
SUBSTITUTE SENATE BILL 6241

State of Washington

60th Legislature

2008 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Fairley, Pflug, Kohl-Welles, Kline, and Franklin)

READ FIRST TIME 02/08/08.

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

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

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

7 (a) The state of Washington has clear and long-standing interests
8 in maximizing the health and well-being of its residents, maintaining
9 practice standards in the licensed professions, safeguarding the
10 confidentiality and integrity of the doctor-patient relationship,
11 combating undue influence of marketing on health care choices, and
12 containing health care costs;

13 (b) To further its substantial interest in the health and
14 well-being of its residents and in containing health care costs, the
15 state of Washington has shown a strong commitment to evidence-based
16 care and cost-effective health purchasing. Washington state has been
17 most active in this regard with respect to prescription drug purchasing
18 focused on clinical and cost-effectiveness, including the Washington
19 evidence-based prescription drug program and the state preferred drug

1 list under RCW 70.14.050, the prescription drug purchasing consortium
2 under RCW 70.14.060, and both generic and therapeutic drug substitution
3 under chapter 69.41 RCW. In addition, the medicaid program is engaged
4 in numerous efforts to improve the quality of, and reduce variability
5 in, 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) Prescriber-identifiable prescription data shows details of
16 prescribers' drug use patterns. Using this data, pharmaceutical
17 manufacturers can track the responses of prescribers to their marketing
18 campaigns and use that information to tailor positive and negative
19 reinforcements, including gifts, invitations to special events, paid
20 speaking and consulting opportunities, prestigious board appointments,
21 messages of appreciation or disappointment, and specially tailored
22 marketing messages, that are intended to, and do in fact, exert an
23 undue influence over prescribing practices;

24 (d) Numerous studies have shown that direct-to-physician marketing
25 of prescription drugs raises prescribing costs and leads to more rapid
26 prescribing of new drugs and decreased use of older or generic
27 medications that may be more effective according to the best available
28 medical evidence. These negative effects of direct-to-prescriber
29 marketing are aggravated by marketer access to prescriber-identifiable
30 prescription data;

31 (e) Health care providers in Washington who write prescriptions for
32 their patients have a strong interest in the integrity of the patient-
33 provider relationship and a reasonable expectation that the information
34 in their prescriptions, including their own identity, will not be used
35 for purposes other than the filling and processing of the payment for
36 that prescription. The Washington chapter of the academy of family
37 practice, the Washington chapter of the academy of pediatrics, and the

1 Washington state medical association support a prohibition on the sale
2 or use of individual prescriber prescription data for marketing or
3 promotional purposes;

4 (f) The removal of the names and addresses of patients from
5 prescription drug data purchased by pharmaceutical manufacturers does
6 not completely protect the privacy of patients. Tracking treatment
7 history and prescriber identity can allow reidentification of patients.
8 Even with patient identities removed, specific patients and shifts in
9 their prescription drug use can be tracked by assigning individual
10 identification numbers to patients, thus enabling marketing directed at
11 convincing a prescriber to change a particular patient's treatment
12 without the patient's knowledge or consent;

13 (g) The physician data restriction program offered by the American
14 medical association is not an adequate remedy for Washington
15 physicians, because (i) many physicians do not know about the program;
16 (ii) many physicians do not receive the end-of-period notification for
17 renewing or canceling their participation; (iii) under the program,
18 physician-specific prescribing data can still be sold to data mining
19 companies even though it is not supposed to be provided to sales
20 representatives; (iv) the American medical association could choose to
21 end the program at any time; and (v) the American medical association
22 has a conflict of interest in operating the program because it earns
23 over forty million dollars per year by selling physician identifying
24 information to companies that match the identifying information to
25 prescription drug claims;

26 (h) It is estimated that the pharmaceutical industry spends between
27 thirty billion dollars and fifty-four billion dollars annually on
28 marketing pharmaceuticals in the United States. Marketing programs are
29 designed to increase sales, income, and profit. Between eighty and
30 ninety percent of pharmaceutical marketing budgets are directed at
31 physicians and other prescribers. Progress toward these goals can come
32 at the expense of evidence-based care, efforts to contain health care
33 costs, and sometimes the health of individual patients;

34 (i) Newer drugs on the market do not necessarily provide additional
35 benefits over older drugs but do add costs and as yet unknown side
36 effects. Marketing that results in prescribers using the newest drugs
37 results in prescribing drugs that are more likely to be subject to

1 federal food and drug administration "black box" warnings or withdrawal
2 from the market for safety reasons; and

3 (j) The sale of prescriber-identifiable prescription data runs
4 counter to Washington's strong commitment to both evidence-based care
5 and cost-effective health purchasing. Pharmaceutical marketers,
6 through their surveillance of prescription records that include
7 prescriber-identifiable data, are able to monitor and reward
8 prescribing practices that favor the financial interests of
9 pharmaceutical manufacturers over the interests of patients in
10 clinically effective and cost-effective care. This act is necessary to
11 realize the goals of the programs and activities undertaken by the
12 state of Washington to implement evidence-based care and cost-effective
13 health purchasing and to preserve the integrity of the patient-
14 prescriber relationship.

15 (2) It is the intent of the legislature to improve the quality of
16 health care received by Washingtonians, further health care cost
17 containment, promote professional standards in the licensed
18 professions, protect the confidentiality of prescribing information,
19 safeguard the integrity of the doctor-patient relationship, and
20 restrain undue influence over prescribing decisions by prohibiting
21 conduct involving the sale, disclosure, and use of individual
22 prescriber prescription data for marketing or promotional purposes.

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

25 (1) "Health care provider" has the same meaning as in RCW
26 48.43.005(16).

27 (2) "Health carrier" has the same meaning as in RCW 48.43.005(18).

28 (3) "Marketing" or "market" includes advertising, promotion, or any
29 activity that is intended to be used or is used to influence sales or
30 the market share of a prescription drug, influence the prescribing
31 behavior of an individual health care provider to promote a
32 prescription drug, market prescription drugs to patients, or evaluate
33 the effectiveness of a professional pharmaceutical detailing sales
34 force.

35 (4) "Person" includes a natural person, corporation, limited
36 liability company, trust, unincorporated association, partnership, and
37 any other type of entity.

1 (5) "Pharmacy" means any individual or entity licensed under
2 chapter 18.64 RCW.

3 (6) "Prescriber" means a health care provider authorized by law to
4 prescribe and administer prescription drugs in the course of
5 professional practice.

6 (7) "Promotion" or "promote" means any activity or product the
7 intention of which is to advertise or publicize a prescription drug,
8 including a brochure, media advertisement or announcement, poster, free
9 sample, detailing visit, or personal appearance.

10 (8) "Regulated records" means information or documentation from a
11 prescription written by a prescriber doing business in Washington or a
12 prescription dispensed in Washington.

13 NEW SECTION. **Sec. 3.** (1) No person shall knowingly sell,
14 disclose, or use regulated records that include prescriber-identifiable
15 data to market or promote a prescription drug.

16 (2) This section does not restrict the sale, disclosure, or use of
17 regulated records that include prescriber-identifiable data for the
18 purposes of:

19 (a) Activities related to filling a valid prescription, including
20 the dispensing of prescription medications to a patient or to the
21 patient's authorized representative; the transmission of prescription
22 information between an authorized prescriber and a pharmacy; the
23 transfer of prescription information between pharmacies; the transfer
24 of prescription records that may occur if pharmacy ownership is changed
25 or transferred; and pharmacy reimbursement;

26 (b) Formulary compliance;

27 (c) Care management related to the diagnosis, treatment, or
28 management of illness for a specific patient, including care management
29 educational communications provided to a patient about the patient's
30 health condition, adherence to a prescribed course of therapy, or other
31 information about the drug being dispensed, treatment options, or
32 clinical trials;

33 (d) Care management related to specialty pharmacy care for
34 conditions including, but not limited to, hemophilia, pulmonary
35 arterial hypertension, multiple sclerosis, respiratory syncytial virus,
36 and hormone growth deficiencies;

1 (e) Utilization review by a health care provider, the patient's
2 health carrier, or an agent of the provider or carrier;

3 (f) Health care research and statistical reports resulting from
4 such research, including, but not limited to, postmarketing
5 surveillance research, drug interaction research, drug safety studies,
6 and population-based public health research;

7 (g) Collection and analysis of prescription drug utilization data
8 for health care quality improvement purposes, including development of
9 evidence-based treatment guidelines or health care performance
10 effectiveness and efficiency measures, promoting compliance with
11 evidence-based treatment guidelines or health care performance
12 measures, and providing prescribers with information that details their
13 practices relative to their peers to encourage prescribing consistent
14 with evidence-based practice;

15 (h) Collection and dissemination of drug utilization data to
16 promote transparency in evaluating performance related to the health
17 care quality improvement measures included in (g) of this subsection;

18 (i) The transfer of prescription drug utilization data to and
19 through secure electronic health record or personal health record
20 systems;

21 (j) Alerting prescribers about a prescription drug recall, change
22 in labeling information, or any purpose authorized by the federal food
23 and drug administration or other federal or state government regulatory
24 authority;

25 (k) The collection and transmission of prescription information to
26 a Washington or federal law enforcement officer engaged in his or her
27 official duties as otherwise provided by law;

28 (l) The collection and transmission of prescription information to
29 any government agency or government agency-sponsored program to carry
30 out its duties, or to any private person acting on behalf of a federal,
31 state, or local agency to carry out its duties;

32 (m) The collection and transmission of prescription drug
33 information in connection with any civil, criminal, administrative, or
34 other proceeding before any federal, state, or local court or
35 administrative agency or before any self-regulatory body, including the
36 service of process, investigation in anticipation of litigation, and
37 the execution or enforcement of judgments and orders, or pursuant to an
38 order of a federal or state court; or

1 (n) As otherwise expressly provided by law.

2 (3) This section does not prohibit the sale, disclosure, or use of
3 regulated records for marketing or promotion, organized by medical
4 specialty or otherwise, if the data does not identify a prescriber, and
5 there is no reasonable basis to believe that the data provided could be
6 used to identify a prescriber or a patient.

7 (4) Any person that has received regulated records that include
8 prescriber-identifiable data under subsection (2) or (3) of this
9 section may reuse, resell, or redisclose that information only for
10 purposes authorized under those subsections. If the information is
11 reused, resold, or redisclosed, the person or entity must maintain
12 records identifying each person or entity that has received information
13 and the permitted purpose for which the information has been used. The
14 records must be maintained for a period of five years following the
15 date or reuse, resale, or redisclosure, and must be made available to
16 any person upon request.

17 NEW SECTION. **Sec. 4.** Any person who knowingly fails to comply
18 with the requirements of this chapter or rules adopted pursuant to this
19 chapter by selling, using, or disclosing regulated data in a manner not
20 authorized by this chapter or its rules shall be subject to an
21 administrative penalty of not more than fifty thousand dollars per
22 violation, as assessed by the secretary of the department of health.
23 The office of the attorney general shall take necessary action to
24 enforce payment of penalties assessed under this section.

25 NEW SECTION. **Sec. 5.** In addition to any other remedy provided by
26 law, the legislature finds that the practices covered by this chapter
27 are matters vitally affecting the public interest for the purpose of
28 applying the consumer protection act, chapter 19.86 RCW. A violation
29 of this chapter is not reasonable in relation to the development and
30 preservation of business and is an unfair or deceptive act in trade or
31 commerce and an unfair method of competition for the purpose of
32 applying the consumer protection act, chapter 19.86 RCW.

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

35 (1) The federal Social Security number of individuals governed

1 under chapter 18.130 RCW maintained in the files of the department of
2 health is exempt from disclosure under this chapter. The exemption in
3 this section does not apply to requests made directly to the department
4 from federal, state, and local agencies of government, and national and
5 state licensing, credentialing, investigatory, disciplinary, and
6 examination organizations.

7 (2) The current residential address and current residential
8 telephone number of a health care provider governed under chapter
9 18.130 RCW maintained in the files of the department are exempt from
10 disclosure under this chapter, if the provider requests that this
11 information be withheld from public inspection and copying, and
12 provides to the department of health an accurate alternate or business
13 address and business telephone number. The current residential address
14 and residential telephone number of a health care provider governed
15 under RCW 18.130.040 maintained in the files of the department of
16 health shall automatically be withheld from public inspection and
17 copying unless the provider specifically requests the information be
18 released, and except as provided for under RCW 42.56.070(9).

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

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

27 NEW SECTION. Sec. 8. This act may be known and cited as the
28 prescription privacy and integrity act of 2008.

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