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**SUBSTITUTE HOUSE BILL 2438 (Corrected Copy)**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Kilduff, Davis, Orwall, Robinson, Kloba, Thai, Peterson, Macri, Ormsby, Pollet, Wylie, and Doglio)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to establishment of the prescription opioid  
2 impact account; amending RCW 70.225.040; adding a new chapter to  
3 Title 69 RCW; prescribing penalties; and providing an effective date.

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

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

6 (a) According to the centers for disease control and prevention  
7 the United States is in the midst of an opioid overdose epidemic;

8 (b) In 2017, opioids, including prescription opioids, heroin, and  
9 fentanyl, killed more than forty-seven thousand people in the United  
10 States. In 2018, opioids killed seven hundred seventy-six people in  
11 Washington and caused over one thousand six hundred hospitalizations  
12 for opioid overdose;

13 (c) In 2018, Washington health care providers wrote over five  
14 million six hundred thousand opioid prescriptions and over three  
15 billion nine hundred million morphine milligram equivalents of  
16 opioid-based medications were dispensed in Washington; and

17 (d) Washington, in addition to a number of other states, has  
18 filed suit against a large manufacturer of opioids alleging the  
19 manufacturer used deceptive marketing practices to convince doctors  
20 and the public that their drugs are effective for treating chronic

1 pain and have a low risk of addiction, contrary to overwhelming  
2 medical evidence.

3 (2) The legislature recognizes that it has taken steps to respond  
4 to the opioid overdose epidemic; however, funding for these efforts  
5 remains lacking.

6 (3) Therefore, the legislature intends to create the prescription  
7 opioid impact account to provide supplemental funding to help combat  
8 the opioid overdose epidemic.

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

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

13 (2) "Impact fee" means a payment of money imposed upon a  
14 manufacturer of prescription opioids under this chapter to pay for a  
15 share of the cost of preventing and treating opioid addiction.

16 (3) "Manufacturer of prescription opioids" or "opioid  
17 manufacturer" means a person who is engaged in manufacturing,  
18 preparing, propagating, compounding, processing, packaging,  
19 repackaging, or labeling of a prescription opioid drug, but does not  
20 include a person who is engaged in the preparation and dispensing of  
21 a drug pursuant to a prescription.

22 (4) "Morphine milligram equivalent" means the conversion factor  
23 used to calculate the strength of an opioid using morphine dosage as  
24 the comparative unit of measure.

25 (5) "Prescription monitoring program" means the program  
26 established under chapter 70.225 RCW.

27 (6) "Prescription opioid" means a drug that is a controlled  
28 substance under this chapter and is either an opiate, derived from  
29 the opium poppy, or an opiate-like synthetic drug. "Prescription  
30 opioid" does not include buprenorphine, morphine, or methadone.

31 NEW SECTION. **Sec. 3.** (1) The prescription opioid impact account  
32 is created in the state treasury. All fees collected by the  
33 department from manufacturers of opioid prescription products under  
34 section 4 of this act and any attorney fees recovered by the attorney  
35 general under section 5 of this act must be deposited into the  
36 account.

37 (2) Moneys in the account may be spent only after appropriation.  
38 Expenditures from the account may be used to fund programs and

1 activities within the department or through grants to other state  
2 agencies, counties, and cities to:

3 (a) Prevent opioid misuse and abuse;

4 (b) Prevent opioid overdose and overdose related deaths;

5 (c) Identify and treat opioid use disorder; and

6 (d) Reimburse the state general fund with interest for any  
7 amounts appropriated to the department during the 2019-2021 biennium  
8 for costs to modify the prescription monitoring program to implement  
9 the requirements of section 4 of this act.

10 (3) No more than twelve percent of the money annually deposited  
11 into the account, excluding the costs for the implementation of  
12 subsection (2)(d) of this section, may be used for the administration  
13 of this chapter. Costs incurred by the attorney general to bring an  
14 action to enforce this chapter shall be covered by the account and  
15 are not subject to or included in the twelve percent cap on  
16 administrative expenses.

17 NEW SECTION. **Sec. 4.** (1) If more than one hundred thousand  
18 morphine milligram equivalents of an opioid manufacturer's  
19 prescription opioid products are dispensed in this state during a  
20 quarter year, the department must provide a quarterly statement to  
21 the manufacturer that states the amount of opioids from the  
22 manufacturer that were dispensed in the previous quarter as reported  
23 in the prescription monitoring program. The opioid manufacturer must  
24 pay to the department a prescription opioid impact fee of one cent  
25 per morphine milligram equivalent for a prescription opioid dispensed  
26 and reported in the prescription monitoring program.

27 (2) If a manufacturer of prescription opioids fails to pay the  
28 impact fee within forty-five days of the date of a statement as  
29 required under this section, the department shall assess a penalty of  
30 one hundred dollars per day or ten percent of the impact fee due,  
31 whichever is greater.

32 NEW SECTION. **Sec. 5.** The attorney general may bring an action  
33 on behalf of the state to enforce this chapter. The attorney general  
34 may recover interest and reasonable attorney fees and expenses as a  
35 result of a successful action to enforce this chapter. Any attorney  
36 fees recovered in an action to enforce this chapter must be remitted  
37 to the prescription opioid impact account.

1        NEW SECTION.    **Sec. 6.**    The department may adopt rules necessary  
2 to implement this chapter.

3        NEW SECTION.    **Sec. 7.**    The department of revenue shall provide  
4 technical assistance, as requested by the department to implement  
5 this chapter.

6        **Sec. 8.**    RCW 70.225.040 and 2019 c 314 s 23 are each amended to  
7 read as follows:

8        (1) All information submitted to the prescription monitoring  
9 program is confidential, exempt from public inspection, copying, and  
10 disclosure under chapter 42.56 RCW, not subject to subpoena or  
11 discovery in any civil action, and protected under federal health  
12 care information privacy requirements, except as provided in  
13 subsections (3) through (6) of this section. Such confidentiality and  
14 exemption from disclosure continues whenever information from the  
15 prescription monitoring program is provided to a requestor under  
16 subsection (3), (4), (5), or (6) of this section except when used in  
17 proceedings specifically authorized in subsection (3), (4), or (5) of  
18 this section.

19        (2) The department must maintain procedures to ensure that the  
20 privacy and confidentiality of all information collected, recorded,  
21 transmitted, and maintained including, but not limited to, the  
22 prescriber, requestor, dispenser, patient, and persons who received  
23 prescriptions from dispensers, is not disclosed to persons except as  
24 in subsections (3) through (6) of this section.

25        (3) The department may provide data in the prescription  
26 monitoring program to the following persons:

27        (a) Persons authorized to prescribe or dispense controlled  
28 substances or legend drugs, for the purpose of providing medical or  
29 pharmaceutical care for their patients;

30        (b) An individual who requests the individual's own prescription  
31 monitoring information;

32        (c) A health professional licensing, certification, or regulatory  
33 agency or entity in this or another jurisdiction. Consistent with  
34 current practice, the data provided may be used in legal proceedings  
35 concerning the license;

36        (d) Appropriate law enforcement or prosecutorial officials,  
37 including local, state, and federal officials and officials of

1 federally recognized tribes, who are engaged in a bona fide specific  
2 investigation involving a designated person;

3 (e) The director or the director's designee within the health  
4 care authority regarding medicaid recipients and members of the  
5 health care authority self-funded or self-insured health plans;

6 (f) The director or director's designee within the department of  
7 labor and industries regarding workers' compensation claimants;

8 (g) The director or the director's designee within the department  
9 of corrections regarding offenders committed to the department of  
10 corrections;

11 (h) Other entities under grand jury subpoena or court order;

12 (i) Personnel of the department for purposes of:

13 (i) Assessing prescribing and treatment practices and morbidity  
14 and mortality related to use of controlled substances and developing  
15 and implementing initiatives to protect the public health including,  
16 but not limited to, initiatives to address opioid use disorder;

17 (ii) Providing quality improvement feedback to prescribers,  
18 including comparison of their respective data to aggregate data for  
19 prescribers with the same type of license and same specialty; and

20 (iii) Administration and enforcement of this chapter (~~(69.50)~~,  
21 chapter 69.50 RCW or chapter 69.--- RCW (the new chapter created in  
22 section 9 of this act);

23 (j) Personnel of a test site that meet the standards under RCW  
24 70.225.070 pursuant to an agreement between the test site and a  
25 person identified in (a) of this subsection to provide assistance in  
26 determining which medications are being used by an identified patient  
27 who is under the care of that person;

28 (k) A health care facility or entity for the purpose of providing  
29 medical or pharmaceutical care to the patients of the facility or  
30 entity, or for quality improvement purposes if the facility or entity  
31 is licensed by the department or is licensed or certified under  
32 chapter 71.24, 71.34, or 71.05 RCW or is an entity deemed for  
33 purposes of chapter 71.24 RCW to meet state minimum standards as a  
34 result of accreditation by a recognized behavioral health accrediting  
35 body, or is operated by the federal government or a federally  
36 recognized Indian tribe;

37 (l) A health care provider group of five or more prescribers or  
38 dispensers for purposes of providing medical or pharmaceutical care  
39 to the patients of the provider group, or for quality improvement  
40 purposes if all the prescribers or dispensers in the provider group

1 are licensed by the department or the provider group is operated by  
2 the federal government or a federally recognized Indian tribe;

3 (m) The local health officer of a local health jurisdiction for  
4 the purposes of patient follow-up and care coordination following a  
5 controlled substance overdose event. For the purposes of this  
6 subsection "local health officer" has the same meaning as in RCW  
7 70.05.010; and

8 (n) The coordinated care electronic tracking program developed in  
9 response to section 213, chapter 7, Laws of 2012 2nd sp. sess.,  
10 commonly referred to as the seven best practices in emergency  
11 medicine, for the purposes of providing:

12 (i) Prescription monitoring program data to emergency department  
13 personnel when the patient registers in the emergency department; and

14 (ii) Notice to local health officers who have made opioid-related  
15 overdose a notifiable condition under RCW 70.05.070 as authorized by  
16 rules adopted under RCW 43.20.050, providers, appropriate care  
17 coordination staff, and prescribers listed in the patient's  
18 prescription monitoring program record that the patient has  
19 experienced a controlled substance overdose event. The department  
20 shall determine the content and format of the notice in consultation  
21 with the Washington state hospital association, Washington state  
22 medical association, and Washington state health care authority, and  
23 the notice may be modified as necessary to reflect current needs and  
24 best practices.

25 (4) The department shall, on at least a quarterly basis, and  
26 pursuant to a schedule determined by the department, provide a  
27 facility or entity identified under subsection (3)(k) of this section  
28 or a provider group identified under subsection (3)(l) of this  
29 section with facility or entity and individual prescriber information  
30 if the facility, entity, or provider group:

31 (a) Uses the information only for internal quality improvement  
32 and individual prescriber quality improvement feedback purposes and  
33 does not use the information as the sole basis for any medical staff  
34 sanction or adverse employment action; and

35 (b) Provides to the department a standardized list of current  
36 prescribers of the facility, entity, or provider group. The specific  
37 facility, entity, or provider group information provided pursuant to  
38 this subsection and the requirements under this subsection must be  
39 determined by the department in consultation with the Washington  
40 state hospital association, Washington state medical association, and

1 Washington state health care authority, and may be modified as  
2 necessary to reflect current needs and best practices.

3 (5) (a) The department may publish or provide data to public or  
4 private entities for statistical, research, or educational purposes  
5 after removing information that could be used directly or indirectly  
6 to identify individual patients, requestors, dispensers, prescribers,  
7 and persons who received prescriptions from dispensers. Direct and  
8 indirect patient identifiers may be provided for research that has  
9 been approved by the Washington state institutional review board and  
10 by the department through a data-sharing agreement.

11 (b) (i) The department may provide dispenser and prescriber data  
12 and data that includes indirect patient identifiers to the Washington  
13 state hospital association for use solely in connection with its  
14 coordinated quality improvement program maintained under RCW  
15 43.70.510 after entering into a data use agreement as specified in  
16 RCW 43.70.052(8) with the association. The department may provide  
17 dispenser and prescriber data and data that includes indirect patient  
18 identifiers to the Washington state medical association for use  
19 solely in connection with its coordinated quality improvement program  
20 maintained under RCW 43.70.510 after entering into a data use  
21 agreement with the association.

22 (ii) The department may provide data including direct and  
23 indirect patient identifiers to the department of social and health  
24 services office of research and data analysis, the department of  
25 labor and industries, and the health care authority for research that  
26 has been approved by the Washington state institutional review board  
27 and, with a data-sharing agreement approved by the department, for  
28 public health purposes to improve the prevention or treatment of  
29 substance use disorders.

30 (iii) The department may provide a prescriber feedback report to  
31 the largest health professional association representing each of the  
32 prescribing professions. The health professional associations must  
33 distribute the feedback report to prescribers engaged in the  
34 professions represented by the associations for quality improvement  
35 purposes, so long as the reports contain no direct patient  
36 identifiers that could be used to identify individual patients,  
37 dispensers, and persons who received prescriptions from dispensers,  
38 and the association enters into a written data-sharing agreement with  
39 the department. However, reports may include indirect patient

1 identifiers as agreed to by the department and the association in a  
2 written data-sharing agreement.

3 (c) For the purposes of this subsection:

4 (i) "Indirect patient identifiers" means data that may include:  
5 Hospital or provider identifiers, a five-digit zip code, county,  
6 state, and country of resident; dates that include month and year;  
7 age in years; and race and ethnicity; but does not include the  
8 patient's first name; middle name; last name; social security number;  
9 control or medical record number; zip code plus four digits; dates  
10 that include day, month, and year; or admission and discharge date in  
11 combination; and

12 (ii) "Prescribing professions" include:

- 13 (A) Allopathic physicians and physician assistants;
- 14 (B) Osteopathic physicians and physician assistants;
- 15 (C) Podiatric physicians;
- 16 (D) Dentists; and
- 17 (E) Advanced registered nurse practitioners.

18 (6) The department may enter into agreements to exchange  
19 prescription monitoring program data with established prescription  
20 monitoring programs in other jurisdictions. Under these agreements,  
21 the department may share prescription monitoring system data  
22 containing direct and indirect patient identifiers with other  
23 jurisdictions through a clearinghouse or prescription monitoring  
24 program data exchange that meets federal health care information  
25 privacy requirements. Data the department receives from other  
26 jurisdictions must be retained, used, protected, and destroyed as  
27 provided by the agreements to the extent consistent with the laws in  
28 this state.

29 (7) Persons authorized in subsections (3) through (6) of this  
30 section to receive data in the prescription monitoring program from  
31 the department, acting in good faith, are immune from any civil,  
32 criminal, disciplinary, or administrative liability that might  
33 otherwise be incurred or imposed for acting under this chapter.

34 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act  
35 constitute a new chapter in Title 69 RCW.

36 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2021.

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