



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 432 (as enrolled)
 Sponsor: Senator Dale L. Shugars
 Senate Committee: Health Policy and Senior Citizens
 House Committee: Health Policy

PUBLIC ACT 355 of 1996

Date Completed: 7-2-96

RATIONALE

The Public Health Code provides for the regulation and supervision of physician's assistants, and permits a supervising physician to delegate to a physician's assistant the function of prescribing drugs. It has been pointed out that this authority does not encompass the receipt and dispensing of complimentary starter dose drugs--that is, drug samples supplied free of charge by pharmaceutical manufacturers and distributors. Evidently, physician's assistants could dispense drug samples until the Federal Prescription Drug Marketing Act amended the Federal Food, Drug, and Cosmetic Act in 1988. The 1988 amendments limited the distribution of drug samples to licensed practitioners. According to interpretations of those amendments by Federal officials and the Attorney General's office, "licensed practitioner" does not include physician's assistants in Michigan, because their authority to prescribe drugs in this State is derived from the delegated authority of a supervising physician. Since physician's assistants are being used with increasing frequency in health facilities--particularly in rural areas and low income clinics where a physician might not always be present--it has been suggested that physicians be permitted to delegate to physician's assistants the function of dispensing drug samples.

This issue also concerns the ability of nurses to prescribe drugs. Under general provisions of the Public Health Code, a licensed health professional may delegate functions that fall within the licensee's profession and will be performed under his or her supervision. Also, under the Code's provisions on pharmacy and drug control, the term "prescriber" is defined to include a licensed health professional acting under the delegation of a physician. As a result, these provisions enable physicians to delegate to nurses the authority to prescribe drugs. In addition, a 1980 Opinion of the Attorney General (No. 5630) held that a physician may delegate the authority to prescribe drugs to a licensed professional nurse (as well as to a

physician's assistant). Some people believe that the Code should include specific language allowing nurses to prescribe drug samples as a delegated act.

CONTENT

The bill amended the Public Health Code to allow a physician who supervises a physician's assistant or a registered professional nurse (RPN) to delegate, in writing, the ordering, receipt, and dispensing of complimentary starter dose drugs, other than controlled substances; and specify that a physician's assistant may order, receive, and dispense complimentary starter dose drugs (other than controlled substances) as a delegated act of a supervising physician.

Under the bill, when the delegated ordering, receipt, or dispensing of a complimentary starter dose drug occurs, both the name of the physician's assistant or the nurse and the name of the supervising physician must be used, recorded, or otherwise indicated in connection with each order, receipt, or dispensing.

Further, when a physician's assistant as a delegated act of a supervising physician orders, receives, or dispenses complimentary starter dose drugs, the supervising physician's name must be used, recorded, or otherwise indicated in connection with each order, receipt, or dispensing so that the individual who processes the order or delivers the drugs, or to whom the drugs are dispensed knows under whose authority the drugs are ordered, received, or dispensed.

The bill states that it is the intent of the Legislature, in enacting the provisions described above, to allow a pharmaceutical manufacturer or wholesale distributor to distribute complimentary starter dose drugs to a physician's assistant or an RPN in compliance with Section 503(d) of the Food, Drug,

and Cosmetic Act (which is the section limiting the distribution of drug samples to licensed practitioners).

In addition, the bill permits a supervising physician to delegate in writing to a pharmacist practicing in a hospital pharmacy the receipt of complimentary starter dose drugs other than controlled substances. When the delegated receipt of complimentary starter dose drugs occurs, both the pharmacist's name and the supervising physician's name must be used, recorded, or otherwise indicated in connection with each receipt. A hospital pharmacist may dispense a prescription for complimentary starter dose drugs written or transmitted by other means of communication by a prescriber.

Under the Code, a "complimentary starter dose" is a prescription drug packaged, dispensed, and distributed in accordance with State and Federal law, that is provided to a dispensing prescriber free of charge by a manufacturer or distributor, and dispensed free of charge to patients.

MCL 333.17048 et al.

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

Over the years, the use of physician's assistants has changed, and the demand for them has increased. In particular, rural and urban areas that lack primary health care may be well served by physician's assistants. While these health professionals must be supervised by a physician, the physician might not always be on site; for example, he or she might be making rounds, or the physician's assistant might be working in a satellite clinic. In many cases, a patient's principal health care professional will be a physician's assistant. In addition, it is a physician's assistant who often deals with drug representatives. Under Michigan law, however, physician's assistants evidently have not been able to dispense or even receive drug samples, although they may prescribe drugs under the delegation of a supervising physician. Many people consider this an oversight in the Public Health Code. Frequently, patients are given drug samples because they cannot afford a prescription, or because it is not known whether a particular drug will work for a patient. Allowing physician's assistants to dispense drug samples not only will

be convenient and efficient, but also will improve the delivery of health care to consumers and reduce health care costs.

Supporting Argument

Like physician's assistants, nurses are often the main practitioners in rural and low income areas. Although nurses may prescribe drugs under a delegation of authority, the Public Health Code did not contain language specific to nurses, as it does concerning physician's assistants. The bill makes it clear that nurses may receive and dispense drug samples if a supervising physician delegates this authority.

Opposing Argument

There is some concern that physicians will not, or will not be able to, monitor their delegated duty appropriately. This might be true particularly in situations in which physicians are separated by many miles from the physician's assistant or nurse to whom the dispensing authority is delegated.

Response: Physicians already may delegate the function of prescribing drugs. The bill simply includes starter dose drugs in that authority.

Opposing Argument

Pharmacists, who may be more accessible to ill individuals than are health care providers, also should be allowed to receive and dispense starter dose drugs. The bill's provisions concerning pharmacists apply only to those practicing in hospital pharmacies, and allow them to dispense starter dose drugs only as ordered by a prescriber.

Response: Physician's assistants and nurses, unlike pharmacists, are usually in the presence of a patient and have the opportunity to perform a physical examination and take the patient's medical history; they also have access to the patient's medical records. Pharmacists do not have the professional training to diagnose and treat patients. Suggesting that pharmacists be given delegated authority to dispense any drugs, including starter dose drugs, raises serious public policy and patient safety concerns.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: J. Walker

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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.