
SENATE BILL 6241

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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