
HOUSE BILL 2343

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Cody and Schmick; by request of Department of Health

Read first time 01/11/12. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to authorization of electronic communication of
2 prescription information for controlled substances; and amending RCW
3 69.50.101, 69.50.308, and 69.50.312.

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

5 **Sec. 1.** RCW 69.50.101 and 2010 c 177 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, definitions of terms
8 shall be as indicated where used in this chapter:

9 (a) "Administer" means to apply a controlled substance, whether by
10 injection, inhalation, ingestion, or any other means, directly to the
11 body of a patient or research subject by:

12 (1) a practitioner authorized to prescribe (or, by the
13 practitioner's authorized agent); or

14 (2) the patient or research subject at the direction and in the
15 presence of the practitioner.

16 (b) "Agent" means an authorized person who acts on behalf of or at
17 the direction of a manufacturer, distributor, or dispenser. It does
18 not include a common or contract carrier, public warehouseperson, or
19 employee of the carrier or warehouseperson.

1 (c) "Board" means the state board of pharmacy.

2 (d) "Controlled substance" means a drug, substance, or immediate
3 precursor included in Schedules I through V as set forth in federal or
4 state laws, or federal or board rules.

5 (e)(1) "Controlled substance analog" means a substance the chemical
6 structure of which is substantially similar to the chemical structure
7 of a controlled substance in Schedule I or II and:

8 (i) that has a stimulant, depressant, or hallucinogenic effect on
9 the central nervous system substantially similar to the stimulant,
10 depressant, or hallucinogenic effect on the central nervous system of
11 a controlled substance included in Schedule I or II; or

12 (ii) with respect to a particular individual, that the individual
13 represents or intends to have a stimulant, depressant, or
14 hallucinogenic effect on the central nervous system substantially
15 similar to the stimulant, depressant, or hallucinogenic effect on the
16 central nervous system of a controlled substance included in Schedule
17 I or II.

18 (2) The term does not include:

19 (i) a controlled substance;

20 (ii) a substance for which there is an approved new drug
21 application;

22 (iii) a substance with respect to which an exemption is in effect
23 for investigational use by a particular person under Section 505 of the
24 federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent
25 conduct with respect to the substance is pursuant to the exemption; or

26 (iv) any substance to the extent not intended for human consumption
27 before an exemption takes effect with respect to the substance.

28 (f) "Deliver" or "delivery," means the actual or constructive
29 transfer from one person to another of a substance, whether or not
30 there is an agency relationship.

31 (g) "Department" means the department of health.

32 (h) "Dispense" means the interpretation of a prescription or order
33 for a controlled substance and, pursuant to that prescription or order,
34 the proper selection, measuring, compounding, labeling, or packaging
35 necessary to prepare that prescription or order for delivery.

36 (i) "Dispenser" means a practitioner who dispenses.

37 (j) "Distribute" means to deliver other than by administering or
38 dispensing a controlled substance.

1 (k) "Distributor" means a person who distributes.

2 (l) "Drug" means (1) a controlled substance recognized as a drug in
3 the official United States pharmacopoeia/national formulary or the
4 official homeopathic pharmacopoeia of the United States, or any
5 supplement to them; (2) controlled substances intended for use in the
6 diagnosis, cure, mitigation, treatment, or prevention of disease in
7 individuals or animals; (3) controlled substances (other than food)
8 intended to affect the structure or any function of the body of
9 individuals or animals; and (4) controlled substances intended for use
10 as a component of any article specified in (1), (2), or (3) of this
11 subsection. The term does not include devices or their components,
12 parts, or accessories.

13 (m) "Drug enforcement administration" means the drug enforcement
14 administration in the United States Department of Justice, or its
15 successor agency.

16 (n) "Immediate precursor" means a substance:

17 (1) that the state board of pharmacy has found to be and by rule
18 designates as being the principal compound commonly used, or produced
19 primarily for use, in the manufacture of a controlled substance;

20 (2) that is an immediate chemical intermediary used or likely to be
21 used in the manufacture of a controlled substance; and

22 (3) the control of which is necessary to prevent, curtail, or limit
23 the manufacture of the controlled substance.

24 (o) "Isomer" means an optical isomer, but in ((~~RCW~~
25 ~~69.50.101(r)(5)~~)) subsection (r)(5) of this section, RCW 69.50.204(a)
26 (12) and (34), and 69.50.206(b)(4), the term includes any geometrical
27 isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term
28 includes any positional isomer; and in RCW 69.50.204(a)(35),
29 69.50.204(c), and 69.50.208(a) the term includes any positional or
30 geometric isomer.

31 (p) "Manufacture" means the production, preparation, propagation,
32 compounding, conversion, or processing of a controlled substance,
33 either directly or indirectly or by extraction from substances of
34 natural origin, or independently by means of chemical synthesis, or by
35 a combination of extraction and chemical synthesis, and includes any
36 packaging or repackaging of the substance or labeling or relabeling of
37 its container. The term does not include the preparation, compounding,

1 packaging, repackaging, labeling, or relabeling of a controlled
2 substance:

3 (1) by a practitioner as an incident to the practitioner's
4 administering or dispensing of a controlled substance in the course of
5 the practitioner's professional practice; or

6 (2) by a practitioner, or by the practitioner's authorized agent
7 under the practitioner's supervision, for the purpose of, or as an
8 incident to, research, teaching, or chemical analysis and not for sale.

9 (q) "Marijuana" or "marihuana" means all parts of the plant
10 Cannabis, whether growing or not; the seeds thereof; the resin
11 extracted from any part of the plant; and every compound, manufacture,
12 salt, derivative, mixture, or preparation of the plant, its seeds or
13 resin. The term does not include the mature stalks of the plant, fiber
14 produced from the stalks, oil or cake made from the seeds of the plant,
15 any other compound, manufacture, salt, derivative, mixture, or
16 preparation of the mature stalks (except the resin extracted
17 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
18 which is incapable of germination.

19 (r) "Narcotic drug" means any of the following, whether produced
20 directly or indirectly by extraction from substances of vegetable
21 origin, or independently by means of chemical synthesis, or by a
22 combination of extraction and chemical synthesis:

23 (1) Opium, opium derivative, and any derivative of opium or opium
24 derivative, including their salts, isomers, and salts of isomers,
25 whenever the existence of the salts, isomers, and salts of isomers is
26 possible within the specific chemical designation. The term does not
27 include the isoquinoline alkaloids of opium.

28 (2) Synthetic opiate and any derivative of synthetic opiate,
29 including their isomers, esters, ethers, salts, and salts of isomers,
30 esters, and ethers, whenever the existence of the isomers, esters,
31 ethers, and salts is possible within the specific chemical designation.

32 (3) Poppy straw and concentrate of poppy straw.

33 (4) Coca leaves, except coca leaves and extracts of coca leaves
34 from which cocaine, ecgonine, and derivatives or ecgonine or their
35 salts have been removed.

36 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

37 (6) Cocaine base.

1 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
2 thereof.

3 (8) Any compound, mixture, or preparation containing any quantity
4 of any substance referred to in subparagraphs (1) through (7).

5 (s) "Opiate" means any substance having an addiction-forming or
6 addiction-sustaining liability similar to morphine or being capable of
7 conversion into a drug having addiction-forming or addiction-sustaining
8 liability. The term includes opium, substances derived from opium
9 (opium derivatives), and synthetic opiates. The term does not include,
10 unless specifically designated as controlled under RCW 69.50.201, the
11 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts
12 (dextromethorphan). The term includes the racemic and levorotatory
13 forms of dextromethorphan.

14 (t) "Opium poppy" means the plant of the species *Papaver somniferum*
15 L., except its seeds.

16 (u) "Person" means individual, corporation, business trust, estate,
17 trust, partnership, association, joint venture, government,
18 governmental subdivision or agency, or any other legal or commercial
19 entity.

20 (v) "Poppy straw" means all parts, except the seeds, of the opium
21 poppy, after mowing.

22 (w) "Practitioner" means:

23 (1) A physician under chapter 18.71 RCW; a physician assistant
24 under chapter 18.71A RCW; an osteopathic physician and surgeon under
25 chapter 18.57 RCW; an osteopathic physician assistant under chapter
26 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
27 limitations in RCW 18.57A.040; an optometrist licensed under chapter
28 18.53 RCW who is certified by the optometry board under RCW 18.53.010
29 subject to any limitations in RCW 18.53.010; a dentist under chapter
30 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;
31 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
32 registered nurse practitioner, or licensed practical nurse under
33 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
34 who is licensed under RCW 18.36A.030 subject to any limitations in RCW
35 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
36 investigator under this chapter, licensed, registered or otherwise
37 permitted insofar as is consistent with those licensing laws to

1 distribute, dispense, conduct research with respect to or administer a
2 controlled substance in the course of their professional practice or
3 research in this state.

4 (2) A pharmacy, hospital or other institution licensed, registered,
5 or otherwise permitted to distribute, dispense, conduct research with
6 respect to or to administer a controlled substance in the course of
7 professional practice or research in this state.

8 (3) A physician licensed to practice medicine and surgery, a
9 physician licensed to practice osteopathic medicine and surgery, a
10 dentist licensed to practice dentistry, a podiatric physician and
11 surgeon licensed to practice podiatric medicine and surgery, or a
12 veterinarian licensed to practice veterinary medicine in any state of
13 the United States.

14 (x) "Prescription" means an order for controlled substances issued
15 by a practitioner duly authorized by law or rule in the state of
16 Washington to prescribe controlled substances within the scope of his
17 or her professional practice for a legitimate medical purpose.

18 (y) "Production" includes the manufacturing, planting, cultivating,
19 growing, or harvesting of a controlled substance.

20 (z) "Secretary" means the secretary of health or the secretary's
21 designee.

22 (aa) "State," unless the context otherwise requires, means a state
23 of the United States, the District of Columbia, the Commonwealth of
24 Puerto Rico, or a territory or insular possession subject to the
25 jurisdiction of the United States.

26 (bb) "Ultimate user" means an individual who lawfully possesses a
27 controlled substance for the individual's own use or for the use of a
28 member of the individual's household or for administering to an animal
29 owned by the individual or by a member of the individual's household.

30 ~~((cc) "Electronic communication of prescription information" means~~
31 ~~the communication of prescription information by computer, or the~~
32 ~~transmission of an exact visual image of a prescription by facsimile,~~
33 ~~or other electronic means for original prescription information or~~
34 ~~prescription refill information for a Schedule III-V controlled~~
35 ~~substance between an authorized practitioner and a pharmacy or the~~
36 ~~transfer of prescription information for a controlled substance from~~
37 ~~one pharmacy to another pharmacy.))~~

1 **Sec. 2.** RCW 69.50.308 and 2001 c 248 s 1 are each amended to read
2 as follows:

3 (a) A controlled substance may be dispensed only as provided in
4 this section, except that subsections (b) through (d) of this section
5 shall not apply to electronic communication of prescription information
6 allowed under RCW 69.50.312.

7 (b) Except when dispensed directly by a practitioner authorized to
8 prescribe or administer a controlled substance, other than a pharmacy,
9 to an ultimate user, a substance included in Schedule II may not be
10 dispensed without the written prescription of a practitioner.

11 (1) Schedule II narcotic substances may be dispensed by a pharmacy
12 pursuant to a facsimile prescription under the following circumstances:

13 (i) The facsimile prescription is transmitted by a practitioner to
14 the pharmacy; and

15 (ii) The facsimile prescription is for a patient in a long-term
16 care facility. "Long-term care facility" means nursing homes licensed
17 under chapter 18.51 RCW, boarding homes licensed under chapter 18.20
18 RCW, and adult family homes licensed under chapter 70.128 RCW; or

19 (iii) The facsimile prescription is for a patient of a hospice
20 program certified or paid for by medicare under Title XVIII; or

21 (iv) The facsimile prescription is for a patient of a hospice
22 program licensed by the state; and

23 (v) The practitioner or the practitioner's agent notes on the
24 facsimile prescription that the patient is a long-term care or hospice
25 patient.

26 (2) Injectable Schedule II narcotic substances that are to be
27 compounded for patient use may be dispensed by a pharmacy pursuant to
28 a facsimile prescription if the facsimile prescription is transmitted
29 by a practitioner to the pharmacy.

30 (3) Under (1) and (2) of this subsection the facsimile prescription
31 shall serve as the original prescription and shall be maintained as
32 other Schedule II narcotic substances prescriptions.

33 (c) In emergency situations, as defined by rule of the state board
34 of pharmacy, a substance included in Schedule II may be dispensed upon
35 oral prescription of a practitioner, reduced promptly to writing and
36 filed by the pharmacy. Prescriptions shall be retained in conformity
37 with the requirements of RCW 69.50.306. (~~(A prescription for a~~
38 ~~substance included in Schedule II may not be refilled.)~~)

1 (d) Except when dispensed directly by a practitioner authorized to
2 prescribe or administer a controlled substance, other than a pharmacy,
3 to an ultimate user, a substance included in Schedule III or IV, which
4 is a prescription drug as determined under RCW 69.04.560, may not be
5 dispensed without a written or oral prescription of a practitioner.
6 Any oral prescription must be promptly reduced to writing. ((The))

7 (e) A prescription for a substance included in Schedule II may not
8 be refilled.

9 (f) Schedule III or IV prescriptions shall not be filled or
10 refilled more than six months after the date thereof or be refilled
11 more than five times, unless renewed by the practitioner.

12 ~~((e))~~ (g) A valid prescription or lawful order of a practitioner,
13 in order to be effective in legalizing the possession of controlled
14 substances, must be issued in good faith for a legitimate medical
15 purpose by one authorized to prescribe the use of such controlled
16 substance. An order purporting to be a prescription not in the course
17 of professional treatment is not a valid prescription or lawful order
18 of a practitioner within the meaning and intent of this chapter; and
19 the person who knows or should know that the person is filling such an
20 order, as well as the person issuing it, can be charged with a
21 violation of this chapter.

22 ~~((f))~~ (h) A substance included in Schedule V must be distributed
23 or dispensed only for a medical purpose.

24 ~~((g))~~ (i) A practitioner may dispense or deliver a controlled
25 substance to or for an individual or animal only for medical treatment
26 or authorized research in the ordinary course of that practitioner's
27 profession. Medical treatment includes dispensing or administering a
28 narcotic drug for pain, including intractable pain.

29 ~~((h))~~ (j) No administrative sanction, or civil or criminal
30 liability, authorized or created by this chapter may be imposed on a
31 pharmacist for action taken in reliance on a reasonable belief that an
32 order purporting to be a prescription was issued by a practitioner in
33 the usual course of professional treatment or in authorized research.

34 ~~((i))~~ (k) An individual practitioner may not dispense a substance
35 included in Schedule II, III, or IV for that individual practitioner's
36 personal use.

1 **Sec. 3.** RCW 69.50.312 and 1998 c 222 s 4 are each amended to read
2 as follows:

3 (1) Information concerning an original prescription for a
4 controlled substance included in Schedules II through V, or information
5 concerning a prescription refill for a controlled substance included in
6 Schedules III through V may be electronically communicated to a
7 pharmacy of the patient's choice pursuant to the provisions of this
8 chapter if the electronically communicated prescription information
9 complies with the following:

10 (a) Electronically communicated prescription information must
11 comply with all applicable statutes and rules regarding the form,
12 content, recordkeeping, and processing of a prescription for a legend
13 drug;

14 (b) The system used for transmitting electronically communicated
15 prescription information and the system used for receiving
16 electronically communicated prescription information must be approved
17 by the board and meet the requirements for electronic orders and
18 prescriptions set forth in Title 21 C.F.R. Parts 1300, 1304, 1306, and
19 1311 in effect on the effective date of this section if used to
20 transmit prescription information for controlled substances included in
21 Schedules II through V. This subsection does not apply to currently
22 used facsimile equipment transmitting an exact visual image of the
23 prescription. The board shall maintain and provide, upon request, a
24 list of systems used for electronically communicating prescription
25 information currently approved by the board;

26 (c) An explicit opportunity for practitioners must be made to
27 indicate their preference on whether a therapeutically equivalent
28 generic drug may be substituted;

29 (d) Prescription drug orders are confidential health information,
30 and may be released only to the patient or the patient's authorized
31 representative, the prescriber or other authorized practitioner then
32 caring for the patient, or other persons specifically authorized by law
33 to receive such information;

34 (e) To maintain confidentiality of prescription records, the
35 electronic system shall have adequate security and systems safeguards
36 designed to prevent and detect unauthorized access, modification, or
37 manipulation of these records. The pharmacist in charge shall
38 establish or verify the existence of policies and procedures which

1 ensure the integrity and confidentiality of prescription information
2 transmitted to the pharmacy by electronic means. All managers,
3 employees, and agents of the pharmacy are required to read, sign, and
4 comply with the established policies and procedures; and

5 (f) The pharmacist shall exercise professional judgment regarding
6 the accuracy, validity, and authenticity of the prescription drug order
7 received by way of electronic transmission, consistent with federal and
8 state laws and rules and guidelines of the board.

9 (2) The board may adopt rules implementing this section.

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