

2SHB 2098 - H AMD 143

By Representative Hinkle

1 On page 20, after line 35, insert the following:

2 "NEW SECTION. **Sec. 22.** The legislature finds that
3 prescription drug abuse has been on the rise and that often
4 dispensers and prescribing providers are unaware of prescriptions
5 provided by others both in and out of state.

6 It is the intent of the legislature to establish an electronic
7 database available in real time to dispensers and prescribers of
8 controlled substances. And further, that the department in as much
9 as possible should establish a common dataset with other sets of
10 other states.

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

14 (1) "Controlled substance" has the meaning provided in RCW
15 69.50.101.

16 (2) "Department" means the department of health.

17 (3) "Patient" means the person or animal who is the ultimate
18 user of a drug for whom a prescription is issued or for whom a drug
19 is dispensed.

20 (4) "Dispenser" means a person who delivers a Schedule II, III,
21 IV, or V controlled substance to the ultimate user, but does not
22 include:

23 (a) A practitioner or other authorized person who administers,
24 as defined in RCW 69.41.010, a controlled substance; or

25 (b) A licensed wholesale distributor or manufacturer, as
26 defined in chapter 18.64 RCW, of a controlled substance.

27 NEW SECTION. **Sec. 24.** (1) The department shall establish and
28 maintain an electronic prescription monitoring program to monitor

1 the prescribing and dispensing of all Schedules II, III, IV, and V
2 controlled substances by all professionals licensed to prescribe or
3 dispense such substances in this state. As much as possible, the
4 department should establish a common database with other states.

5 (2) Except as provided in subsection (5) of this section, each
6 dispenser shall submit to the department by electronic means
7 information regarding each prescription dispensed for a drug
8 included under subsection (1) of this section. The information
9 submitted for each prescription shall include, but not be limited
10 to:

- 11 (a) Patient identifier;
- 12 (b) Drug dispensed;
- 13 (c) Date of dispensing;
- 14 (d) Quantity dispensed;
- 15 (e) Prescriber; and
- 16 (f) Dispenser.

17 (3) Each dispenser shall submit the information in accordance
18 with transmission methods established by the department.

19 (4) The department may allow submission of prescription
20 information by electronic means within one year from the effective
21 date of this act. The waiver may permit the dispenser to submit
22 prescription information by paper form or other means, provided all
23 information required in subsection (2) of this section is submitted
24 in this alternative format. At such time as technology is readily
25 available and affordable, the department shall require on-line real
26 time reporting by dispensers.

27 (5) The data submission requirements of this section do not
28 apply to:

- 29 (a) Medications provided to patients receiving inpatient
30 services provided at hospitals licensed under chapter 70.41 RCW; or
- 31 (b) Pharmacies operated by the department of corrections for
32 the purpose of providing medications to offenders in prison or in
33 a work release program that is receiving pharmaceutical services
34 from a department of corrections pharmacy.

35 (6) The department shall seek federal grants to support the
36 activities described in this act. As state and federal funds are
37 available, the department shall develop and implement the
38 prescription monitoring program. The department may not require a

1 practitioner or a pharmacist to pay a fee or tax specifically
2 dedicated to the operation of the system.

3 (7) The department shall report to the legislature on the
4 implementation of this chapter by December 1, 2009.

5 NEW SECTION. **Sec. 25.** (1) Prescription information submitted
6 to the department shall be confidential, in compliance with the
7 federal health insurance portability and accountability act of 1996
8 and its implementing regulations, and not subject to disclosure,
9 except as provided in subsections (3), (4), and (5) of this
10 section.

11 (2) The department shall maintain procedures to ensure that the
12 privacy and confidentiality of patients and patient information
13 collected, recorded, transmitted, and maintained is not disclosed
14 to persons except as in subsections (3), (4), and (5) of this
15 section.

16 (3) The department shall review the prescription information.
17 The department shall notify the practitioner and allow explanation
18 or correction of any problem. If there is reasonable cause to
19 believe a violation of law or breach of professional standards may
20 have occurred, the department shall notify the appropriate law
21 enforcement or professional licensing, certification, or regulatory
22 agency or entity, and provide prescription information required for
23 an investigation.

24 (4) The department may provide data in the prescription
25 monitoring program to the following persons:

26 (a) Persons authorized to prescribe or dispense controlled
27 substances, for the purpose of providing medical or pharmaceutical
28 care for their patients;

29 (b) An individual who requests the individual's own
30 prescription monitoring information;

31 (c) Health professional licensing, certification, or regulatory
32 agency or entity;

33 (d) Appropriate local, state, and federal law enforcement or
34 prosecutorial officials who are engaged in a bona fide specific
35 investigation involving a designated person;

36 (e) Authorized practitioners of the department of social and
37 health services regarding medicaid program recipients;

1 (f) Other entities under grand jury subpoena or court order;
2 and

3 (g) Personnel of the department for purposes of administration
4 and enforcement of this chapter or chapter 69.50 RCW.

5 (5) The department may provide data to public or private
6 entities for statistical, research, or educational purposes after
7 removing information that could be used to identify individual
8 patients, dispensers, prescribers, and persons who received
9 prescriptions from dispensers.

10 (6) A dispenser or practitioner acting in good faith is immune
11 from any civil, criminal, or administrative liability that might
12 otherwise be incurred or imposed for requesting, receiving, or
13 using information from the program.

14 (7) A pharmacist or prescriber does not have a duty and shall
15 not be held liable in damages to any person in any civil, criminal
16 or administrative action for injury, death or loss to a person or
17 property on the basis that the pharmacist or prescriber did or did
18 not seek or obtain information from the database.

19 NEW SECTION. **Sec. 26.** The department may contract with
20 another agency of this state or with a private vendor, as
21 necessary, to ensure the effective operation of the prescription
22 monitoring program. Any contractor is bound to comply with the
23 provisions regarding confidentiality of prescription information in
24 section 4 of this act and is subject to the penalties specified in
25 section 7 of this act for unlawful acts.

26 NEW SECTION. **Sec. 27.** The department shall adopt rules to
27 implement this chapter.

28 NEW SECTION. **Sec. 28.** (1) A dispenser who knowingly fails to
29 submit prescription monitoring information to the department as
30 required by this chapter or knowingly submits incorrect
31 prescription information is subject to disciplinary action under
32 chapter 18.130 RCW.

33 (2) A person authorized to have prescription monitoring
34 information under this chapter who knowingly discloses such
35 information in violation of this chapter is subject to civil
36 penalty.

1 (3) A person authorized to have prescription monitoring
2 information under this chapter who uses such information in a
3 manner or for a purpose in violation of this chapter is subject to
4 civil penalty.

5 (4) In accordance with the federal health insurance portability
6 and accountability act of 1996 and its implementing regulations,
7 any prescriber or pharmacist authorized to access a patient's
8 prescription monitoring may discuss or release that information to
9 other health care providers involved with the patient in order to
10 provide safe and appropriate care coordination.

11 NEW SECTION. **Sec. 29.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 **Sec. 30.** RCW 42.56.360 and 2006 c 209 s 9 and 2006 c 8 s 112
16 are each reenacted and amended to read as follows:

17 (1) The following health care information is exempt from
18 disclosure under this chapter:

19 (a) Information obtained by the board of pharmacy as provided
20 in RCW 69.45.090;

21 (b) Information obtained by the board of pharmacy or the
22 department of health and its representatives as provided in RCW
23 69.41.044, 69.41.280, and 18.64.420;

24 (c) Information and documents created specifically for, and
25 collected and maintained by a quality improvement committee under
26 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
27 4.24.250, or by a quality assurance committee pursuant to RCW
28 74.42.640 or 18.20.390, and notifications or reports of adverse
29 events or incidents made under RCW 70.56.020 or 70.56.040,
30 regardless of which agency is in possession of the information and
31 documents;

32 (d)(i) Proprietary financial and commercial information that
33 the submitting entity, with review by the department of health,
34 specifically identifies at the time it is submitted and that is
35 provided to or obtained by the department of health in connection
36 with an application for, or the supervision of, an antitrust
37 exemption sought by the submitting entity under RCW 43.72.310;

1 (ii) If a request for such information is received, the
2 submitting entity must be notified of the request. Within ten
3 business days of receipt of the notice, the submitting entity shall
4 provide a written statement of the continuing need for
5 confidentiality, which shall be provided to the requester. Upon
6 receipt of such notice, the department of health shall continue to
7 treat information designated under this subsection (1)(d) as exempt
8 from disclosure;

9 (iii) If the requester initiates an action to compel disclosure
10 under this chapter, the submitting entity must be joined as a party
11 to demonstrate the continuing need for confidentiality;

12 (e) Records of the entity obtained in an action under RCW
13 18.71.300 through 18.71.340;

14 (f) Except for published statistical compilations and reports
15 relating to the infant mortality review studies that do not
16 identify individual cases and sources of information, any records
17 or documents obtained, prepared, or maintained by the local health
18 department for the purposes of an infant mortality review conducted
19 by the department of health under RCW 70.05.170; (~~and~~)

20 (g) Complaints filed under chapter 18.130 RCW after July 27,
21 1997, to the extent provided in RCW 18.130.095(1); and

22 (h) Information obtained by the department of health under
23 chapter 69.-- RCW (sections 22 through 29 of this act).

24 (2) Chapter 70.02 RCW applies to public inspection and copying
25 of health care information of patients.

26 NEW SECTION. Sec. 31. Sections 22 through 29 of this act
27 constitute a new chapter in Title 69 RCW."

28 Renumber the remaining sections consecutively, correct internal
29 references accordingly, and correct the title.

EFFECT: Establishes an electronic prescription monitoring
program to monitor the prescribing and dispensing of all
Schedules II, III, IV, and V controlled substances by all
professionals licensed to prescribe controlled substances.

