H-2418.1

SUBSTITUTE HOUSE BILL 1553

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Health Care & Wellness (originally sponsored by Representatives Hinkle, Morrell, Moeller, Seaquist, Curtis, Linville, Green and Ormsby)

READ FIRST TIME 02/26/07.

AN ACT Relating to a controlled substances prescription monitoring program; reenacting and amending RCW 42.56.360; adding a new chapter to Title 69 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** The legislature finds that prescription drug abuse has been on the rise and that often dispensers and prescribing providers are unaware of prescriptions provided by others both in and out of state.

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

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

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

NEW SECTION. **Sec. 3.** (1) The department shall establish and maintain a web-based interactive prescription monitoring program available in real time to monitor the prescribing and dispensing of all Schedules II, III, IV, and V controlled substances and any additional drugs identified by the board of pharmacy as demonstrating a potential for abuse by all professionals licensed to prescribe or dispense such substances in this state. As much as possible, the department should establish a common database with other states.

(2) Except as provided in subsection (5) of this section, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a drug included under subsection (1) of this section. Drug prescriptions for more than immediate one day use should be immediately reported. The information submitted for each prescription shall include, but not be limited to:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

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

(4) The department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means; however, all dispensers shall be required to submit prescription information by electronic means within one year from the effective date of this act. The waiver may permit the dispenser to submit prescription information

by paper form or other means, provided all information required in subsection (2) of this section is submitted in this alternative format.

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

(a) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW; or

(b) Pharmacies operated by the department of corrections for the purpose of providing medications to offenders in prison or in a work release program that is receiving pharmaceutical services from a department of corrections pharmacy.

(6) The department shall seek federal grants to support the activities described in this act. As state and federal funds are available, the department shall develop and implement the prescription monitoring program. The department may not require a practitioner or a pharmacist to pay a fee or tax specifically dedicated to the operation of the system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 5.** The department may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription information in section 4 of this act and is subject to the penalties specified in section 7 of this act for unlawful acts.

NEW SECTION. **Sec. 6.** The department shall adopt rules to implement this chapter.

NEW SECTION. **Sec. 7.** (1) A dispenser who knowingly fails to

submit prescription monitoring information to the department as required by this chapter or knowingly submits incorrect prescription information is subject to disciplinary action under chapter 18.130 RCW.

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

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

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

NEW SECTION. **Sec. 8.** 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.

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

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

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

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

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

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

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

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

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

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

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1)<u>; and</u>

<u>(h) Information obtained by the department of health under chapter 69.-- RCW (sections 1 through 8 of this act)</u>.

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

<u>NEW SECTION.</u> **Sec. 10.** Sections 1 through 8 of this act constitute a new chapter in Title 69 RCW.

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