

HOUSE BILL REPORT

HB 1493

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to prohibiting the use of patient health care information for prescription drug marketing.

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 History:

Committee Activity:

Health Care & Wellness: 2/3/09, 2/20/09 [DPS].

Brief Summary of Substitute Bill

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

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Cody, Chair; Campbell, Clibborn, Green, Moeller, Morrell and Pedersen.

Minority Report: Do not pass. Signed by 6 members: Representatives Driscoll, Vice Chair; Ericksen, Ranking Minority Member; Bailey, Herrera, Hinkle and Kelley.

Staff: Dave Knutson (786-7146)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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:

- 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 Substitute 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.

Substitute Bill Compared to Original Bill:

The intent section is modified to focus on the importance of maintaining patient privacy and the importance of the patient-physician relationship. Health care providers will not be prohibited from communicating with their patients about their treatment. Payment from insurers or other health plan purchasers, or health plan enrollees to pharmacies for drug costs, dispensing fees, formulary compliance, or other care management activities provided by pharmacists to a health plans's enrollees, is not considered remuneration.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill will protect patient information by not allowing direct marketing in an attempt to get patients to change their prescriptions. The federal law on patient privacy provides a floor – not a ceiling. Washington should provide greater privacy protections than are available under federal law. The pharmaceutical industry should not attempt to interfere with the health care provider-patient relationship. This type of marketing of brand-name drugs adds to the high cost of health care.

(With concerns) It is important for pharmacists to be able to communicate with patients regarding their prescriptions. This bill will impede a pharmacist's ability to help patients make informed decisions about their health care.

(Opposed) This bill only restricts marketing related to prescription drugs, not other costly forms of health care services. Refill reminders for generic drugs would be permitted, but refill reminders for brand-name drugs would be prohibited. The intent section is overly argumentative. Making a violation of the bill a violation of the Consumer Protection Act is not necessary because it is already covered by the Uniform Health Care Information Act.

Persons Testifying: (In support) Representative Pedersen, prime sponsor; Rupin Thakkar, Washington Coalition for Prescribing Integrity; Peggy Quan, American Association of Retired Persons of Washington; Joana Ramos, Washington Coalition of Prescribing Integrity; Pam Crone, Community Health Plan; Susan Eidenschink, League of Women Voters; Bev Spears, Washington Community Action Network; and Sarah Cherin, United Food and Commercial Workers International Union, Local 21.

(With concerns) Lis Houchen, National Association of Chain Drug Stores.

(Opposed) Cliff Webster, Pharmaceutical Research and Manufacturers of America.

Persons Signed In To Testify But Not Testifying: None.