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HOUSE BILL 2664

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Pedersen, Cody, Green, Morrell, Seaquist, Conway, Hasegawa, Hudgins, Upthegrove, Chase, Lias, Nelson, Loomis, McIntire, Barlow, Schual-Berke, and VanDeWege

Read first time 01/15/08. Referred to Committee on Health Care & Wellness.

1            AN ACT Relating to prohibiting the sale and use of  
2 prescriber-identifiable prescription data for marketing or promotional  
3 purposes; amending RCW 42.56.350; adding a new chapter to Title 19 RCW;  
4 creating a new section; and prescribing penalties.

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

6            NEW SECTION.    **Sec. 1.** (1) The legislature finds that:

7            (a) The state of Washington has a clear and long-standing interest  
8 in maximizing the health and well-being of its residents and in  
9 containing health care costs;

10           (b) To further its substantial interest in the health and  
11 well-being of its residents and in containing health care costs, the  
12 state of Washington has shown a strong commitment to evidence-based  
13 care and cost-effective health purchasing. Washington state has been  
14 most active in this regard with respect to prescription drug purchasing  
15 focused on clinical and cost-effectiveness, including the Washington  
16 evidence-based prescription drug program and the state preferred drug  
17 list under RCW 70.14.050, the prescription drug purchasing consortium  
18 under RCW 70.14.060, and both generic and therapeutic drug substitution  
19 under chapter 69.41 RCW. In addition, the medicaid program is engaged

1 in numerous efforts to improve the quality of, and reduce variability  
2 in, prescribing of pain management and mental health medications. The  
3 state also aggressively seeks supplemental rebates to lower drug costs  
4 in the medicaid program. The Washington state health technology  
5 assessment program, established under chapter 70.14 RCW, is applying  
6 the principles of evidence-based care and cost-effective purchasing to  
7 the review of medical devices and procedures for state purchased health  
8 care programs. Finally, the state is an active participant in the  
9 Puget Sound health alliance, whose goal is to improve the quality and  
10 transparency of health services provided across the public and private  
11 sectors;

12 (c) Prescriber-identifiable prescription data shows details of  
13 prescribers' drug use patterns. Using this data, pharmaceutical  
14 manufacturers can track the prescribing habits of every prescriber in  
15 Washington, allowing them to target their marketing efforts toward  
16 those prescribers that they find would lead to increased prescriptions  
17 and profitability;

18 (d) Health care providers in Washington who write prescriptions for  
19 their patients have a strong interest in the integrity of the patient-  
20 provider relationship and a reasonable expectation that the information  
21 in their prescriptions, including their own identity, will not be used  
22 for purposes other than the filling and processing of the payment for  
23 that prescription. The Washington chapter of the academy of family  
24 practice, the Washington chapter of the academy of pediatrics, and the  
25 Washington state medical association support a prohibition on the sale  
26 or use of individual prescriber prescription data for marketing or  
27 promotional purposes;

28 (e) The removal of the names and addresses of patients from  
29 prescription drug data purchased by pharmaceutical manufacturers does  
30 not completely protect the privacy of patients. Tracking treatment  
31 history and prescriber identity can allow reidentification of patients,  
32 and can result in marketing directed at convincing a prescriber to  
33 change a particular patient's treatment;

34 (f) The physician data restriction program offered by the American  
35 medical association is not an adequate remedy for Washington  
36 physicians, because (i) many physicians do not know about the program;  
37 (ii) many physicians do not receive the end-of-period notification for  
38 renewing or canceling their participation; (iii) under the program,

1 physician-specific prescribing data can still be sold to data mining  
2 companies even though it is not supposed to be provided to sales  
3 representatives; and (iv) the American medical association could choose  
4 to end the program at any time;

5 (g) In 2004, the pharmaceutical industry spent twenty-seven billion  
6 dollars marketing pharmaceuticals in the United States. Marketing  
7 programs are designed to increase sales, income, and profit. Progress  
8 toward these goals can come at the expense of evidence-based care,  
9 efforts to contain health care costs, and sometimes the health of  
10 individual patients;

11 (h) Newer drugs on the market do not necessarily provide additional  
12 benefits over older drugs but do add costs and as yet unknown side  
13 effects. Marketing that results in prescribers using the newest drugs  
14 results in prescribing drugs that are more likely to be subject to  
15 federal food and drug administration "black box" warnings or withdrawal  
16 from the market for safety reasons; and

17 (i) The sale of prescriber-identifiable prescription data runs  
18 counter to Washington's strong commitment to both evidence-based care  
19 and cost-effective health purchasing. Pharmaceutical marketers,  
20 through their surveillance of prescription records that include  
21 prescriber-identifiable data, are able to monitor and reward  
22 prescribing practices that favor the financial interests of  
23 pharmaceutical manufacturers over the interests of patients in  
24 clinically effective and cost-effective care. This act is necessary to  
25 realize the goals of the programs and activities undertaken by the  
26 state of Washington to implement evidence-based care and cost-effective  
27 health purchasing and to preserve the integrity of the patient-  
28 prescriber relationship.

29 (2) It is the intent of the legislature to improve the quality of  
30 health care received by Washingtonians, further health care cost  
31 containment, and protect the privacy of prescribing information, by  
32 prohibiting conduct involving the sale and use of individual prescriber  
33 prescription data for marketing or promotional purposes.

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

36 (1) "Health care provider" has the same meaning as in RCW  
37 48.43.005(16).

1 (2) "Health carrier" has the same meaning as in RCW 48.43.005(18).

2 (3) "Marketing" or "market" includes advertising, promotion, or any  
3 activity that is intended to be used or is used to influence sales or  
4 the market share of a prescription drug, influence the prescribing  
5 behavior of an individual health care provider to promote a  
6 prescription drug, market prescription drugs to patients, or evaluate  
7 the effectiveness of a professional pharmaceutical detailing sales  
8 force.

9 (4)(a) "Pharmaceutical manufacturer" means an entity that is  
10 engaged in the production, preparation, propagation, compounding,  
11 conversion, or processing of prescription drugs, either directly or  
12 indirectly by extraction from substances of natural origin, or  
13 independently by means of chemical synthesis, or by a combination of  
14 extraction and chemical synthesis, or any entity engaged in the  
15 packaging, repackaging, labeling, relabeling, or distribution of  
16 prescription drugs, biologics, or medical devices.

17 (b) "Pharmaceutical manufacturer" does not include pharmacists or  
18 pharmacies licensed under chapter 18.64 RCW or pharmacy operations of  
19 any integrated delivery system undertaken for the benefit of patients  
20 obtaining care through that system.

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

27 (6) "Pharmacy" means any individual or entity licensed under  
28 chapter 18.64 RCW.

29 (7) "Prescriber" means a health care provider authorized by law to  
30 prescribe and administer prescription drugs in the course of  
31 professional practice.

32 (8) "Promotion" or "promote" means any activity or product the  
33 intention of which is to advertise or publicize a prescription drug,  
34 including a brochure, media advertisement or announcement, poster, free  
35 sample, detailing visit, or personal appearance.

36 (9) "Regulated records" means information or documentation from a  
37 prescription written by a prescriber doing business in Washington or a  
38 prescription dispensed in Washington.

1        NEW SECTION.    **Sec. 3.**    (1) Pharmaceutical marketers shall not  
2 purchase, license, transfer, use, or sell regulated records that  
3 include prescriber-identifiable data to market or promote a  
4 prescription drug.

5        (2) This section does not restrict the licensure, transfer, use, or  
6 sale of regulated records that include prescriber-identifiable data for  
7 the purposes of:

8        (a) Activities related to filling a valid prescription, including  
9 the dispensing of prescription medications to a patient or to the  
10 patient's authorized representative; the transmission of prescription  
11 information between an authorized prescriber and a pharmacy; the  
12 transfer of prescription information between pharmacies; the transfer  
13 of prescription records that may occur if pharmacy ownership is changed  
14 or transferred; and pharmacy reimbursement;

15        (b) Formulary compliance;

16        (c) Care management related to the diagnosis, treatment, or  
17 management of illness for a specific patient, including care management  
18 educational communications provided to a patient about the patient's  
19 health condition, adherence to a prescribed course of therapy, or other  
20 information about the drug being dispensed, treatment options, or  
21 clinical trials;

22        (d) Utilization review by a health care provider, the patient's  
23 health carrier, or an agent of the provider or carrier;

24        (e) Health care research including, but not limited to,  
25 postmarketing surveillance research, drug interaction research, drug  
26 safety studies, and population-based public health research;

27        (f) Collection and analysis of prescription drug utilization data  
28 for health care quality improvement purposes, including development of  
29 evidence-based treatment guidelines or health care performance  
30 effectiveness and efficiency measures, promoting compliance with  
31 evidence-based treatment guidelines or health care performance  
32 measures, and providing prescribers with information that details their  
33 practices relative to their peers to encourage prescribing consistent  
34 with evidence-based practice;

35        (g) Collection and dissemination of drug utilization data to  
36 promote transparency in evaluating performance related to the health  
37 care quality improvement measures included in (f) of this subsection;

1 (h) The transfer of prescription drug utilization data to and  
2 through secure electronic health record or personal health record  
3 systems;

4 (i) The collection and transmission of prescription information to  
5 a Washington or federal law enforcement officer engaged in his or her  
6 official duties as otherwise provided by law; or

7 (j) As otherwise expressly provided by law.

8 (3) This section does not prohibit the collection, use, transfer,  
9 or sale of regulated records for marketing or promotion, organized by  
10 medical specialty or otherwise, if the data does not identify a  
11 prescriber, and there is no reasonable basis to believe that the data  
12 provided could be used to identify a prescriber or a patient.

13 NEW SECTION. **Sec. 4.** Any person who knowingly fails to comply  
14 with the requirements of this chapter or rules adopted pursuant to this  
15 chapter by purchasing, licensing, transferring, using, or selling  
16 regulated data in a manner not authorized by this chapter or its rules  
17 shall be subject to an administrative penalty of not more than fifty  
18 thousand dollars per violation, as assessed by the secretary of the  
19 department of health. The office of the attorney general shall take  
20 necessary action to enforce payment of penalties assessed under this  
21 section.

22 NEW SECTION. **Sec. 5.** In addition to any other remedy provided by  
23 law, the legislature finds that the practices covered by this chapter  
24 are matters vitally affecting the public interest for the purpose of  
25 applying the consumer protection act, chapter 19.86 RCW. A violation  
26 of this chapter is not reasonable in relation to the development and  
27 preservation of business and is an unfair or deceptive act in trade or  
28 commerce and an unfair method of competition for the purpose of  
29 applying the consumer protection act, chapter 19.86 RCW.

30 **Sec. 6.** RCW 42.56.350 and 2005 c 274 s 415 are each amended to  
31 read as follows:

32 (1) The federal Social Security number of individuals governed  
33 under chapter 18.130 RCW maintained in the files of the department of  
34 health is exempt from disclosure under this chapter. The exemption in  
35 this section does not apply to requests made directly to the department

1 from federal, state, and local agencies of government, and national and  
2 state licensing, credentialing, investigatory, disciplinary, and  
3 examination organizations.

4 (2) The current residential address and current residential  
5 telephone number of a health care provider governed under chapter  
6 18.130 RCW maintained in the files of the department are exempt from  
7 disclosure under this chapter, if the provider requests that this  
8 information be withheld from public inspection and copying, and  
9 provides to the department of health an accurate alternate or business  
10 address and business telephone number. The current residential address  
11 and residential telephone number of a health care provider governed  
12 under RCW 18.130.040 maintained in the files of the department of  
13 health shall automatically be withheld from public inspection and  
14 copying unless the provider specifically requests the information be  
15 released, and except as provided for under RCW 42.56.070(9).

16 (3) Records held by an agency administering a state purchased  
17 health care program, as defined in RCW 41.05.011(2), that include  
18 prescription information containing prescriber-identifiable data that  
19 could be used to identify a prescriber, are exempt from disclosure  
20 under this chapter, except that the records shall be made available  
21 upon request for the purposes expressed in section 3(2) of this act.

22 NEW SECTION. Sec. 7. Sections 1 through 5 of this act constitute  
23 a new chapter in Title 19 RCW.

24 NEW SECTION. Sec. 8. This act may be known and cited as the  
25 prescription privacy and integrity act of 2008.

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