comes at the expense of evidence-based care and sometimes the health of individual patients;

(5) There is considerable evidence that pharmaceutical marketing campaigns lead doctors to prescribe drugs based on incomplete and biased information, particularly for prescribers who lack the time to perform substantive research assessing whether the messages they are receiving from pharmaceutical representatives are full and accurate;

(6) The federal food and drug administration requires marketing and advertising to be fair and balanced; however, the federal food and drug administration has limited legal ability to enforce this requirement;

(7) Newer drugs on the market do not necessarily provide additional benefits over older drugs but do add costs and as yet unknown side effects;

(8) Between 1975 and 2000, fifty percent of all drug withdrawals from the market and "black box warnings" were within the first two years of the release of the drug. One-fifth of all drugs are subject to "black box warnings" or withdrawal from the market because of serious public health concerns. Marketing that results in prescribers using the newest drugs also results in prescribing drugs that are more likely to be subject to these warnings and withdrawal;

(9) Nearly one-third of the five-fold increase in spending on drugs in the United States over the last decade can be attributed to marketing-induced shifts in doctors' prescribing from existing, effective, and lower cost, often generic, therapies to new and more

expensive treatments, which often have little or no evidence-based therapeutic value;

(10) Several studies suggest that drug samples clearly affect prescribing behavior in favor of the sample, and that the presence of drug samples may influence physicians to dispense or prescribe drugs that differ from their preferred drug source; and

(11) This act is necessary to promote the use of safe and clinically effective drugs, and to advance health care cost-containment efforts for the state, consumers, and businesses.

NEW SECTION. **Sec. 3.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Program" means the prescription drug professional education program.

(2) "Administrator" means the administrator of the authority.

(3) "Authority" means the health care authority.

(4) "State purchased health care" means the same as defined in RCW 41.05.011.

NEW SECTION. **Sec. 4.** (1) By January 1, 2009, the authority shall establish the prescription drug professional education program to:

(a) Enhance the health of residents of the state;

(b) Promote evidence-based treatment;

(c) Encourage better communication between state agencies and health care practitioners participating in state purchased health care programs; and

(d) Reduce the health complications and unnecessary costs associated with nonevidence-based drug prescribing.

(2) The authority shall design the program with state agencies administering state purchased health care programs. In designing the program, the authority shall consult with national experts, prescribers and dispensers of drugs, carriers and health plans, hospitals, pharmacy benefit managers, and consumers.

(3) The program shall consist of outreach and education to prescribers and dispensers of drugs in the state and shall include evidence-based information, including the use of generic drugs as demonstrated in the state's prescription drug purchasing consortium under RCW 70.14.060.

(4) The program shall provide information to prescribers through a variety of means, including written and web-based materials and personal visits.

(5) Where possible, the program shall share prescriber-specific data in a report card format that compares each prescriber's practice to evidence-based practice standards that promote safety and cost-effectiveness. Such data shall be confidential and made available only to the individual prescriber, unless the data is aggregated for reporting purposes.

(6) Starting January 10, 2009, and annually thereafter, the authority shall provide to the legislature an annual report on the operation of the program. The report shall include information on the outreach and education components of the program, the impact of the program on prescribing practices, revenues, expenditures, and balances; and savings attributable to the program in state-funded health care programs.

(7) Beginning April 1, 2009, each manufacturer of prescription drugs that are provided to Washington state residents through the medicaid program under chapter 74.09 RCW shall pay a fee of five thousand dollars per calendar year to the state. Fees collected under this subsection shall be used to cover the cost of implementing this chapter.

(8) The authority may solicit grants and donations from public and private sources for the program.

(9) Nothing in this chapter shall be construed to prohibit carriers having integrated delivery systems with pharmacy management programs from establishing and using their own evidenced-based prescribing standards and educational efforts as a means of meeting the goals and objectives of the prescription drug professional education program.

NEW SECTION. **Sec. 5.** The prescription drug professional education program account is created in the custody of the state treasurer. All receipts from the fee established in section 4 of this act must be deposited into the account. Expenditures from the account may be used only for the prescription drug professional education program. Only the administrator or the administrator's designee may authorize expenditures from the account. The account is subject to allotment

procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 6.** The authority may adopt rules to implement the provisions of this chapter.

NEW SECTION. **Sec. 7.** This chapter may be known and cited as the prescription drug evidence-based education act.

NEW SECTION. **Sec. 8.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act constitute a new chapter in Title 70 RCW.

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