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BILL ANALYSIS



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Senate Bill 352 (Substitute S-1 as passed by the Senate)
House Bill 4405 (Substitute S-1 as passed by the Senate)
House Bill 4434 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Hardiman (S.B. 352)
Representative Gretchen Whitmer (H.B. 4405)
Representative Scott Hummel (H.B. 4434)
Senate Committee: Health Policy
House Committee: Health Policy (H.B. 4404 & 4434)

Date Completed: 5-11-05

RATIONALE

Due to increasing health care costs, many employer-sponsored and individual health care plans either require or offer financial incentives for subscribers to use mail-order pharmacy companies. Reportedly, consumers often can receive medication from mail-order pharmacies at a significant discount--sometimes, more than 50%--off the price at a traditional retail pharmacy. Since the beginning of fiscal year 2004-05, mail-order pharmacies have been able to contract with the State to provide prescription drugs for the Medicaid program. The Public Health Code, however, authorizes administrative sanctions against a pharmacist who uses the mail to fill prescriptions that have been received by mail, meaning that Michigan pharmacies may not compete with out-of-State mail-order pharmacies for State contracts. Evidently, because of the loss of business to mail-order pharmacies, many local pharmacies have had to lay off pharmacists or close. It has been suggested that the possibility of sanctions should be eliminated so that Michigan pharmacists may operate mail-order services and compete for the Medicaid contracts, and that community pharmacies should be allowed to engage in centralized prescription processing, which many out-of-State competing mail-order firms use to do business.

CONTENT

Senate Bill 352 (S-1) would amend the Public Health Code to allow a pharmacy to perform centralized prescription processing services or outsource those

services to another pharmacy if certain conditions were met.

House Bill 4434 (S-1) would amend the Public Health Code to provide that pharmacies that shared a real-time, on-line database or other equivalent means of communication, or pharmacies that transferred prescriptions pursuant to a written contract for centralized prescription processing services would not have to follow the procedure established in the Code to refill a copy of a prescription from another pharmacy.

House Bill 4405 (S-1) would amend the Public Health Code to eliminate the authority of a disciplinary subcommittee to impose sanctions against a pharmacist for employing the mail to sell, distribute, or deliver a drug that requires a prescription when the prescription for the drug is received by mail.

Under Senate Bill 352 (S-1), "centralized prescription processing" would mean the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, reviewing drug use, completing claims adjudication, obtaining refill authorizations, initiating therapeutic interventions, and other functions related to the practice of pharmacy.

Senate Bill 352 (S-1) and House Bill 4434 (S-1) are tie-barred to each other. The bills are described below in further detail.

Senate Bill 352 (S-1)

Under the bill, a pharmacy could perform centralized prescription processing services or outsource those services to another pharmacy if all of the following conditions were met:

- The pharmacies had the same owner or had a written contract outlining the services to be provided and the responsibilities and accountabilities of each pharmacy in fulfilling the terms of the contract in compliance with Federal and State laws and regulations.
- The pharmacies shared a common electronic file or had appropriate technology to allow access to sufficient information necessary or required to prepare a prescription drug order.
- The pharmacies complied with Federal and State laws and regulations.

A pharmacy that performed, or contracted for, centralized prescription processing services would have to maintain a policy and procedures manual, along with documentation that implementation was occurring, and each would have to be made available to the Michigan Board of Pharmacy for inspection and review upon request. The manual would have to include at least a detailed description of how the pharmacies would do the following:

- Maintain appropriate records to identify the responsible pharmacist, or pharmacists, in the various stages of the drug product preparation, dispensing, and counseling process.
- Track the prescription drug order during each step in the drug product preparation, dispensing, and counseling process.
- Identify on the prescription label each pharmacy involved in the preparation and dispensing of the prescription drug order.
- Provide adequate security to protect the confidentiality and integrity of a patient's protected health information.
- Implement and maintain a quality improvement program for pharmacy services designed to monitor and evaluate objectively and systematically the quality and appropriateness of patient care, pursue opportunities to improve

patient care, and resolve identified problems.

House Bill 4434 (S-1)

Under the Code, a pharmacist may refill a copy of a prescription from another pharmacy if the original prescription has remaining authorized refills, and the copy is issued according to the following procedure:

- The pharmacist issuing a written or oral copy of a prescription must cancel the original prescription and record the cancellation.
- The copy must be a duplicate of the original prescription as well as include the prescription number, the name of the pharmacy issuing the copy, the date it was issued, and the number of authorized refills remaining.
- The pharmacist receiving a copy of the prescription must exercise reasonable diligence to determine whether it is valid.
- All other copies furnished must be used, and clearly marked, for information purposes only.

Under the bill, these provisions would not apply to pharmacies that shared a real-time, on-line database or transferred prescriptions pursuant to a written contract for centralized prescription processing services as provided in Senate Bill 352 (S-1).

House Bill 4434 (S-1)

Under the Code, the Department of Community Health may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The Department must report its findings to the appropriate disciplinary subcommittee, which must impose administrative sanctions if it finds that certain grounds exist. Currently, a disciplinary subcommittee may fine or reprimand a licensed pharmacist, place a licensed pharmacist on probation, deny, limit, suspend, or revoke a pharmacist's license, or order restitution or community service for violating or abetting in a violation of the prohibition against selling, distributing, or delivering a prescription drug by mail, if the prescription is received through the mail. The bill would eliminate that ground for disciplinary action.

Proposed MCL 333.17753 (S.B. 352)
MCL 333.17708 et al. (H.B. 4405)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would help to level the playing field for local pharmacies by enabling them to compete with large mail-order operations. As a cost-saving measure, the State of Michigan has decided to enter into contracts with mail-order pharmacies to provide prescription drugs for the Medicaid program in the current fiscal year. Because Michigan pharmacists are prohibited from delivering medication through the mail if the prescription has been received by mail, the State must give the contracts to out-of-State companies. Due to Michigan's sluggish economy, there recently has been much emphasis placed on attracting and retaining business in Michigan, and giving priority to Michigan companies to perform certain functions, when possible. House Bill 4405 (S-1) would be consistent with these efforts in that it would allow local pharmacies to compete for the contracts.

Mail-order pharmacies typically are large companies that have one central receiving address to which patients mail their prescriptions and several facilities throughout the nation that warehouse specific drugs and actually fill the prescriptions. Due to their smaller customer bases, local pharmacies process a smaller volume of prescriptions, making a large system of drug warehouses uneconomical. To keep mail-order services cost-effective, local pharmacies would have to contract with other companies to perform the centralized processing function appropriate to the size of their operations. Under Section 17752 of the Public Health Code, however, a prescription on file in a pharmacy is not a public record, and its contents may not be disclosed without the patient's authorization to any person, subject to certain exceptions. Section 17752 allows a pharmacist to refill a copy of a prescription from another pharmacy only if the pharmacist follows a specific procedure. The Michigan Board of Pharmacy maintains that this section essentially prohibits Michigan pharmacies from contracting with other companies for centralized processing

services. House Bill 4434 (S-1) and Senate Bill 352 (S-1) would allow local pharmacies to contract for centralized prescription processing, provided that appropriate measures were taken to track prescription drug orders.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 352 (S-1) and House Bill 4434 (S-1)

Pharmacies making use of an on-line database or a centralized prescription processing service for the transfer of prescriptions likely would see a reduction in administrative cost. This could lead to moderate cost savings to the State for prescriptions filled for Medicaid fee-for-service recipients, people insured through State employee health plans, and individuals treated at State-run medical facilities.

House Bill 4405 (S-1)

Health insurers, including Michigan Medicaid, currently use mail order firms for the provision of prescription drugs for enrollees. Permitting pharmacies in Michigan to participate in mail order pharmacy would increase competition for this business and could bring about minor reductions in the price of these drugs. Michigan-based pharmacists also would have the opportunity to expand their business offerings to include mail order pharmaceuticals, which could create an opportunity for increased revenue to these firms, generating a positive, indeterminate tax revenue gain for the State.

Under current law, a pharmacy that provided prescription drugs through the mail would be subject to discipline through the Michigan Board of Pharmacy, including a fine of up to \$5,000 per violation. Technically, under the bill, revenue from the fine would no longer be available to the State, although the Department of Community Health could not report a single instance in which a Michigan-based pharmacy violated the mail order prohibition.

Fiscal Analyst: David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.