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HOUSE BILL 1633

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Cooke, Schoesler, Anderson, Dunshee, Grant, Romero, Kessler, Carrell, Talcott, Sheldon, Kastama, Costa, Buck, Koster, Scott, Zellinsky, Johnson, Keiser and Honeyford

Read first time 02/03/97. Referred to Committee on Health Care.

1 AN ACT Relating to fairness in drug manufacturer pricing; adding a  
2 new chapter to Title 69 RCW; creating a new section; and prescribing  
3 penalties.

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

5 NEW SECTION. **Sec. 1.** The intent of this act is to encourage  
6 manufacturers to develop a variety of marketing programs. Nothing in  
7 this act is intended to create a single price for prescription drugs or  
8 to eliminate existing price reduction programs as long as those  
9 programs adhere to the conditions of this act.

10 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
11 otherwise, the definitions in this section apply throughout this  
12 chapter.

13 (1) "Charitable health care provider" means a health care provider  
14 exempted from federal taxation by section 501(c)(3) of the internal  
15 revenue code who provides health care services to the public, a  
16 substantial portion of which are provided free or at a reduced fee  
17 based on the patient's ability to pay.

1 (2) "Drug" means a substance subject to section 503(b)(1) of the  
2 federal food, drug, and cosmetic act, 21 U.S.C. Sec. 353(b)(1).

3 (3) "Inpatient" means the formal acceptance by a hospital of a  
4 patient who is to be provided with room, board, and continuous nursing  
5 service in an area of the hospital where patients generally stay at  
6 least overnight or a patient to be administered a medication for the  
7 treatment of emergent care and short-stay procedures.

8 (4) "Manufacturer" means a person, other than a wholesaler, who  
9 sells drugs for resale, either directly or through a wholesaler, to  
10 purchasers.

11 (5) "Price discrimination" means a difference in a contemporaneous  
12 price, volume or blended-product volume discount, rebate, payment  
13 terms, free merchandise, or related trade concession by a manufacturer  
14 as between different wholesalers or purchasers in this state.

15 The prohibitions on price discrimination under this chapter include  
16 a prohibition on price discrimination for drugs that are sold for  
17 delivery to a wholesaler, wholesaler facility, purchaser, purchaser  
18 facility, or consumers located in the state.

19 (6) "Purchaser" means a person doing business in this state who  
20 sells or dispenses drugs directly to consumers in this state.

21 (7) "Wholesaler" means a person other than a manufacturer who sells  
22 drugs to purchasers.

23 NEW SECTION. **Sec. 3.** (1) During the same time period, a  
24 manufacturer must offer drugs to all purchasers on the same terms and  
25 conditions, whether the sale is a direct transaction between a  
26 manufacturer and a purchaser or one in which a manufacturer sells to a  
27 purchaser through a contractual arrangement implemented by one or more  
28 wholesalers.

29 (2) This section does not prohibit a manufacturer from offering a  
30 price reduction or program as long as each is made available to all  
31 purchasers on the same terms and conditions.

32 (3) No manufacturer may provide price reductions to a purchaser  
33 based solely on the class of trade to which the purchaser belongs.

34 (4) This section applies to a purchase of drugs delivered to a  
35 purchaser for sale to consumers in this state.

36 NEW SECTION. **Sec. 4.** (1) An agency of the state may not purchase  
37 drugs from a manufacturer who engages in price discrimination.

1 (2) By January 1, 1998, a manufacturer who wishes to do business  
2 with an agency of the state must submit to the secretary of social and  
3 health services, and before January 1st of each year, an affidavit  
4 signed by a corporate officer stating that it will not engage in price  
5 discrimination in its business dealings in the state.

6 (3) A wholesaler or purchaser may not knowingly induce or receive  
7 a discrimination in price, rebates, free merchandise, payment terms, or  
8 related trade concessions.

9 (4) For a state agency, exceptions may be allowed under this  
10 subsection in the case of a necessary and unique drug not otherwise  
11 available that is provided by a manufacturer who has violated this  
12 chapter.

13 NEW SECTION. **Sec. 5.** For purposes of this chapter the following  
14 are not purchasers:

15 (1) The department of veterans affairs, the department of defense,  
16 covered entities under section 340B(a)(4) of the public health services  
17 act, 42 U.S.C. Sec. 256b(a)(4) as amended, and any other federal,  
18 state, or local government program that directly procures  
19 pharmaceuticals;

20 (2) Hospitals that purchase drugs for their inpatient's own use,  
21 but not for resale or outpatient use; and

22 (3) Charitable health care providers except those that issue,  
23 offer, or administer a health insurance policy or an employee benefit  
24 plan for a person or entity other than their employees.

25 NEW SECTION. **Sec. 6.** (1) A manufacturer who violates this chapter  
26 or a rule adopted under this chapter is subject to a civil penalty of  
27 not less than one thousand dollars nor more than fifty thousand dollars  
28 for each violation, payable to the health services account.

29 (2) A purchaser may bring action against a manufacturer to recover  
30 damages suffered as the result of a violation of this chapter or a rule  
31 adopted under this chapter. Proof of price discrimination constitutes  
32 prima facie evidence of damages. In an action under this chapter, the  
33 court may award, in addition to any other appropriate legal or  
34 equitable relief, an amount equal to three times the damages sustained  
35 by a person in interest.

1        NEW SECTION.   **Sec. 7.**   Sections 2 through 6 of this act constitute  
2   a new chapter in Title 69 RCW.

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