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**SUBSTITUTE HOUSE BILL 1399**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Health Care (originally sponsored by Representatives Clibborn, Campbell, Ruderman, Wallace, Moeller, Conway, McIntire, Benson, Sullivan, Kenney, Kessler, Schual-Berke, Kagi and Upthegrove; by request of Insurance Commissioner)

READ FIRST TIME 02/17/03.

1 AN ACT Relating to prescription drug marketing and disclosure;  
2 adding a new section to chapter 18.64 RCW; creating new sections; and  
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The purpose of this act is to require  
6 disclosure and reporting of gifts, grants, and gratuities made by  
7 pharmaceutical manufacturers, directly or indirectly, to any person or  
8 entity authorized to prescribe, dispense, or purchase prescription  
9 drugs in Washington.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.64 RCW  
11 to read as follows:

12 (1) The definitions in this subsection apply throughout this  
13 section unless the context clearly requires otherwise.

14 (a) "Group purchasing organization" means any group of two or more  
15 hospitals, nursing homes, or other health care organizations that  
16 collectively purchase either directly from a manufacturer or by  
17 accessing contracts through another group.

1 (b) "Health benefit plan administrator" means any person or entity  
2 who manages or administers a private, self-insured health benefit plan  
3 or public employee health benefit plan and any person who manages or  
4 administers health benefit plans for another person, including health  
5 insuring corporations and sickness and accident insurers under contract  
6 to provide managerial and administrative services.

7 (c) "Pharmaceutical detailing, promotional, or marketing  
8 activities" means promotional or educational activities by  
9 pharmaceutical marketers directed at physicians, their staff, or other  
10 health care professionals who prescribe, dispense, or administer  
11 prescription drugs.

12 (d) "Pharmaceutical manufacturing company" means an entity that is  
13 engaged in the production, preparation, propagation, compounding,  
14 conversion, or processing of prescription drugs, either directly or  
15 indirectly by extraction from substances of natural origin, or  
16 independently by means of chemical synthesis, or by a combination of  
17 extraction and chemical synthesis, or any entity engaged in the  
18 packaging, repackaging, labeling, relabeling, or distribution of  
19 prescription drugs. This term does not include pharmacists licensed  
20 under this chapter, or pharmacy operations of any integrated delivery  
21 system undertaken for the benefit of patients obtaining care through  
22 that system.

23 (e) "Pharmaceutical marketer" means a person, agent, or  
24 representative who, while employed by or under contract to represent a  
25 pharmaceutical manufacturing company, engages in pharmaceutical  
26 detailing, promotional activities, or other marketing of prescription  
27 drugs in this state to any entity or person authorized to prescribe,  
28 dispense, or purchase prescription drugs in this state.

29 (f) "Pharmacy benefit manager" means a person or business entity  
30 that administers or otherwise assists with prescription drug benefit  
31 services including formulary management, rebates, discounted pharmacy  
32 network, mail service pharmacies, and electronic claims processing.  
33 Such services may be provided on behalf of a health insurer, an  
34 employer-sponsored health benefit plan, or an agency of the state.

35 (2) On or before January 1st of each year, every pharmaceutical  
36 manufacturing company must disclose to the board the value, nature, and  
37 purpose of any gift, fee, or payment made to any person or entity  
38 licensed under Title 18 RCW who is authorized to prescribe or dispense

1 prescription drugs, hospital licensed under chapter 70.41 RCW, health  
2 benefit plan administrator, group purchasing organization or pharmacy  
3 benefit manager, or other entity authorized to purchase prescription  
4 drugs in this state. For the purpose of this section, disclosure  
5 includes any subsidy or other economic benefit provided in connection  
6 with detailing, promotional, or other marketing activities by the  
7 company directly or through its pharmaceutical marketers. Disclosure  
8 must include both direct payments made by the company, as well as  
9 indirect payments made through any other entity at the direction of or  
10 with the implied or express knowledge of the company. Disclosure must  
11 include the names of all persons or entities receiving the gift, fee,  
12 or payment and be made in electronic format in a manner prescribed by  
13 the board. Initial disclosure must be made on or before January 1,  
14 2005, for the twelve-month period ending June 30, 2004. The board must  
15 provide to the office of the attorney general complete access to the  
16 information required to be disclosed and report annually on the  
17 disclosures made under this section to the legislature and the governor  
18 on or before March 1st.

19 (3) Each company subject to the provisions of this section must  
20 also disclose to the board, on or before October 1, 2003, and annually  
21 thereafter, the name and address of the individual responsible for the  
22 company's compliance with the provisions of this section.

23 (4) The following are exempt from disclosure:

24 (a) Free samples of prescription drugs intended to be distributed  
25 to patients; and

26 (b) Any gift, fee, payment, subsidy, or other economic benefit the  
27 value of which in the aggregate to any entity including all of its  
28 employees is less than twenty-five dollars.

29 (5) The attorney general may bring an action in Thurston county  
30 superior court for injunctive relief, costs, and attorneys' fees, and  
31 to impose on a pharmaceutical manufacturing company that fails to  
32 disclose as required by subsection (2) of this section a civil penalty  
33 of not more than ten thousand dollars per violation. Each unlawful  
34 failure to disclose constitutes a separate violation.

35 (6) The board may adopt rules to implement the provisions of this  
36 section.

1        NEW SECTION.   **Sec. 3.** This act may be known and cited as the  
2 prescription drug marketing and disclosure act.

3        NEW SECTION.   **Sec. 4.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

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