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BILL ANALYSIS

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Senate Bill 146 (as passed by the Senate)
Sponsor: Senator Virg Bernero
Committee: Health Policy

Date Completed: 2-14-05

RATIONALE

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. 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. The Public Health Code, however, authorizes administrative sanctions against a pharmacist who uses the mail to fill prescriptions that have been received by mail. It has been suggested that the authority to impose these sanctions should be eliminated so that Michigan pharmacists may operate mail-order services and compete for the Medicaid contracts.

CONTENT

The bill would amend the Public Health Code to delete a provision authorizing a disciplinary subcommittee to impose sanctions on 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 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, reprimand, or 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.

MCL 333.17708 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

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. The bill would be consistent with these efforts in that it would allow local pharmacies to compete for the contracts.

Response: Before Michigan pharmacies are allowed to operate via mail, a more thorough examination of the effects on patient safety and the financial benefit the State could experience should be undertaken. Apparently, some unscrupulous companies that operate mail order pharmacies have been investigated or penalized for reliability and safety problems,

questionable pricing practices, kickbacks, and fraud.

Opposing Argument

Rather than provide new economic opportunities for local pharmacies already operating in Michigan, the bill simply might encourage the existing, large mail-order pharmacies to establish operations here.

Response: While it is true that the bill could provide an incentive for out-of-State companies to locate here, it at least would remove one of the legal barriers that prevent Michigan companies from operating mail-order services.

Opposing Argument

The bill simply would eliminate the disciplinary subcommittee's authority to impose sanctions on Michigan pharmacists who fill prescriptions that are received by mail. It would not, however, allow Michigan pharmacists to operate mail-order pharmacies. 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. Under Section 17752 of the Public Health Code, which the bill would not amend, 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. This section essentially prohibits Michigan pharmacies from using this centralized processing method. In order to level the playing field effectively for the State's smaller, community pharmacies, Section 17752 also should be amended.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Health insurers, including Michigan Medicaid, currently use mail-order firms for the provision of prescription drugs for enrollees. Permitting pharmacies in the State of Michigan to participate in mail-order services could increase competition for this business and 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, producing 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 fines of up to \$5,000 per violation. Technically, under the bill, revenue from these fines would no longer be available to the State, although the Department of Community Health could not recall 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.