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SENATE BILL 6241

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State of Washington                      60th Legislature                      2008 Regular Session

By Senators Fairley, Pflug, Kohl-Welles, Kline, and Franklin

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

1            AN ACT Relating to prohibiting the sale and use of  
2 prescriber-identifiable prescription data for marketing or promotional  
3 purposes absent affirmative authorization by the prescriber; amending  
4 RCW 42.56.350; adding a new chapter to Title 19 RCW; and prescribing  
5 penalties.

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

7            NEW SECTION.    **Sec. 1.** (1) The legislature finds that:

8            (a) The state of Washington has a clear and long-standing interest  
9 in maximizing the well-being of its residents and in containing health  
10 care costs;

11            (b) To further its substantial interest in the well-being of its  
12 residents and containing health care costs, the state of Washington has  
13 shown, through numerous legislative and executive branch activities, a  
14 strong commitment to evidence-based care and cost-effective health  
15 purchasing. Washington has been most active in this regard with  
16 respect to prescription drug purchasing focused on clinical and  
17 cost-effectiveness. The commitment is demonstrated through  
18 establishment of the Washington evidence-based prescription drug  
19 program and the state preferred drug list under RCW 70.14.050,

1 establishment of the prescription drug purchasing consortium under RCW  
2 70.14.060, and both generic and therapeutic drug substitution under  
3 chapter 69.41 RCW. In addition, the medicaid program is engaged in  
4 numerous efforts to improve the quality of, and reduce variability in,  
5 prescribing of pain management and mental health medications. The  
6 state also aggressively seeks supplemental rebates to lower drug costs  
7 in the medicaid program. The Washington state health technology  
8 assessment program, established under chapter 70.14 RCW, is applying  
9 the principles of evidence-based care and cost-effective purchasing to  
10 the review of medical devices and procedures for state purchased health  
11 care programs. Finally, the state is an active participant in the  
12 Puget Sound health alliance, whose goal is to improve the quality and  
13 transparency of health services provided across the public and private  
14 sectors;

15 (c) The sale of prescriber-identifiable prescription data without  
16 the consent of the prescriber runs counter to Washington's strong  
17 commitment to both evidence-based care and cost-effective health  
18 purchasing;

19 (d) Prescriber-identifiable prescription data shows details of  
20 prescribers' drug use patterns. Pharmaceutical manufacturers purchase  
21 data from data mining companies that allow the manufacturers to track  
22 the prescribing habits of every prescriber in Washington.  
23 Pharmaceutical manufacturers can then target their marketing efforts  
24 toward those prescribers that they find would lead to increased  
25 prescriptions and profitability;

26 (e) Health care providers in Washington who write prescriptions for  
27 their patients have a reasonable expectation that the information in  
28 that prescription, including their own identity, will not be used for  
29 purposes other than the filling and processing of the payment for that  
30 prescription. The Washington chapter of the academy of family  
31 practice, the Washington chapter of the academy of pediatrics, and the  
32 Washington state medical association support a prohibition on the sale  
33 or use of individual prescriber prescription data for commercial or  
34 marketing purposes absent explicit authorization from the prescriber;

35 (f) The removal of the names and addresses of patients from  
36 prescription drug data purchased by pharmaceutical manufacturers does  
37 not completely protect the privacy of patients. Tracking treatment

1 history and prescriber identity can allow reidentification of patients,  
2 and can result in marketing directed at convincing a prescriber to  
3 change a particular patient's treatment;

4 (g) The physician data restriction program offered by the American  
5 medical association is not an adequate remedy for Washington  
6 physicians, because (i) many physicians do not know about the program;  
7 (ii) many physicians do not receive the end-of-period notification for  
8 renewing or canceling their participation; (iii) under the program,  
9 physician-specific prescribing data can still be sold to data mining  
10 companies even though it is not supposed to be provided to sales  
11 representatives; and (iv) the American medical association could choose  
12 to end the program at any time;

13 (h) In 2004, the pharmaceutical industry spent twenty-seven billion  
14 dollars marketing pharmaceuticals in the United States. Marketing  
15 programs are designed to increase sales, income, and profit. Progress  
16 toward these goals can come at the expense of evidence-based care,  
17 efforts to contain health care costs, and sometimes the health of  
18 individual patients;

19 (i) Newer drugs on the market do not necessarily provide additional  
20 benefits over older drugs but do add costs and as yet unknown side  
21 effects. Marketing that results in prescribers using the newest drugs  
22 results in prescribing drugs that are more likely to be subject to  
23 federal food and drug administration "black box" warnings or withdrawal  
24 from the market for safety reasons; and

25 (j) This act is necessary to protect prescriber privacy by limiting  
26 marketing to prescribers who choose to allow disclosure of their  
27 prescribing information, to promote the use of safe and clinically  
28 effective drugs, and to advance health care cost containment efforts  
29 for the state, consumers, and businesses.

30 (2) It is the intent of the legislature to improve the quality of  
31 health care received by Washingtonians, protect the privacy of  
32 prescribers and prescribing information, and further health care cost  
33 containment, by prohibiting the sale and use of individual prescriber  
34 prescription data for commercial or marketing purposes absent explicit  
35 authorization by the prescriber as provided in section 3(1) of this act  
36 through establishment of the prescription drug information integrity  
37 program.

1        NEW SECTION.    **Sec. 2.** The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

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

4        (2) "Electronic transmission intermediary" means an entity that  
5 provides the infrastructure that connects the computer systems or other  
6 electronic devices used by health care providers, prescribers,  
7 pharmacies, health care facilities and pharmacy benefit managers,  
8 health carriers, third-party administrators, and agents and contractors  
9 of those persons, in order to facilitate the secure transmission of an  
10 individual's prescription drug order, refill, authorization request,  
11 claim, payment, or other prescription drug information.

12        (3) "Health care facility" has the same meaning as in RCW  
13 48.43.005(15).

14        (4) "Health care provider" has same meaning as in RCW  
15 48.43.005(16).

16        (5) "Health carrier" has the same meaning as in RCW 48.43.005(18).

17        (6) "Marketing" shall include advertising, promotion, or any  
18 activity that is intended to be used or is used to influence sales or  
19 the market share of a prescription drug, influence or evaluate the  
20 prescribing behavior of an individual health care provider to promote  
21 a prescription drug, market prescription drugs to patients, or evaluate  
22 the effectiveness of a professional pharmaceutical detailing sales  
23 force.

24        (7) "Pharmacy" means any individual or entity licensed under  
25 chapter 18.64 RCW.

26        (8) "Prescriber" means a health care provider authorized by law to  
27 prescribe and administer prescription drugs in the course of  
28 professional practice.

29        (9) "Program" means the prescription drug information integrity  
30 program established in this chapter.

31        (10) "Promotion" or "promote" means any activity or product the  
32 intention of which is to advertise or publicize a prescription drug,  
33 including a brochure, media advertisement or announcement, poster, free  
34 sample, detailing visit, or personal appearance.

35        (11) "Regulated records" means information or documentation from a  
36 prescription written by a prescriber doing business in Washington or a  
37 prescription dispensed in Washington.

1        NEW SECTION.    **Sec. 3.**    (1)(a) The department, in consultation with  
2 the appropriate disciplinary boards or commissions, shall establish the  
3 prescription drug information integrity program to allow a prescriber  
4 to give consent for his or her identifying information to be used for  
5 the purposes described under subsection (2) of this section.    The  
6 department shall provide an opportunity for a prescriber to indicate  
7 his or her consent on licensing application or renewal forms and shall  
8 provide a method for a prescriber to revoke his or her consent.    The  
9 department may adopt rules to implement, administer, and enforce this  
10 program.

11        (b) The department shall make available the list of prescribers who  
12 have consented to sharing their information.    Entities that intend to  
13 use the information as authorized in this section shall review the list  
14 of participating prescribers at least every six months.

15        (2) A health carrier, self-insured employer, electronic  
16 transmission intermediary, pharmacy, or other similar entity may use  
17 regulated records that include prescription information containing  
18 prescriber-identifiable data for marketing or promoting a prescription  
19 drug only if a prescriber has provided consent for the use of that data  
20 as provided in subsection (1)(a) of this section.

21        (3) This section does not restrict the licensure, transfer, use, or  
22 sale of regulated records for the purposes of:

23        (a) Pharmacy reimbursement;

24        (b) Formulary compliance;

25        (c) Care management related to the diagnosis, treatment, or  
26 management of illness for a specific patient;

27        (d) Utilization review by a health care provider, the patient's  
28 health carrier, or an agent of the provider or carrier;

29        (e) Health care research including, but not limited to,  
30 postmarketing surveillance research, drug interaction research, drug  
31 safety studies, and population-based public health research;

32        (f) Collection and analysis of prescription drug utilization data  
33 for health care quality improvement purposes, including development of  
34 evidence-based treatment guidelines or health care performance  
35 effectiveness and efficiency measures, promoting compliance with  
36 evidence-based treatment guidelines or health care performance  
37 measures, and providing prescribers with information that details their

1 practices relative to their peers to encourage prescribing consistent  
2 with evidence-based practice;

3 (g) Collection and dissemination of drug utilization data to  
4 promote transparency in evaluating performance related to the health  
5 care quality improvement measures included in (f) of this subsection;

6 (h) The transfer of prescription drug utilization data to and  
7 through secure electronic health record or personal health record  
8 systems;

9 (i) The collection and transmission of prescription information to  
10 a Washington or federal law enforcement officer engaged in his or her  
11 official duties as otherwise provided by law; or

12 (j) As otherwise expressly provided by law.

13 (4) This section does not prohibit:

14 (a) The dispensing of prescription medications to a patient or to  
15 the patient's authorized representative; the transmission of  
16 prescription information between an authorized prescriber and a  
17 pharmacy; the transfer of prescription information between pharmacies;  
18 the transfer of prescription records that may occur if pharmacy  
19 ownership is changed or transferred; or care management educational  
20 communications provided to a patient about the patient's health  
21 condition, adherence to a prescribed course of therapy, or other  
22 information about the drug being dispensed, treatment options, or  
23 clinical trials; or

24 (b) The collection, use, transfer, or sale of prescriber data for  
25 marketing or promotion, organized by medical specialty or otherwise, if  
26 the data does not identify a prescriber, and there is no reasonable  
27 basis to believe that the data provided could be used to identify a  
28 prescriber.

29 NEW SECTION. **Sec. 4.** Any person who knowingly fails to comply  
30 with the requirements of this chapter or rules adopted pursuant to this  
31 chapter by using, selling, or transferring regulated data in a manner  
32 not authorized by this chapter or its rules shall be subject to an  
33 administrative penalty of not more than fifty thousand dollars per  
34 violation, as assessed by the secretary of the department. The office  
35 of the attorney general shall take necessary action to enforce payment  
36 of penalties assessed under this section.

1        NEW SECTION.    **Sec. 5.** In addition to any other remedy provided by  
2 law, the legislature finds that the practices covered by this chapter  
3 are matters vitally affecting the public interest for the purpose of  
4 applying the consumer protection act, chapter 19.86 RCW. A violation  
5 of this chapter is not reasonable in relation to the development and  
6 preservation of business and is an unfair or deceptive act in trade or  
7 commerce and an unfair method of competition for the purpose of  
8 applying the consumer protection act, chapter 19.86 RCW.

9        **Sec. 6.** RCW 42.56.350 and 2005 c 274 s 415 are each amended to  
10 read as follows:

11        (1) The federal Social Security number of individuals governed  
12 under chapter 18.130 RCW maintained in the files of the department of  
13 health is exempt from disclosure under this chapter. The exemption in  
14 this section does not apply to requests made directly to the department  
15 from federal, state, and local agencies of government, and national and  
16 state licensing, credentialing, investigatory, disciplinary, and  
17 examination organizations.

18        (2) The current residential address and current residential  
19 telephone number of a health care provider governed under chapter  
20 18.130 RCW maintained in the files of the department are exempt from  
21 disclosure under this chapter, if the provider requests that this  
22 information be withheld from public inspection and copying, and  
23 provides to the department of health an accurate alternate or business  
24 address and business telephone number. The current residential address  
25 and residential telephone number of a health care provider governed  
26 under RCW 18.130.040 maintained in the files of the department of  
27 health shall automatically be withheld from public inspection and  
28 copying unless the provider specifically requests the information be  
29 released, and except as provided for under RCW 42.56.070(9).

30        (3) Records held by an agency administering a state purchased  
31 health care program, as defined in RCW 41.05.011(2), that include  
32 prescription information containing prescriber-identifiable data that  
33 could be used to identify a prescriber, are exempt from disclosure  
34 under this chapter, except that the records shall be made available  
35 upon request for the purposes expressed in section 3(3) of this act.

1        NEW SECTION.   **Sec. 7.**   Sections 1 through 5 of this act constitute  
2   a new chapter in Title 19 RCW.

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