
Health Care & Wellness Committee

HB 1493

Brief Description: Marketing prescription drugs.

Sponsors: Representatives Pedersen, Hinkle, Cody, Clibborn, Morrell, Campbell, Green, DeBolt, Seaquist, Nelson, Moeller, Ericks, Appleton, Hudgins, Hasegawa, Conway, Kagi and Kenney.

Brief Summary of Bill

- Health care providers, including pharmacists and pharmacies health carriers, pharmacy benefit managers, or the business associates, subsidiaries, or the affiliates of these entities are prohibited from sharing, selling, or using health care information for the purpose of marketing prescription drugs to patients.

Hearing Date: 2/3/09

Staff: Dave Knutson (786-7146)

Background:

Under the federal Health Insurance Portability and Privacy Act (HIPPA) it is not considered "marketing" for a doctor to make a prescription refill reminder even if a third party pays for the communication. The prescription refill reminder is considered treatment. The communication is therefore excluded from the definition of marketing and does not require a prior authorization. Similarly, it is not marketing when a doctor or pharmacy is paid by a pharmaceutical company to recommend an alternative medication to patients. Communications about alternative treatments are excluded from the definition of marketing and do not require a prior authorization. The simple receipt of remuneration does not transform a treatment communication into a commercial promotion of a product or service.

In addition, doctors, pharmacies, and health plans may use a legitimate business associate to assist them in making such permissible communications. The HIPPA definition of a "business associate" is an individual or corporate "person" that:

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- performs on behalf of the doctor, pharmacy, or health plan any function or activity involving the use or disclosure of protected health information; and
- is not a member of the covered entity's workforce. For instance, if a pharmacist that has been paid by a third party contracts with a mail house to send out prescription refill reminders to the pharmacist's patients, neither the mail house nor the pharmacist needs a prior authorization. However, a covered entity would require an authorization if it sold protected health information to a third party for the third party's marketing purposes.

Summary of Bill:

Health care providers, including pharmacists and pharmacies health carriers, pharmacy benefit managers, or the business associates, subsidiaries, or the affiliates of these entities are prohibited from sharing, selling, or using health care information for the purpose of marketing prescription drugs to patients. A violation of this prohibition is considered a violation of the Consumer Protection Act, chapter 19.86 RCW. The penalty for violating this prohibition is the greater of \$1,000 or actual damages sustained by a person, and reasonable attorneys' fees. The court is authorized to treble the damages.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.