Z-0247.4

SENATE BILL 5634

State of Washington 58th Legislature 2003 Regular Session

By Senators Kohl-Welles, Prentice, Kline and Keiser; by request of Insurance Commissioner

Read first time 02/03/2003. Referred to Committee on Health & Long-Term Care.

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

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

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

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

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

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

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

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

(d) "Pharmaceutical manufacturing company" means an entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or any entity engaged in the packaging, repackaging, labeling, relabeling, or distribution of prescription drugs. This term does not include pharmacists licensed under this chapter.

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

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

(2) On or before January 1st of each year, every pharmaceutical manufacturing company must disclose to the board the value, nature, and purpose of any gift, fee, or payment made to any person or entity licensed under Title 18 RCW who is authorized to prescribe or dispense prescription drugs, hospital licensed under chapter 70.41 RCW, health benefit plan administrator, group purchasing organization or pharmacy

benefit manager, or other entity authorized to purchase prescription drugs in this state. For the purpose of this section, disclosure includes any subsidy or other economic benefit provided in connection with detailing, promotional, or other marketing activities by the company directly or through its pharmaceutical marketers. Disclosure must include both direct payments made by the company, as well as indirect payments made through any other entity at the direction of or with the implied or express knowledge of the company. Disclosure must include the names of all persons or entities receiving the gift, fee, or payment and be made in electronic format in a manner prescribed by the board. Initial disclosure must be made on or before January 1, 2005, for the twelve-month period ending June 30, 2004. The board must provide to the office of the attorney general complete access to the information required to be disclosed and report annually on the disclosures made under this section to the legislature and the governor on or before March 1st.

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

(4) The following are exempt from disclosure:

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

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

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

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

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

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

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