H-4750.1

SUBSTITUTE HOUSE BILL 2438

State of Washington 66th Legislature 2020 Regular Session

By House Appropriations (originally sponsored by Representatives Kilduff, Davis, Orwall, Robinson, Kloba, Thai, Peterson, Macri, Ormsby, Pollet, Wylie, and Doglio)

READ FIRST TIME 02/11/20.

AN ACT Relating to establishment of the prescription opioid impact account; amending RCW 70.225.040; adding a new chapter to Title 69 RCW; prescribing penalties; and providing an effective date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) "Prescription monitoring program" means the program established under chapter 70.225 RCW.

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

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

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

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

(a) Prevent opioid misuse and abuse;

(b) Prevent opioid overdose and overdose related deaths;

(c) Identify and treat opioid use disorder; and

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

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

NEW SECTION. **Sec. 4.** (1) If more than one hundred thousand morphine milligram equivalents of an opioid manufacturer's prescription opioid products are dispensed in this state during a quarter year, the department must provide a quarterly statement to the manufacturer that states the amount of opioids from the manufacturer that were dispensed in the previous quarter as reported in the prescription monitoring program. The opioid manufacturer must pay to the department a prescription opioid impact fee of one cent per morphine milligram equivalent for a prescription opioid dispensed and reported in the prescription monitoring program.

(2) If a manufacturer of prescription opioids fails to pay the impact fee within forty-five days of the date of an invoice as required under this section, the department shall assess a penalty of one hundred dollars per day or ten percent of the impact fee due, whichever is greater.

NEW SECTION. **Sec. 5.** The attorney general may bring an action on behalf of the state to enforce this chapter. The attorney general may recover interest and reasonable attorney fees and expenses as a result of a successful action to enforce this chapter. Any attorney fees recovered in an action to enforce this chapter must be remitted to the prescription opioid impact account.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Personnel of the department for purposes of:

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

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

(iii) Administration and enforcement of this chapter ((~~or~~)), chapter 69.50 RCW or chapter 69.--- RCW (the new chapter created in section 8 of this act);

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

(k) A health care facility or entity for the purpose of providing medical or pharmaceutical care to the patients of the facility or entity, or for quality improvement purposes if the facility or entity is licensed by the department or is licensed or certified under chapter 71.24, 71.34, or 71.05 RCW or is an entity deemed for purposes of chapter 71.24 RCW to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body, or is operated by the federal government or a federally recognized Indian tribe;

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

(m) The local health officer of a local health jurisdiction for the purposes of patient follow-up and care coordination following a controlled substance overdose event. For the purposes of this

subsection "local health officer" has the same meaning as in RCW 70.05.010; and

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

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

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

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

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

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

(5)(a) The department may publish or provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used directly or indirectly

to identify individual patients, requestors, dispensers, prescribers, and persons who received prescriptions from dispensers. Direct and indirect patient identifiers may be provided for research that has been approved by the Washington state institutional review board and by the department through a data-sharing agreement.

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

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

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

(c) For the purposes of this subsection:

(i) "Indirect patient identifiers" means data that may include: Hospital or provider identifiers, a five-digit zip code, county, state, and country of resident; dates that include month and year;

age in years; and race and ethnicity; but does not include the patient's first name; middle name; last name; social security number; control or medical record number; zip code plus four digits; dates that include day, month, and year; or admission and discharge date in combination; and

(ii) "Prescribing professions" include:

(A) Allopathic physicians and physician assistants;

(B) Osteopathic physicians and physician assistants;

(C) Podiatric physicians;

(D) Dentists; and

(E) Advanced registered nurse practitioners.

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

(7) Persons authorized in subsections (3) through (6) of this section to receive data in the prescription monitoring program from the department, acting in good faith, are immune from any civil, criminal, disciplinary, or administrative liability that might otherwise be incurred or imposed for acting under this chapter.

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

NEW SECTION. **Sec. 9.** This act takes effect January 1, 2021.

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