
HOUSE BILL 2438

State of Washington

66th Legislature

2020 Regular Session

By Representatives Kilduff, Davis, Orwall, Robinson, Kloba, Thai, Peterson, Macri, Ormsby, Pollet, Wylie, and Doglio

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1 AN ACT Relating to establishment of the prescription opioid
2 impact account; amending RCW 70.225.040; adding a new chapter to
3 Title 69 RCW; and prescribing penalties.

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

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

6 (a) According to the centers for disease control and prevention
7 the United States is in the midst of an opioid overdose epidemic;

8 (b) In 2017, opioids, including prescription opioids, heroin, and
9 fentanyl, killed more than forty-seven thousand people in the United
10 States. In 2018, opioids killed seven hundred seventy-six people in
11 Washington and caused over one thousand six hundred hospitalizations
12 for opioid overdose;

13 (c) In 2018, Washington health care providers wrote over five
14 million six hundred thousand opioid prescriptions and over three
15 billion nine hundred million morphine milligram equivalents of
16 opioid-based medications were dispensed in Washington; and

17 (d) Washington, in addition to a number of other states, has
18 filed suit against a large manufacturer of opioids alleging the
19 manufacturer used deceptive marketing practices to convince doctors
20 and the public that their drugs are effective for treating chronic

1 pain and have a low risk of addiction, contrary to overwhelming
2 medical evidence.

3 (2) The legislature recognizes that it has taken steps to respond
4 to the opioid overdose epidemic; however, funding for these efforts
5 remains lacking.

6 (3) Therefore, the legislature intends to create the prescription
7 opioid impact account to provide supplemental funding to help combat
8 the opioid overdose epidemic.

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

12 (1) "Impact fee" means a payment of money imposed upon a
13 manufacturer of prescription opioids under this chapter to pay for a
14 share of the cost of preventing and treating opioid addiction.

15 (2) "Manufacturer of prescription opioids" or "opioid
16 manufacturer" means a person who is engaged in manufacturing,
17 preparing, propagating, compounding, processing, packaging,
18 repackaging, or labeling of a prescription opioid drug, but does not
19 include a person who is engaged in the preparation and dispensing of
20 a drug pursuant to a prescription.

21 (3) "Morphine milligram equivalent" means the conversion factor
22 used to calculate the strength of an opioid using morphine dosage as
23 the comparative unit of measure.

24 (4) "Prescription monitoring program" means the program
25 established under chapter 70.225 RCW.

26 (5) "Prescription opioid" means a drug that is a controlled
27 substance under this chapter and is either an opiate, derived from
28 the opium poppy, or an opiate-like synthetic drug. "Prescription
29 opioid" does not include buprenorphine.

30 NEW SECTION. **Sec. 3.** (1) The prescription opioid impact account
31 is created in the state treasury. All fees collected by the
32 department of revenue from manufacturers of opioid prescription
33 products under section 4 of this act and any attorney fees recovered
34 by the attorney general under section 5 of this act must be deposited
35 into the account.

36 (2) Moneys in the account may be spent only after appropriation.
37 Expenditures from the account may be used to fund programs and

1 activities within the department of health or through grants to other
2 state agencies, counties, and cities to:

3 (a) Prevent opioid misuse and abuse;

4 (b) Prevent opioid overdose and overdose related deaths;

5 (c) Identify and treat opioid use disorder; and

6 (d) Reimburse the state general fund with interest for any
7 amounts appropriated to the department of health during the 2019-2021
8 biennium for costs to modify the prescription monitoring program to
9 implement the requirements of section 4 of this act.

10 (3) No county may receive funding under subsection (2) of this
11 section unless the county has levied the tax authorized in RCW
12 82.14.460.

13 (4) No more than fifteen percent of the money annually deposited
14 into the account, excluding the costs for the implementation of
15 subsection (2)(d) of this section, may be used for the administration
16 of this chapter. Costs incurred by the attorney general to bring an
17 action to enforce this chapter shall be covered by the account and
18 are not subject to or included in the fifteen percent cap on
19 administrative expenses.

20 NEW SECTION. **Sec. 4.** (1) If more than one hundred thousand
21 morphine milligram equivalents of an opioid manufacturer's
22 prescription opioid products are dispensed in this state during a
23 quarter year, the opioid manufacturer must pay a prescription opioid
24 impact fee of one cent per morphine milligram equivalent for a
25 prescription opioid dispensed and reported in the prescription
26 monitoring program.

27 (2) The department of revenue shall:

28 (a) Calculate the total amount of the impact fee on a quarterly
29 basis using the information in the prescription monitoring program;
30 and

31 (b) Send an invoice to manufacturers of prescription opioids
32 dispensed in this state for the impact fee due under this section
33 quarterly.

34 (3) Manufacturers of prescription opioids shall pay the impact
35 fee no later than forty-five days after the date of an invoice. If a
36 manufacturer of prescription opioids fails to pay the impact fee
37 within forty-five days of the date of an invoice, the department of
38 revenue shall assess a penalty of one hundred dollars per day or ten
39 percent of the impact fee due, whichever is greater.

1 NEW SECTION. **Sec. 5.** (1) A manufacturer who disputes the
2 amount an invoice sent under section 4 of this act is entitled to the
3 appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180,
4 82.32.190, and 82.32.200.

5 (2) The attorney general may bring an action on behalf of the
6 state to enforce this chapter. The attorney general may recover
7 interest and reasonable attorney fees and expenses as a result of a
8 successful action to enforce this chapter. Any attorney fees
9 recovered in an action to enforce this chapter must be remitted to
10 the prescription opioid impact account.

11 NEW SECTION. **Sec. 6.** The department of revenue may adopt rules
12 necessary to implement this chapter.

13 **Sec. 7.** RCW 70.225.040 and 2019 c 314 s 23 are each amended to
14 read as follows:

15 (1) All information submitted to the prescription monitoring
16 program is confidential, exempt from public inspection, copying, and
17 disclosure under chapter 42.56 RCW, not subject to subpoena or
18 discovery in any civil action, and protected under federal health
19 care information privacy requirements, except as provided in
20 subsections (3) through (6) of this section. Such confidentiality and
21 exemption from disclosure continues whenever information from the
22 prescription monitoring program is provided to a requestor under
23 subsection (3), (4), (5), or (6) of this section except when used in
24 proceedings specifically authorized in subsection (3), (4), or (5) of
25 this section.

26 (2) The department must maintain procedures to ensure that the
27 privacy and confidentiality of all information collected, recorded,
28 transmitted, and maintained including, but not limited to, the
29 prescriber, requestor, dispenser, patient, and persons who received
30 prescriptions from dispensers, is not disclosed to persons except as
31 in subsections (3) through (6) of this section.

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

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

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

1 (c) A health professional licensing, certification, or regulatory
2 agency or entity in this or another jurisdiction. Consistent with
3 current practice, the data provided may be used in legal proceedings
4 concerning the license;

5 (d) Appropriate law enforcement or prosecutorial officials,
6 including local, state, and federal officials and officials of
7 federally recognized tribes, who are engaged in a bona fide specific
8 investigation involving a designated person;

9 (e) The director or the director's designee within the health
10 care authority regarding medicaid recipients and members of the
11 health care authority self-funded or self-insured health plans;

12 (f) The director or director's designee within the department of
13 labor and industries regarding workers' compensation claimants;

14 (g) The director or the director's designee within the department
15 of corrections regarding offenders committed to the department of
16 corrections;

17 (h) Other entities under grand jury subpoena or court order;

18 (i) Personnel of the department for purposes of:

19 (i) Assessing prescribing and treatment practices and morbidity
20 and mortality related to use of controlled substances and developing
21 and implementing initiatives to protect the public health including,
22 but not limited to, initiatives to address opioid use disorder;

23 (ii) Providing quality improvement feedback to prescribers,
24 including comparison of their respective data to aggregate data for
25 prescribers with the same type of license and same specialty; and

26 (iii) Administration and enforcement of this chapter or chapter
27 69.50 RCW;

28 (j) Personnel of a test site that meet the standards under RCW
29 70.225.070 pursuant to an agreement between the test site and a
30 person identified in (a) of this subsection to provide assistance in
31 determining which medications are being used by an identified patient
32 who is under the care of that person;

33 (k) A health care facility or entity for the purpose of providing
34 medical or pharmaceutical care to the patients of the facility or
35 entity, or for quality improvement purposes if the facility or entity
36 is licensed by the department or is licensed or certified under
37 chapter 71.24, 71.34, or 71.05 RCW or is an entity deemed for
38 purposes of chapter 71.24 RCW to meet state minimum standards as a
39 result of accreditation by a recognized behavioral health accrediting

1 body, or is operated by the federal government or a federally
2 recognized Indian tribe;

3 (l) A health care provider group of five or more prescribers or
4 dispensers for purposes of providing medical or pharmaceutical care
5 to the patients of the provider group, or for quality improvement
6 purposes if all the prescribers or dispensers in the provider group
7 are licensed by the department or the provider group is operated by
8 the federal government or a federally recognized Indian tribe;

9 (m) The local health officer of a local health jurisdiction for
10 the purposes of patient follow-up and care coordination following a
11 controlled substance overdose event. For the purposes of this
12 subsection "local health officer" has the same meaning as in RCW
13 70.05.010; (~~and~~)

14 (n) The coordinated care electronic tracking program developed in
15 response to section 213, chapter 7, Laws of 2012 2nd sp. sess.,
16 commonly referred to as the seven best practices in emergency
17 medicine, for the purposes of providing:

18 (i) Prescription monitoring program data to emergency department
19 personnel when the patient registers in the emergency department; and

20 (ii) Notice to local health officers who have made opioid-related
21 overdose a notifiable condition under RCW 70.05.070 as authorized by
22 rules adopted under RCW 43.20.050, providers, appropriate care
23 coordination staff, and prescribers listed in the patient's
24 prescription monitoring program record that the patient has
25 experienced a controlled substance overdose event. The department
26 shall determine the content and format of the notice in consultation
27 with the Washington state hospital association, Washington state
28 medical association, and Washington state health care authority, and
29 the notice may be modified as necessary to reflect current needs and
30 best practices; and

31 (o) The department of revenue for purposes of billing
32 prescription opioid manufacturers for the prescription opioid impact
33 fee as required by chapter 69.--- RCW (the new chapter created in
34 section 8 of this act).

35 (4) The department shall, on at least a quarterly basis, and
36 pursuant to a schedule determined by the department, provide a
37 facility or entity identified under subsection (3)(k) of this section
38 or a provider group identified under subsection (3)(l) of this
39 section with facility or entity and individual prescriber information
40 if the facility, entity, or provider group:

1 (a) Uses the information only for internal quality improvement
2 and individual prescriber quality improvement feedback purposes and
3 does not use the information as the sole basis for any medical staff
4 sanction or adverse employment action; and

5 (b) Provides to the department a standardized list of current
6 prescribers of the facility, entity, or provider group. The specific
7 facility, entity, or provider group information provided pursuant to
8 this subsection and the requirements under this subsection must be
9 determined by the department in consultation with the Washington
10 state hospital association, Washington state medical association, and
11 Washington state health care authority, and may be modified as
12 necessary to reflect current needs and best practices.

13 (5)(a) The department may publish or provide data to public or
14 private entities for statistical, research, or educational purposes
15 after removing information that could be used directly or indirectly
16 to identify individual patients, requestors, dispensers, prescribers,
17 and persons who received prescriptions from dispensers. Direct and
18 indirect patient identifiers may be provided for research that has
19 been approved by the Washington state institutional review board and
20 by the department through a data-sharing agreement.

21 (b)(i) The department may provide dispenser and prescriber data
22 and data that includes indirect patient identifiers to the Washington
23 state hospital association for use solely in connection with its
24 coordinated quality improvement program maintained under RCW
25 43.70.510 after entering into a data use agreement as specified in
26 RCW 43.70.052(8) with the association. The department may provide
27 dispenser and prescriber data and data that includes indirect patient
28 identifiers to the Washington state medical association for use
29 solely in connection with its coordinated quality improvement program
30 maintained under RCW 43.70.510 after entering into a data use
31 agreement with the association.

32 (ii) The department may provide data including direct and
33 indirect patient identifiers to the department of social and health
34 services office of research and data analysis, the department of
35 labor and industries, and the health care authority for research that
36 has been approved by the Washington state institutional review board
37 and, with a data-sharing agreement approved by the department, for
38 public health purposes to improve the prevention or treatment of
39 substance use disorders.

1 (iii) The department may provide a prescriber feedback report to
2 the largest health professional association representing each of the
3 prescribing professions. The health professional associations must
4 distribute the feedback report to prescribers engaged in the
5 professions represented by the associations for quality improvement
6 purposes, so long as the reports contain no direct patient
7 identifiers that could be used to identify individual patients,
8 dispensers, and persons who received prescriptions from dispensers,
9 and the association enters into a written data-sharing agreement with
10 the department. However, reports may include indirect patient
11 identifiers as agreed to by the department and the association in a
12 written data-sharing agreement.

13 (c) For the purposes of this subsection:

14 (i) "Indirect patient identifiers" means data that may include:
15 Hospital or provider identifiers, a five-digit zip code, county,
16 state, and country of resident; dates that include month and year;
17 age in years; and race and ethnicity; but does not include the
18 patient's first name; middle name; last name; social security number;
19 control or medical record number; zip code plus four digits; dates
20 that include day, month, and year; or admission and discharge date in
21 combination; and

22 (ii) "Prescribing professions" include:

- 23 (A) Allopathic physicians and physician assistants;
- 24 (B) Osteopathic physicians and physician assistants;
- 25 (C) Podiatric physicians;
- 26 (D) Dentists; and
- 27 (E) Advanced registered nurse practitioners.

28 (6) The department may enter into agreements to exchange
29 prescription monitoring program data with established prescription
30 monitoring programs in other jurisdictions. Under these agreements,
31 the department may share prescription monitoring system data
32 containing direct and indirect patient identifiers with other
33 jurisdictions through a clearinghouse or prescription monitoring
34 program data exchange that meets federal health care information
35 privacy requirements. Data the department receives from other
36 jurisdictions must be retained, used, protected, and destroyed as
37 provided by the agreements to the extent consistent with the laws in
38 this state.

39 (7) Persons authorized in subsections (3) through (6) of this
40 section to receive data in the prescription monitoring program from

1 the department, acting in good faith, are immune from any civil,
2 criminal, disciplinary, or administrative liability that might
3 otherwise be incurred or imposed for acting under this chapter.

4 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
5 constitute a new chapter in Title 69 RCW.

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