

Legislative Analysis



PRESCRIPTIONS: PROVIDE FOR FAXES & ELECTRONIC SIGNATURES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6323 (Substitute H-1)
Sponsor: Rep. Gary A. Newell
Committee: Health Policy

First Analysis (11-6-06)

BRIEF SUMMARY: The bill would allow for electronically transmitted prescriptions and prescriptions transmitted by facsimile.

FISCAL IMPACT: The bill may provide cost efficiencies to medical prescription processing, which may provide state savings for pharmaceutical medical care costs for state employees and the Medicaid program.

THE APPARENT PROBLEM:

Although research into medical errors has revealed that using computers to generate prescriptions, transmitting prescriptions from a physician's computer to a pharmacy computer or facsimile machine, or using other means of communication significantly decreases errors associated with illegible prescriptions and similarly spelled medications, there is nothing in current law that specifically authorizes physicians to electronically prescribe or electronically transmit prescriptions.

Some physicians do use a computer to write and print prescriptions, which are then handed to the patient. However, many prescriptions are not manually signed, nor do they contain an electronic signature. As a result, some health insurers are withholding reimbursement for these prescriptions. Legislation has been offered to address these concerns.

THE CONTENT OF THE BILL:

The bill would allow for electronically transmitted prescriptions and prescriptions transmitted by facsimile.

An "electronically transmitted prescription" would mean the communication of an original prescription or refill authorization by electronic means. It would include computer-to-computer transmissions, computer to facsimile machine, or electronic mail transmissions that contained the same information as when the prescriber or authorized agent transmitted the prescription. The term would not include a prescription or refill authorization transmitted by telephone or facsimile machine. Prior to dispensing a prescription that was electronically transmitted, a pharmacist would have to exercise professional judgment regarding the accuracy, validity, and authenticity of the

transmitted prescription. An electronically transmitted prescription meeting the bill's requirements would be considered the original prescription.

Except as otherwise provided in Article 7 of the code and the federal Food, Drug, and Cosmetic Act, a prescription could be transmitted electronically by a prescriber or the prescriber's authorized agent as long as the transmission was in compliance with the Health Insurance Portability and Accountability Act (HIPPA) or regulations promulgated under that act and the data were not altered or modified in the transmission process. In addition, the electronically transmitted prescription would have to include all of the following information:

- The prescriber's name, address, and telephone number.
- The patient's full name.
- An electronic signature or other identifier which specifically identified and authenticated the prescriber or the prescriber's authorized agent. ("Electronic signature" would mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. "Sign" would mean to affix one's signature manually to a document or to use an electronic signature when transmitting a prescription electronically.)
- The time and date of the transmission.
- The name of the pharmacy intended to receive the transmission.
- Any other information required by the Food, Drug, and Cosmetic Act or state law.

The equipment or system used in the transmission and communication of prescriptions would have to provide adequate confidentiality safeguards and be maintained to protect patient confidentiality as required under any applicable federal and state law and to ensure against unauthorized access.

An electronic transmission of a prescription would have to be communicated in a retrievable, recognizable form acceptable to the intended recipient. "Dispense as written" or "D.A.W." could not be the default setting. Further, the bill would include references to prescriptions transmitted by "facsimile", "electronic transmission", and "other means of communication" in several provisions.

ARGUMENTS:

For:

In an effort to reduce medical errors and improve efficiencies in prescribing, filling, and dispensing prescription medications, many health care providers around the nation are using computers to generate prescriptions for their patients. Reportedly, states that have already implemented such practices are expecting to save money, especially for Medicaid programs. Though there are pilot projects in the state using electronic transmissions of prescriptions, current law does not specifically allow such practices. And, since there are no guidelines for providers and pharmacies to follow, there is no uniformity. Some providers print the prescriptions off the computer and hand them to patients to take to a pharmacy, whereas others transmit the prescription from their computers to a pharmacy's

computer by email, or fax the prescriptions to the pharmacy. In addition, since the printing or transmission of a computer-generated prescription may be done by a person delegated by the physician, these often do not contain the signature of the physician. It is reported that some insurers have withheld reimbursements to pharmacies, claiming that an unsigned prescription is not a valid prescription.

The legislation would address these concerns by defining what would constitute an electronically transmitted prescription, approving electronic signatures for electronic transmissions, and requiring computer-generated prescriptions to contain a manual signature.

POSITIONS:

The Department of Community Health indicated support for the bill. (9-19-06)

A representative of SureScripts, LLC testified in support of the bill. (9-19-06)

A representative of the Michigan Pharmacists Association testified in support of the bill. (9-19-06)

The following organizations indicated support for the bill: Felpausch Pharmacy, CareMark, MedCo Health Solutions, Michigan Association of Health Plans, St. John Health, Michigan Health and Hospital Association, and Express Scripts.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.