

HOUSE BILL REPORT

SSB 5601

As Reported by House Committee On: Health Care & Wellness

Title: An act relating to ensuring chapter 19.68 RCW is interpreted in a manner consistent with the federal antikickback statute

Brief Description: Concerning interpretation of state law regarding rebating practices by health care entities.

Sponsors: Senate Committee on Health Care (originally sponsored by Senators Becker, Cleveland, Dammeier and Schlicher).

Brief History:

Committee Activity:

Health Care & Wellness: 3/19/13, 3/28/13 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Exempts from state prohibitions against rebating, the donation of electronic health record technology and other activity permitted by federal rebating laws.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 17 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Angel, Clibborn, Green, Harris, Manweller, Moeller, Morrell, Riccelli, Rodne, Ross, Short, Tharinger and Van De Wege.

Staff: Chris Blake (786-7392).

Background:

Federal Laws Regarding Rebating.

Federal law establishes a crime for an individual to engage in certain types of remuneration arrangements under federal health programs. These provisions prohibit the knowing and

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willful solicitation or receipt of a remuneration in return for: (1) referring an individual to a person for furnishing items or services; or (2) purchasing, leasing, ordering, or arranging for goods, facilities, services, or items. Federal law also prohibits knowingly and willfully offering or paying a remuneration to induce a person to: (1) refer an individual to a person to furnish items or services; or (2) purchase, lease, order, or arrange goods, facilities, services, or items.

There are several exceptions to the remuneration regulations, including:

- discounts obtained by a provider of services if the reduction is properly disclosed and reflected in the price;
- amounts paid by an employer to an employee;
- amounts paid by a vendor to a purchasing agent for a group furnishing services under a federal health care program;
- remuneration between organizations pursuant to a risk-sharing arrangement;
- other payment practices authorized by the Secretary of the Department of Health and Human Services; and
- the provision of nonmonetary remuneration necessary to receive and transmit certain electronic prescription information, such as hardware, software, or information technology and training services.

State Laws Regarding Rebating.

State law prohibits licensed physicians, osteopathic physicians, dentists, and pharmacists from receiving a payment, such as a rebate, refund, or commission, if that payment is received in connection with the referral of patients or the furnishing of health care treatment or diagnosis. The stated intent of the prohibition is to prevent licensed health care providers from receiving compensation for services that they did not perform. The prohibition does not apply to a licensed health provider who charges for the health care services rendered by an employee who is licensed to provide the services.

There have been several court decisions and Attorney General Opinions regarding the application of Washington's rebating prohibitions. The most recent Attorney General Opinion was issued in November 2012. Under this opinion, it was determined that monetary donations by a clinical laboratory to a physician's office to cover costs related to electronic health records could violate state rebating laws. The occurrence of a violation depends upon whether or not the donation is made in connection with patient referrals; the furnishing of health care, diagnosis, treatment, or services; or clinical laboratory services.

Summary of Amended Bill:

The donation of electronic health record technology or any other activity is permissible under state anti-rebating laws when the donation or other activity is allowed by, or does not violate, federal law regarding illegal remunerations under federal health programs. The exceptions do not apply to entities that principally operate as clinical laboratories. The term "electronic health record technology" means items and services in the form of software or information technology and training services used to create, maintain, transmit, or receive electronic health records.

The bill applies retroactively to June 1, 2006, as well as prospectively.

Amended Bill Compared to Substitute Bill:

The amended bill applies retroactively to June 1, 2006, as well as prospectively.

Appropriation: None.

Fiscal Note: Available for original bill.

Effective Date of Amended 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) Hospitals have been working hard to help clinics get electronic medical records. This bill will correct state law so that hospitals are not violating Stark laws or anti-trust laws. Since 2006 hospitals have been able to donate medical records, but in November 2012 this practice was brought into question by the Washington State Attorney General's Office. This bill seeks to clarify that the state's anti-kickback law will be interpreted in a manner consistent with the federal anti-kickback law. There should be an amendment to give the bill retroactive effect until 2006.

(Opposed) None.

Persons Testifying: Senator Becker, prime sponsor; and Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.