
SUBSTITUTE SENATE BILL 5917

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, Keiser, Fairley, Kastama, Franklin, Marr and Kline)

READ FIRST TIME 02/27/07.

1 AN ACT Relating to prescription drug marketing and disclosure;
2 adding a new chapter to Title 69 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The purpose of this chapter is to require
5 disclosure and reporting of gifts, grants, and gratuities made by
6 pharmaceutical manufacturing companies, directly or indirectly, to any
7 person or entity authorized to prescribe, dispense, or purchase
8 prescription drugs in Washington.

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

11 (1) "Department" means the department of health.

12 (2) "Gift, fee, or payment" includes any subsidy or other economic
13 benefit provided in connection with detailing, promotional, or other
14 marketing activities by the company directly or through its
15 pharmaceutical marketers. This does not include payments made in
16 conjunction with returned merchandise, overpayments, and other normal
17 course-of-business financial dealings unrelated to detailing,
18 promotional, or other marketing activities.

1 (3) "Group purchasing organization" means any group of two or more
2 hospitals, nursing homes, or other health care organizations that
3 collectively purchase either directly from a pharmaceutical
4 manufacturing company or by accessing contracts through another group.

5 (4) "Health benefit plan administrator" means any person or entity
6 who manages or administers a private, self-insured health benefit plan
7 or public employee health benefit plan and any person who manages or
8 administers health benefit plans for another person, including health
9 insuring corporations and sickness and accident insurers under contract
10 to provide managerial and administrative services.

11 (5) "Pharmaceutical detailing, promotional, or marketing
12 activities" means promotional or educational activities by
13 pharmaceutical marketers directed at physicians, their staff, or other
14 health care professionals who prescribe, dispense, or administer
15 prescription drugs.

16 (6) "Pharmaceutical manufacturing company" means an entity that is
17 engaged in the production, preparation, propagation, compounding,
18 conversion, or processing of prescription drugs, either directly or
19 indirectly by extraction from substances of natural origin, or
20 independently by means of chemical synthesis, or by a combination of
21 extraction and chemical synthesis, or any entity engaged in the
22 packaging, repackaging, labeling, relabeling, or distribution of
23 prescription drugs. This term does not include pharmacists or
24 pharmacies licensed under this chapter or pharmacy operations of any
25 integrated delivery system undertaken for the benefit of patients
26 obtaining care through that system.

27 (7) "Pharmaceutical marketer" means a person, agent, or
28 representative who, while employed by or under contract to represent a
29 pharmaceutical manufacturing company, engages in pharmaceutical
30 detailing, promotional activities, or other marketing of prescription
31 drugs in this state to any entity or person authorized to prescribe,
32 dispense, or purchase prescription drugs in this state.

33 (8) "Pharmacy benefit manager" means a person or business entity
34 that administers or otherwise assists with prescription drug benefit
35 services including formulary management, rebates, discounted pharmacy
36 network, mail service pharmacies, and electronic claims processing.
37 Such services may be provided on behalf of a health insurer, an
38 employer-sponsored health benefit plan, or an agency of the state.

1 NEW SECTION. **Sec. 3.** (1) On or before January 1st of each year,
2 every pharmaceutical manufacturing company must disclose to the
3 department the value, nature, and purpose of any gift, fee, or payment
4 made to any:

5 (a) Entity that employs a health care professional licensed under
6 Title 18 RCW who is authorized to prescribe or dispense prescription
7 drugs;

8 (b) Hospital licensed under chapter 70.41 RCW;

9 (c) Health benefit plan administrator;

10 (d) Group purchasing organization or pharmacy benefit manager; or

11 (e) Other entity authorized to purchase prescription drugs in this
12 state.

13 (2) Disclosure to the department must:

14 (a) Include direct payments made by the company as well as indirect
15 payments made through any other entity at the direction of or with the
16 implied or express knowledge of the company;

17 (b) Include the names of all practices or entities receiving a
18 gift, fee, or payment;

19 (c) Be made in electronic format in a manner prescribed by the
20 department;

21 (d) Initially be made on or before January 1, 2009, for the
22 twelve-month period ending June 30, 2008; and

23 (e) Include the name and address of the individual responsible for
24 the company's compliance with the provisions of this section.

25 NEW SECTION. **Sec. 4.** The department shall:

26 (1) Report annually on the disclosures made under this section to
27 the legislature and the governor on or before March 1st of each year;

28 (2) Post its findings on its internet site, by pharmaceutical
29 manufacturer and by recipient; and

30 (3) Keep confidential all trade secrets, as defined in RCW
31 19.108.010. The disclosure form must permit the company to identify
32 any information that is a trade secret.

33 NEW SECTION. **Sec. 5.** The following are exempt from disclosure
34 under this chapter:

35 (1) Professional samples of a drug provided to a prescriber for
36 free distribution to patients;

1 (2) Items with a total combined retail value, in any calendar year,
2 of not more than one hundred dollars;

3 (3) A reasonable payment to the sponsor of a medical conference,
4 professional meeting, or other educational program, provided the
5 payment is not made directly to a practitioner and is used solely for
6 bona fide educational purposes;

7 (4) Publications and educational materials; or

8 (5) Salaries or other benefits paid to employees.

9 NEW SECTION. **Sec. 6.** The attorney general may bring an action in
10 Thurston county superior court for injunctive relief, costs, and
11 attorneys' fees, and to impose on a pharmaceutical manufacturing
12 company that fails to disclose as required by this chapter a civil
13 penalty of not more than ten thousand dollars per violation. Each
14 unlawful failure to disclose constitutes a separate violation.

15 NEW SECTION. **Sec. 7.** The department may adopt rules to implement
16 the provisions of this chapter.

17 NEW SECTION. **Sec. 8.** This chapter may be known and cited as the
18 prescription drug marketing and disclosure act.

19 NEW SECTION. **Sec. 9.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute
24 a new chapter in Title 69 RCW.

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