

# SENATE BILL REPORT

## SSB 5601

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As Amended by House, April 16, 2013

**Title:** An act relating to ensuring chapter 19.68 RCW is interpreted in a manner consistent with the federal antikickback statute

**Brief Description:** Concerning interpretation of state law regarding rebating practices by health care entities.

**Sponsors:** Senate Committee on Health Care (originally sponsored by Senators Becker, Cleveland, Dammeier and Schlicher).

**Brief History:**

**Committee Activity:** Health Care: 2/19/13, 2/21/13 [DPS].

Passed Senate: 3/05/13, 49-0.

Passed House: 4/16/13, 96-0.

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### SENATE COMMITTEE ON HEALTH CARE

**Majority Report:** That Substitute Senate Bill No. 5601 be substituted therefor, and the substitute bill do pass.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Keiser, Ranking Member; Bailey, Cleveland, Ericksen, Frockt, Parlette and Schlicher.

**Staff:** Mich'l Needham (786-7442)

**Background:** Federal law known as the anti-kickback statute, provides criminal penalties for individuals or entities that knowingly and willingly offer, pay, solicit, or receive remuneration in order to induce or reward the referral of business reimbursable under any federal health care programs. The types of remuneration specifically prohibited include kickbacks, bribes, and rebates made in cash or in kind. Subsequent legislation established safe-harbor protections for certain arrangements involving the donation of electronic prescribing and electronic health records software and training services.

The state law on rebating or kick-backs for health professions does not allow the rebate, refund, commission or profit by any means in connection with the following: the referral of patients; in connection with the furnishing of medical, surgical, or dental care, diagnosis, treatment or service; on the sale, rental, furnishing, or supplying of clinical laboratory supplies of any kind; or any goods, services, or supplies prescribed for medical diagnosis,

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care, or treatment. The state law on rebating has not been updated in a decade, and it does not reflect the federal safe harbors that have been developed in recent years.

**Summary of Substitute Bill:** The state rebating law is amended to indicate the law may not be construed to limit or prohibit the donation of electronic health record technology or other activity by any entity, including a hospital that operates a clinical laboratory, when the donation or other activity is allowed by federal law or does not otherwise violate federal law. The provisions do not apply to an entity that operates principally as a clinical laboratory.

Electronic health record technology is defined to mean items and services, in the form of software or information technology and training services, used to create, maintain, transmit, or receive electronic health records.

**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: Hospitals have been donating electronic medical records to providers to assist in the implementation of portable health records for years. The federal safe harbor was assumed to cover the donations but a recent Attorney General opinion on clinical laboratories created concern that it may be more broadly interpreted. This bill will ensure that state law is interpreted in a manner consistent with all the safe harbors provided in federal law. The state law was not updated because it assumed that federal language provided enough protection, but now we need more certainty. The emergency clause is to protect those who received the donated equipment for the last several years.

**Persons Testifying:** PRO: Barbara Gorham, WA State Hospital Assn.; Dr. Mark Adams, Franciscan Health System.

**House Amendment(s):** The act applies retroactively to June 1, 2006 and prospectively. The retroactive date captures the time frame covered by the federal regulations.