H-1033.3

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**SECOND SUBSTITUTE HOUSE BILL 1161**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Peterson, Davis, Pollet, and Thai)

AN ACT Relating to modifying the requirements for drug take-back programs; amending RCW 69.48.010, 69.48.050, 69.48.070, 69.48.120, 43.131.423, and 43.131.424; and creating a new section.

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

**Sec.**  RCW 69.48.010 and 2018 c 196 s 1 are each amended to read as follows:

(1) Abuse, fatal overdoses, and poisonings from prescription and over-the-counter medicines used in the home have emerged as an epidemic in recent years. Poisoning is the leading cause of unintentional injury-related death in Washington, and more than ninety percent of poisoning deaths are due to drug overdoses. Poisoning by prescription and over-the-counter medicines is also one of the most common means of suicide and suicide attempts, with poisonings involved in more than twenty-eight thousand suicide attempts between 2004 and 2013.

(2) Home medicine cabinets are the most common source of prescription drugs that are diverted and misused. Studies find about seventy percent of those who abuse prescription medicines obtain the drugs from family members or friends, usually for free. People who are addicted to heroin often first abused prescription opiate medicines. Unused, unwanted, and expired medicines that accumulate in homes increase risks of drug abuse, overdoses, and preventable poisonings.

(3) A safe system for the collection and disposal of unused, unwanted, and expired medicines is a key element of a comprehensive strategy to prevent prescription drug abuse, but disposing of medicines by flushing them down the toilet or placing them in the garbage can contaminate groundwater and other bodies of water, contributing to long-term harm to the environment and animal life.

(4) The legislature therefore finds that it is in the interest of public health to establish a single, uniform, statewide system of regulation for safe and secure collection and disposal of medicines through ((~~a uniform~~)) drug "take-back" programs operated and funded by drug manufacturers.

NEW SECTION. **Sec.**  (1) The legislature finds that in 2018, the legislature passed Engrossed Substitute House Bill No. 1047, which required drug manufacturers that sell drugs into Washington to operate a drug take-back program to collect and dispose of prescription and over-the-counter drugs. Further, the legislature finds that there is uncertainty about whether, under current law, more than one drug take-back program may operate.

(2) Therefore, the legislature intends to clearly authorize the department of health to approve and allow the operation of multiple drug take-back programs that meet all statutory requirements.

**Sec.**  RCW 69.48.050 and 2018 c 196 s 5 are each amended to read as follows:

(1) By July 1, 2019, a program operator must submit a proposal for the establishment and implementation of a drug take-back program to the department for approval. Proposals from new entities seeking to become a program operator after July 1, 2019, may be submitted as provided in subsection (7) of this section. The department shall approve a proposed program if the applicant submits a completed application, the proposed program meets the requirements of subsection (2) of this section, and the applicant pays the appropriate proposal review fee established by the department under RCW 69.48.120. The department may approve drug take-back programs proposed by one or more program operators consistent with the provisions of this section.

(2) To be approved by the department, a proposed drug take-back program, independent of any other operating program, must:

(a) Identify and provide contact information for the program operator and each participating covered manufacturer;

(b) Identify and provide contact information for the authorized collectors for the proposed program, as well as the reasons for excluding any potential authorized collectors from participation in the program;

(c) Provide for a collection system that complies with RCW 69.48.060;

(d) Ensure that physical collection sites are the primary method of collection across the state and that methods of supplementing physical collection site service are the secondary methods for collection as required by RCW 69.48.060(3) (b) through (d). A drug take-back program's use of supplemental mail-back distribution locations or periodic collection events in any areas underserved by physical collection sites may provide collection services to no more than 15 percent of the state's residents;

(e) Provide for a handling and disposal system that complies with RCW 69.48.080;

((~~(e)~~)) (f) Identify any transporters and waste disposal facilities that the program will use;

((~~(f)~~)) (g) Adopt policies and procedures to be followed by persons handling covered drugs collected under the program to ensure safety, security, and compliance with regulations adopted by the United States drug enforcement administration, as well as any applicable laws;

((~~(g)~~)) (h) Ensure the security of patient information on drug packaging during collection, transportation, recycling, and disposal;

((~~(h)~~)) (i) Promote the program by providing consumers, pharmacies, and other entities with educational and informational materials as required by RCW 69.48.070;

((~~(i)~~)) (j) Demonstrate adequate funding for all administrative and operational costs of the drug take-back program, with costs apportioned among participating covered manufacturers;

((~~(j)~~)) (k) Set long-term and short-term goals with respect to collection amounts and public awareness; and

((~~(k)~~)) (l) Consider: (i) The use of existing providers of pharmaceutical waste transportation and disposal services; (ii) separation of covered drugs from packaging to reduce transportation and disposal costs; and (iii) recycling of drug packaging.

(3)(a) No later than one hundred twenty days after receipt of a drug take-back program proposal, the department shall either approve or reject the proposal in writing to the applicant. The department may extend the deadline for approval or rejection of a proposal for good cause. If the department rejects the proposal, it shall provide the reason for rejection.

(b) No later than ninety days after receipt of a notice of rejection under (a) of this subsection, the applicant shall submit a revised proposal to the department. The department shall either approve or reject the revised proposal in writing to the applicant within ninety days after receipt of the revised proposal, including the reason for rejection, if applicable.

(c) If the department rejects a revised proposal, the department may:

(i) Require the program operator to submit a further revised proposal;

(ii) Develop and impose changes to some or all of the revised proposal to address deficiencies;

(iii) Require the covered manufacturer or covered manufacturers that proposed the rejected revised proposal to participate in a previously approved drug take-back program; or

(iv) Find the covered manufacturer out of compliance with the requirements of this chapter and take enforcement action as provided in RCW 69.48.110.

(4) The program operator must ((~~initiate operation of~~)) fully implement an approved drug take-back program no later than one hundred eighty days after approval of the proposal by the department.

(5)(a) Proposed changes to an approved drug take-back program that substantially alter program operations must have prior written approval of the department. A program operator must submit to the department such a proposed change in writing at least fifteen days before the change is scheduled to occur. Changes requiring prior approval of the department include changes to participating covered manufacturers, collection methods, achievement of the service convenience goal described in RCW 69.48.060, policies and procedures for handling covered drugs, education and promotion methods, and selection of disposal facilities.

(b) For changes to a drug take-back program that do not substantially alter program operations, a program operator must notify the department at least seven days before implementing the change. Changes that do not substantially alter program operations include changes to collection site locations, methods for scheduling and locating periodic collection events, and methods for distributing prepaid, preaddressed mailers.

(c) A program operator must notify the department of any changes to the official point of contact for the program no later than fifteen days after the change. A program operator must notify the department of any changes in ownership or contact information for participating covered manufacturers no later than ninety days after such change.

(6) ((~~No later than four years after a drug take-back program initiates operations~~)) By July 1, 2024, and every four years thereafter, ((~~the~~)) all program operators must submit an updated proposal to the department describing any substantive changes to program elements described in subsection (2) of this section. The department shall approve or reject the updated proposal using the process described in subsection (3) of this section.

(7)(a) On July 1, 2021, the department will begin the review of new proposals received by that date from entities seeking to become a program operator.

(b) Beginning July 1, 2024, and every four years thereafter, the department will review new proposals from entities seeking to become a program operator.

(c) The department shall approve a proposal if it meets the requirements in subsection (2) of this section and the applicant pays the appropriate fee established by the department under RCW 69.48.120. The department must approve or reject proposals received using the process provided in subsection (3) of this section.

(8)(a) If there is a single approved drug take-back program at any time and that program operator intends to leave the program for any reason, participating manufacturers must find a new entity to take over operations of the existing program without a break in program services. The new entity may not make changes to the operations of the approved program, which must be consistent with the proposal as it was approved by the department under this section, or each covered manufacturer or group of covered manufacturers must identify a new program operator to develop a new program proposal. The department must accept new proposals from potential program operators for a minimum of four months from the date the department is notified of the program operator intending to cease operations, or until a proposal is approved by the department. The department may approve a proposal if it meets the requirements in subsection (2) of this section and the applicant pays the appropriate fee established by the department under RCW 69.48.120. The department must approve or reject proposals received using the process described in subsection (3) of this section.

(b) If there is a single approved drug take-back program, and that program operator leaves the program and participating manufacturers do not identify a program operator to take over the approved program as provided in (a) of this subsection, all covered manufacturers must participate in a new approved drug take-back program as soon as one is approved.

(9) If there is more than one approved drug take-back program, and a program operator for a drug take-back program leaves the program for any reason and the covered manufacturers participating in that program fail to identify a new entity to take over operations of the existing program without a break in program services as described in subsection (8)(a) of this section, those manufacturers must immediately join an existing approved drug take-back program.

(10) A covered manufacturer may change the approved drug take-back program it participates in but the covered manufacturer must maintain continuous participation in an established drug take-back program and may not leave an approved program until it transfers participation to an approved drug take-back program that has begun drug collection.

(11) The department shall make all proposals submitted under this section available to the public and shall provide an opportunity for written public comment on each proposal.

(12)(a) All program operators must collaborate to present a consistent statewide drug take-back system for residents to ensure that all state residents can easily identify, understand, and access services provided by any approved drug take-back program. The department may identify or clarify in rule additional requirements for coordination or performance amongst program operators, if necessary, to ensure consistent operation of the drug take-back program. Requirements may include, but are not limited to: Consistent drop box appearance and signage; consistent messaging in education and outreach; and consistent metrics included in operator annual reports as required in RCW 69.48.100 to ensure the department can accurately analyze the data.

(b) Failure to comply with these requirements may result in enforcement action against a program operator as authorized under RCW 69.48.110.

**Sec.**  RCW 69.48.070 and 2018 c 196 s 7 are each amended to read as follows:

(1) A drug take-back program must develop and provide a system of promotion, education, and public outreach about the safe storage and secure collection of covered drugs. This system may include signage, written materials to be provided at the time of purchase or delivery of covered drugs, and advertising or other promotional materials. At a minimum, each program must:

(a) Promote the safe storage of legend drugs and nonlegend drugs by residents before secure disposal through a drug take-back program;

(b) Discourage residents from disposing of covered drugs in solid waste collection, sewer, or septic systems;

(c) Promote the use of the drug take-back program so that where and how to return covered drugs is widely understood by residents, pharmacists, retail pharmacies, health care facilities and providers, veterinarians, and veterinary hospitals;

(d) Establish a toll-free telephone number and website publicizing collection options and collection sites and discouraging improper disposal practices for covered drugs, such as flushing them or placing them in the garbage;

(e) Prepare educational and outreach materials that: Promote safe storage of covered drugs; discourage the disposal of covered drugs in solid waste collection, sewer, or septic systems; and describe how to return covered drugs to the drug take-back program. The materials must use plain language and explanatory images to make collection services and discouraged disposal practices readily understandable to all residents, including residents with limited English proficiency;

(f) Disseminate the educational and outreach materials described in (e) of this subsection to pharmacies, health care facilities, and other interested parties for dissemination to covered entities;

(g) Work with authorized collectors to develop a readily recognizable, consistent design of collection receptacles, as well as clear, standardized instructions for covered entities on the use of collection receptacles. The department may provide guidance to program operators on the development of the instructions and design; and

(h) Annually report on its promotion, outreach, and public education activities in its annual report required by RCW 69.48.100.

(2) If more than one drug take-back program is approved by the department, the programs must coordinate their promotional activities to ensure that all state residents can easily identify, understand, and access the collection services provided by any drug take-back program. Coordination efforts must include providing residents with a single toll-free telephone number and single website to access information about collection services for every approved program, including presenting all available collection sites, mail-back distribution locations, and take-back events to ensure residents are able to access the most convenient method of collection, regardless of the program operator, and must manage requests for prepaid, preaddressed mailing envelopes from covered entities and from retail pharmacies as provided in RCW 69.48.060(3)(e).

(3) Pharmacies and other entities that sell medication in the state are encouraged to promote secure disposal of covered drugs through the use of one or more approved drug take-back programs. Upon request, a pharmacy must provide materials explaining the use of approved drug take-back programs to its customers. The program operator must provide pharmacies with these materials upon request and at no cost to the pharmacy.

(4) The department, the health care authority, the department of social and health services, the department of ecology, and any other state agency that is responsible for health, solid waste management, and wastewater treatment shall, through their standard educational methods, promote safe storage of prescription and nonprescription drugs by covered entities, secure disposal of covered drugs through a drug take-back program, and the toll-free telephone number and website for approved drug take-back programs. Local health jurisdictions and local government agencies are encouraged to promote approved drug take-back programs.

(5) The department:

(a) Shall conduct a survey of covered entities and a survey of pharmacists, health care providers, and veterinarians who interact with covered entities on the use of medicines after the first full year of operation of the drug take-back program, and again every two years thereafter. Survey questions must: Measure consumer awareness of the drug take-back program; assess the extent to which collection sites and other collection methods are convenient and easy to use; assess knowledge and attitudes about risks of abuse, poisonings, and overdoses from drugs used in the home; and assess covered entities' practices with respect to unused, unwanted, or expired drugs, both currently and prior to implementation of the drug take-back program; and

(b) May, upon review of results of public awareness surveys, direct a program operator for an approved drug take-back program to modify the program's promotion and outreach activities to better achieve widespread awareness among Washington state residents and health care professionals about where and how to return covered drugs to the drug take-back program.

**Sec.**  RCW 69.48.120 and 2018 c 196 s 12 are each amended to read as follows:

(1)(a) ((~~By July 1, 2019, the~~)) The department shall: Determine its costs for the administration, oversight, and enforcement of the requirements of this chapter, including, but not limited to, a fee for proposal review, and the survey required under RCW 69.48.200; pursuant to RCW 43.70.250, set fees at a level sufficient to recover the costs associated with administration, oversight, and enforcement; and adopt rules establishing requirements for program operator proposals.

(b) The department shall not impose any fees in excess of its actual administrative, oversight, and enforcement costs. The fees collected from each program operator in calendar year 2020 and any subsequent year may not exceed ten percent of the program's annual expenditures as reported to the department in the annual report required by RCW 69.48.100 and determined by the department.

(c) Adjustments to the department's fees may be made annually and shall not exceed actual administration, oversight, and enforcement costs. Adjustments for inflation may not exceed the percentage change in the consumer price index for all urban consumers in the United States as calculated by the United States department of labor as averaged by city for the twelve-month period ending with June of the previous year.

(d) The annual fee set by the department shall be evenly split amongst each approved program operator.

(e) The department shall collect annual operating fees from each program operator by October 1, 2019, and annually thereafter.

(f) Between the effective date of this section and January 1, 2024, the department shall collect a nonrefundable one-time fee of $157,000 for review of proposals from each potential program operator applicant as provided in RCW 69.48.050.

(2) All fees collected under this section must be deposited in the secure drug take-back program account established in RCW 69.48.130.

**Sec.**  RCW 43.131.423 and 2018 c 196 s 26 are each amended to read as follows:

The authorization for drug take-back programs created in chapter 196, Laws of 2018 and chapter . . ., Laws of 2021 (sections 1 through 5 of this act) shall be terminated on January 1, 2029, as provided in RCW 43.131.424.

**Sec.**  RCW 43.131.424 and 2018 c 196 s 27 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective January 1, 2030:

(1) RCW 69.48.010 and 2021 c . . . s 1 (section 1 of this act) & 2018 c 196 s 1;

(2) RCW 69.48.020 and 2018 c 196 s 2;

((~~(2)~~)) (3) RCW 69.48.030 and 2018 c 196 s 3;

((~~(3)~~)) (4) RCW 69.48.040 and 2018 c 196 s 4;

((~~(4)~~)) (5) RCW 69.48.050 and 2021 c . . . s 3 (section 3 of this act) & 2018 c 196 s 5;

((~~(5)~~)) (6) RCW 69.48.060 and 2018 c 196 s 6;

((~~(6)~~)) (7) RCW 69.48.070 and 2021 c . . . s 4 (section 4 of this act) & 2018 c 196 s 7;

((~~(7)~~)) (8) RCW 69.48.080 and 2018 c 196 s 8;

((~~(8)~~)) (9) RCW 69.48.090 and 2018 c 196 s 9;

((~~(9)~~)) (10) RCW 69.48.100 and 2018 c 196 s 10;

((~~(10)~~)) (11) RCW 69.48.110 and 2018 c 196 s 11;

((~~(11)~~)) (12) RCW 69.48.120 and 2021 c . . . s 5 (section 5 of this act) & 2018 c 196 s 12;

((~~(12)~~)) (13) RCW 69.48.130 and 2018 c 196 s 13;

((~~(13)~~)) (14) RCW 69.48.140 and 2018 c 196 s 14;

((~~(14)~~)) (15) RCW 69.48.150 and 2018 c 196 s 15;

((~~(15)~~)) (16) RCW 69.48.160 and 2018 c 196 s 16;

((~~(16)~~)) (17) RCW 69.48.170 and 2018 c 196 s 17;

((~~(17)~~)) (18) RCW 69.48.180 and 2018 c 196 s 18;

((~~(18)~~)) (19) RCW 69.48.190 and 2018 c 196 s 19; and

((~~(19)~~)) (20) RCW 69.48.200 and 2018 c 196 s 20.

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