
ENGROSSED SUBSTITUTE HOUSE BILL 1769

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Zellinsky, Sheldon and L. Thomas)

Read first time 03/05/97.

1 AN ACT Relating to electronic transfer of prescription information;
2 amending RCW 69.41.010 and 69.50.101; adding a new section to chapter
3 69.41 RCW; and adding a new section to chapter 69.50 RCW.

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

5 **Sec. 1.** RCW 69.41.010 and 1996 c 178 s 16 are each amended to read
6 as follows:

7 As used in this chapter, the following terms have the meanings
8 indicated unless the context clearly requires otherwise:

9 (1) "Administer" means the direct application of a legend drug
10 whether by injection, inhalation, ingestion, or any other means, to the
11 body of a patient or research subject by:

12 (a) A practitioner; or

13 (b) The patient or research subject at the direction of the
14 practitioner.

15 (2) "Deliver" or "delivery" means the actual, constructive, or
16 attempted transfer from one person to another of a legend drug, whether
17 or not there is an agency relationship.

18 (3) "Department" means the department of health.

1 (4) "Dispense" means the interpretation of a prescription or order
2 for a legend drug and, pursuant to that prescription or order, the
3 proper selection, measuring, compounding, labeling, or packaging
4 necessary to prepare that prescription or order for delivery.

5 (5) "Dispenser" means a practitioner who dispenses.

6 (6) "Distribute" means to deliver other than by administering or
7 dispensing a legend drug.

8 (7) "Distributor" means a person who distributes.

9 (8) "Drug" means:

10 (a) Substances recognized as drugs in the official United States
11 pharmacopoeia, official homeopathic pharmacopoeia of the United States,
12 or official national formulary, or any supplement to any of them;

13 (b) Substances intended for use in the diagnosis, cure, mitigation,
14 treatment, or prevention of disease in man or animals;

15 (c) Substances (other than food, minerals or vitamins) intended to
16 affect the structure or any function of the body of man or animals; and

17 (d) Substances intended for use as a component of any article
18 specified in clause (a), (b), or (c) of this subsection. It does not
19 include devices or their components, parts, or accessories.

20 (9) "Electronic communication of prescription information" means
21 the communication of prescription information by computer, or the
22 transmission of an exact visual image of a prescription by facsimile,
23 or other electronic means for original prescription information or
24 prescription refill information for a legend drug between an authorized
25 practitioner and a pharmacy or the transfer of prescription information
26 for a legend drug from one pharmacy to another pharmacy.

27 (10) "Legend drugs" means any drugs which are required by state law
28 or regulation of the state board of pharmacy to be dispensed on
29 prescription only or are restricted to use by practitioners only.

30 (~~(10)~~) (11) "Person" means individual, corporation, government or
31 governmental subdivision or agency, business trust, estate, trust,
32 partnership or association, or any other legal entity.

33 (~~(11)~~) (12) "Practitioner" means:

34 (a) A physician under chapter 18.71 RCW, an osteopathic physician
35 or an osteopathic physician and surgeon under chapter 18.57 RCW, a
36 dentist under chapter 18.32 RCW, a podiatric physician and surgeon
37 under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a
38 registered nurse, advanced registered nurse practitioner, or licensed
39 practical nurse under chapter 18.79 RCW, an optometrist under chapter

1 18.53 RCW who is certified by the optometry board under RCW 18.53.010,
2 an osteopathic physician assistant under chapter 18.57A RCW, a
3 physician assistant under chapter 18.71A RCW, or a pharmacist under
4 chapter 18.64 RCW;

5 (b) A pharmacy, hospital, or other institution licensed,
6 registered, or otherwise permitted to distribute, dispense, conduct
7 research with respect to, or to administer a legend drug in the course
8 of professional practice or research in this state; and

9 (c) A physician licensed to practice medicine and surgery or a
10 physician licensed to practice osteopathic medicine and surgery in any
11 state, or province of Canada, which shares a common border with the
12 state of Washington.

13 (~~(12)~~) (13) "Secretary" means the secretary of health or the
14 secretary's designee.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.41 RCW
16 to read as follows:

17 (1) Information concerning an original prescription or information
18 concerning a prescription refill for a legend drug may be
19 electronically communicated between an authorized petitioner and a
20 pharmacy of the patient's choice with no intervening person having
21 access to the prescription drug order pursuant to the provisions of
22 this chapter if the electronically communicated prescription
23 information complies with the following:

24 (a) Electronically communicated prescription information must
25 comply with all applicable statutes and rules regarding the form,
26 content, recordkeeping, and processing of a prescription for a legend
27 drug;

28 (b) The system used for transmitting electronically communicated
29 prescription information and the system used for receiving
30 electronically communicated prescription information must be approved
31 by the board. This subsection does not apply to currently used
32 facsimile equipment transmitting an exact visual image of the
33 prescription. The board shall maintain and provide, upon request, a
34 list of systems used for electronically communicating prescription
35 information currently approved by the board;

36 (c) An explicit opportunity for practitioners must be made to
37 indicate their preference on whether a therapeutically equivalent
38 generic drug may be substituted;

1 (d) Prescription drug orders are confidential health information,
2 and may be released only to the patient or the patient's authorized
3 representative, the prescriber or other authorized practitioner then
4 caring for the patient, or other persons specifically authorized by law
5 to receive such information;

6 (e) To maintain confidentiality of prescription records, the
7 electronic system shall have adequate security and systems safeguards
8 designed to prevent and detect unauthorized access, modification, or
9 manipulation of these records. The pharmacist in charge shall
10 establish or verify the existence of policies and procedures which
11 ensure the integrity and confidentiality of prescription information
12 transmitted to the pharmacy by electronic means. All managers,
13 employees, and agents of the pharmacy are required to read, sign, and
14 comply with the established policies and procedures; and

15 (f) The pharmacist shall exercise professional judgment regarding
16 the accuracy, validity, and authenticity of the prescription drug order
17 received by way of electronic transmission, consistent with federal and
18 state laws and rules and guidelines of the board.

19 (2) The board may adopt rules implementing this section.

20 **Sec. 3.** RCW 69.50.101 and 1996 c 178 s 18 are each amended to read
21 as follows:

22 Unless the context clearly requires otherwise, definitions of terms
23 shall be as indicated where used in this chapter:

24 (a) "Administer" means to apply a controlled substance, whether by
25 injection, inhalation, ingestion, or any other means, directly to the
26 body of a patient or research subject by:

27 (1) a practitioner authorized to prescribe (or, by the
28 practitioner's authorized agent); or

29 (2) the patient or research subject at the direction and in the
30 presence of the practitioner.

31 (b) "Agent" means an authorized person who acts on behalf of or at
32 the direction of a manufacturer, distributor, or dispenser. It does
33 not include a common or contract carrier, public warehouseperson, or
34 employee of the carrier or warehouseperson.

35 (c) "Board" means the state board of pharmacy.

36 (d) "Controlled substance" means a drug, substance, or immediate
37 precursor included in Schedules I through V as set forth in federal or
38 state laws, or federal or board rules.

1 (e)(1) "Controlled substance analog" means a substance the chemical
2 structure of which is substantially similar to the chemical structure
3 of a controlled substance in Schedule I or II and:

4 (i) that has a stimulant, depressant, or hallucinogenic effect on
5 the central nervous system substantially similar to the stimulant,
6 depressant, or hallucinogenic effect on the central nervous system of
7 a controlled substance included in Schedule I or II; or

8 (ii) with respect to a particular individual, that the individual
9 represents or intends to have a stimulant, depressant, or
10 hallucinogenic effect on the central nervous system substantially
11 similar to the stimulant, depressant, or hallucinogenic effect on the
12 central nervous system of a controlled substance included in Schedule
13 I or II.

14 (2) The term does not include:

15 (i) a controlled substance;

16 (ii) a substance for which there is an approved new drug
17 application;

18 (iii) a substance with respect to which an exemption is in effect
19 for investigational use by a particular person under Section 505 of the
20 federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent
21 conduct with respect to the substance is pursuant to the exemption; or

22 (iv) any substance to the extent not intended for human consumption
23 before an exemption takes effect with respect to the substance.

24 (f) "Deliver" or "delivery," means the actual or constructive
25 transfer from one person to another of a substance, whether or not
26 there is an agency relationship.

27 (g) "Department" means the department of health.

28 (h) "Dispense" means the interpretation of a prescription or order
29 for a controlled substance and, pursuant to that prescription or order,
30 the proper selection, measuring, compounding, labeling, or packaging
31 necessary to prepare that prescription or order for delivery.

32 (i) "Dispenser" means a practitioner who dispenses.

33 (j) "Distribute" means to deliver other than by administering or
34 dispensing a controlled substance.

35 (k) "Distributor" means a person who distributes.

36 (l) "Drug" means (1) a controlled substance recognized as a drug in
37 the official United States pharmacopoeia/national formulary or the
38 official homeopathic pharmacopoeia of the United States, or any
39 supplement to them; (2) controlled substances intended for use in the

1 diagnosis, cure, mitigation, treatment, or prevention of disease in
2 individuals or animals; (3) controlled substances (other than food)
3 intended to affect the structure or any function of the body of
4 individuals or animals; and (4) controlled substances intended for use
5 as a component of any article specified in (1), (2), or (3) of this
6 subsection. The term does not include devices or their components,
7 parts, or accessories.

8 (m) "Drug enforcement administration" means the drug enforcement
9 administration in the United States Department of Justice, or its
10 successor agency.

11 (n) "Immediate precursor" means a substance:

12 (1) that the state board of pharmacy has found to be and by rule
13 designates as being the principal compound commonly used, or produced
14 primarily for use, in the manufacture of a controlled substance;

15 (2) that is an immediate chemical intermediary used or likely to be
16 used in the manufacture of a controlled substance; and

17 (3) the control of which is necessary to prevent, curtail, or limit
18 the manufacture of the controlled substance.

19 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),
20 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any
21 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)
22 the term includes any positional isomer; and in RCW 69.50.204(a)(35),
23 69.50.204(c), and 69.50.208(a) the term includes any positional or
24 geometric isomer.

25 (p) "Manufacture" means the production, preparation, propagation,
26 compounding, conversion, or processing of a controlled substance,
27 either directly or indirectly or by extraction from substances of
28 natural origin, or independently by means of chemical synthesis, or by
29 a combination of extraction and chemical synthesis, and includes any
30 packaging or repackaging of the substance or labeling or relabeling of
31 its container. The term does not include the preparation, compounding,
32 packaging, repackaging, labeling, or relabeling of a controlled
33 substance:

34 (1) by a practitioner as an incident to the practitioner's
35 administering or dispensing of a controlled substance in the course of
36 the practitioner's professional practice; or

37 (2) by a practitioner, or by the practitioner's authorized agent
38 under the practitioner's supervision, for the purpose of, or as an
39 incident to, research, teaching, or chemical analysis and not for sale.

1 (q) "Marijuana" or "marihuana" means all parts of the plant
2 Cannabis, whether growing or not; the seeds thereof; the resin
3 extracted from any part of the plant; and every compound, manufacture,
4 salt, derivative, mixture, or preparation of the plant, its seeds or
5 resin. The term does not include the mature stalks of the plant, fiber
6 produced from the stalks, oil or cake made from the seeds of the plant,
7 any other compound, manufacture, salt, derivative, mixture, or
8 preparation of the mature stalks (except the resin extracted
9 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
10 which is incapable of germination.

11 (r) "Narcotic drug" means any of the following, whether produced
12 directly or indirectly by extraction from substances of vegetable
13 origin, or independently by means of chemical synthesis, or by a
14 combination of extraction and chemical synthesis:

15 (1) Opium, opium derivative, and any derivative of opium or opium
16 derivative, including their salts, isomers, and salts of isomers,
17 whenever the existence of the salts, isomers, and salts of isomers is
18 possible within the specific chemical designation. The term does not
19 include the isoquinoline alkaloids of opium.

20 (2) Synthetic opiate and any derivative of synthetic opiate,
21 including their isomers, esters, ethers, salts, and salts of isomers,
22 esters, and ethers, whenever the existence of the isomers, esters,
23 ethers, and salts is possible within the specific chemical designation.

24 (3) Poppy straw and concentrate of poppy straw.

25 (4) Coca leaves, except coca leaves and extracts of coca leaves
26 from which cocaine, ecgonine, and derivatives or ecgonine or their
27 salts have been removed.

28 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

29 (6) Cocaine base.

30 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
31 thereof.

32 (8) Any compound, mixture, or preparation containing any quantity
33 of any substance referred to in subparagraphs (1) through (7).

34 (s) "Opiate" means any substance having an addiction-forming or
35 addiction-sustaining liability similar to morphine or being capable of
36 conversion into a drug having addiction-forming or addiction-sustaining
37 liability. The term includes opium, substances derived from opium
38 (opium derivatives), and synthetic opiates. The term does not include,
39 unless specifically designated as controlled under RCW 69.50.201, the

1 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
2 (dextromethorphan). The term includes the racemic and levorotatory
3 forms of dextromethorphan.

4 (t) "Opium poppy" means the plant of the species *Papaver somniferum*
5 L., except its seeds.

6 (u) "Person" means individual, corporation, business trust, estate,
7 trust, partnership, association, joint venture, government,
8 governmental subdivision or agency, or any other legal or commercial
9 entity.

10 (v) "Poppy straw" means all parts, except the seeds, of the opium
11 poppy, after mowing.

12 (w) "Practitioner" means:

13 (1) A physician under chapter 18.71 RCW, a physician assistant
14 under chapter 18.71A RCW, an osteopathic physician and surgeon under
15 chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric
16 physician and surgeon under chapter 18.22 RCW, a veterinarian under
17 chapter 18.92 RCW, a registered nurse, advanced registered nurse
18 practitioner, or licensed practical nurse under chapter 18.79 RCW, a
19 pharmacist under chapter 18.64 RCW or a scientific investigator under
20 this chapter, licensed, registered or otherwise permitted insofar as is
21 consistent with those licensing laws to distribute, dispense, conduct
22 research with respect to or administer a controlled substance in the
23 course of their professional practice or research in this state.

24 (2) A pharmacy, hospital or other institution licensed, registered,
25 or otherwise permitted to distribute, dispense, conduct research with
26 respect to or to administer a controlled substance in the course of
27 professional practice or research in this state.

28 (3) A physician licensed to practice medicine and surgery, a
29 physician licensed to practice osteopathic medicine and surgery, a
30 dentist licensed to practice dentistry, a podiatric physician and
31 surgeon licensed to practice podiatric medicine and surgery, or a
32 veterinarian licensed to practice veterinary medicine in any state of
33 the United States.

34 (x) "Prescription" means an order for controlled substances issued
35 by a practitioner duly authorized by law or rule in the state of
36 Washington to prescribe controlled substances within the scope of his
37 or her professional practice for a legitimate medical purpose.

38 (y) "Production" includes the manufacturing, planting, cultivating,
39 growing, or harvesting of a controlled substance.

1 (z) "Secretary" means the secretary of health or the secretary's
2 designee.

3 (aa) "State," unless the context otherwise requires, means a state
4 of the United States, the District of Columbia, the Commonwealth of
5 Puerto Rico, or a territory or insular possession subject to the
6 jurisdiction of the United States.

7 (bb) "Ultimate user" means an individual who lawfully possesses a
8 controlled substance for the individual's own use or for the use of a
9 member of the individual's household or for administering to an animal
10 owned by the individual or by a member of the individual's household.

11 (cc) "Electronic communication of prescription information" means
12 the communication of prescription information by computer, or the
13 transmission of an exact visual image of a prescription by facsimile,
14 or other electronic means for original prescription information or
15 prescription refill information for a Schedule III-V controlled
16 substance between an authorized practitioner and a pharmacy or the
17 transfer of prescription information for a controlled substance from
18 one pharmacy to another pharmacy.

19 NEW SECTION. Sec. 4. A new section is added to chapter 69.50 RCW
20 to read as follows:

21 (1) Information concerning an original prescription or information
22 concerning a prescription refill for a controlled substance may be
23 electronically communicated to a pharmacy of the patient's choice
24 pursuant to the provisions of this chapter if the electronically
25 communicated prescription information complies with the following:

26 (a) Electronically communicated prescription information must
27 comply with all applicable statutes and rules regarding the form,
28 content, recordkeeping, and processing of a prescription for a legend
29 drug;

30 (b) The system used for transmitting electronically communicated
31 prescription information and the system used for receiving
32 electronically communicated prescription information must be approved
33 by the board. This subsection does not apply to currently used
34 facsimile equipment transmitting an exact visual image of the
35 prescription. The board shall maintain and provide, upon request, a
36 list of systems used for electronically communicating prescription
37 information currently approved by the board;

1 (c) An explicit opportunity for practitioners must be made to
2 indicate their preference on whether a therapeutically equivalent
3 generic drug may be substituted;

4 (d) Prescription drug orders are confidential health information,
5 and may be released only to the patient or the patient's authorized
6 representative, the prescriber or other authorized practitioner then
7 caring for the patient, or other persons specifically authorized by law
8 to receive such information;

9 (e) To maintain confidentiality of prescription records, the
10 electronic system shall have adequate security and systems safeguards
11 designed to prevent and detect unauthorized access, modification, or
12 manipulation of these records. The pharmacist in charge shall
13 establish or verify the existence of policies and procedures which
14 ensure the integrity and confidentiality of prescription information
15 transmitted to the pharmacy by electronic means. All managers,
16 employees, and agents of the pharmacy are required to read, sign, and
17 comply with the established policies and procedures; and

18 (f) The pharmacist shall exercise professional judgment regarding
19 the accuracy, validity, and authenticity of the prescription drug order
20 received by way of electronic transmission, consistent with federal and
21 state laws and rules and guidelines of the board.

22 (2) The board may adopt rules implementing this section.

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