

SENATE BILL REPORT

SB 6241

As Reported By Senate Committee On:
Health & Long-Term Care, February 07, 2008

Title: An act relating to prohibiting the sale and use of prescriber-identifiable prescription data for marketing or promotional purposes absent affirmative authorization by the prescriber.

Brief Description: Prohibiting the sale or use of prescriber-identifiable prescription data for commercial or marketing purposes absent prescriber consent. **REVISED FOR SUBSTITUTE:** Prohibiting the sale or use of prescriber-identifiable prescription data for commercial or marketing purposes.

Sponsors: Senators Fairley, Pflug, Kohl-Welles, Kline and Franklin.

Brief History:

Committee Activity: Health & Long-Term Care: 1/17/08, 2/07/08 [DPS, DNP].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 6241 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Franklin, Vice Chair; Fairley, Kastama, Kohl-Welles and Marr.

Minority Report: Do not pass.

Signed by Senators Pflug, Ranking Minority Member; Carrell.

Staff: Edith Rice (786-7444)

Background: Prescription data-mining is the practice of obtaining information about the prescribing history of health professionals and using it to market prescription drugs and devices. Data gathering companies obtain information through contracts with retail pharmacy chains and companies that manage drug plans for insurers then sell it to pharmaceutical companies. Some of these prescription data-mining companies have paid the American Medical Association (AMA) for access to its information about physicians. The AMA currently allows physicians to indicate that they do not want their prescribing information shared with pharmaceutical representatives.

Summary of Bill (Recommended Substitute): The sale or use of regulated records that include prescriber-identifiable data to market prescription drugs is prohibited. Sale or use of regulated records that include prescriber identifiable data can be used for other purposes such as pharmacy reimbursement, formulary compliance, health care research, care management

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related to specialty pharmacy care, alerting prescribers about a drug recall, collection and transmission of prescription information to a government agency or program and in connection with a court proceeding. Any person who reuses, resells or rediscloses that information for authorized purposes, must keep records for a period of five years which identify each person that has received the information and the permitted purpose.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Substitute): The provision creating the prescription drug information integrity program is removed from the bill. Physicians will not have an option to voluntarily share such information with marketers and the Department of Health will not administer the program.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Physicians are often unaware that pharmaceutical companies can get such detailed information about their prescribing practices. These firms can be pushing drugs that aren't good for patients. We support adoption of an "opt in" process for physicians, or an outright total ban on using this data to market drugs. Bills like these threaten seniors' ability to pay for costly drugs. This practice violates the integrity of the doctor-patient relationship.

CON: There are constitutional issues being heard in Federal District Court that are on appeal. Information these companies provide serves many purposes including safety warnings and product improvement. Information we gather is used by the federal government and in academic and research settings. Information gathered allows us to contain costs by tailoring who gets the appropriate notices for safety recall notices. We have concerns about section 3 and the penalty imposed is high.

Persons Testifying: PRO: Senator Fairley, prime sponsor; Dr. Rupin Thakker, Washington Coalition for Prescribing Integrity; Dr. Bryan Wicks, Washington State Medical Association; Ruth Shearer, RN; Dr. Beth Harvey, Washington Chapter, American Academy of Pediatrics; Lonnie Johns Brown, Health Washington Coalition; Dr. Art Zoloth, Natural Physicians Alliance of Puget Sound.

CON: Mike Ryherd, Robert Hunkler, IMS Health; Jeff Gombosky, AMGEN; Carrie Tellefson, CVS/Caremark; Cliff Webster, Pharmaceutical Research and Manufacturers of America; Charlie Brown, Medical Health Solutions.