



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 956 (Substitute S-1 as reported)
Senate Bill 1366 (as reported by the Committee of the Whole)
Sponsor: Senator Hansen Clarke (S.B. 956)
Senator Tom George (S.B. 1366)
Committee: Health Policy

Date Completed: 9-24-08

RATIONALE

Due to increasing health care costs, many employer-sponsored and individual health care plans either require subscribers to use mail-order pharmacy companies or offer financial incentives to do so. 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. As use of mail-order pharmacies has increased, some people have expressed concern that several provisions of Michigan's Public Health Code related to certain controlled substance prescriptions present a barrier to these pharmacies' operations, leading the firms to locate and expand their business in other states.

Under the Public Health Code, a practitioner (e.g., a pharmacist) may not dispense a prescription for a controlled substance written and signed or transmitted by facsimile, electronic transmission, or other means of communication by a physician licensed to practice in another state, unless the physician resides adjacent to the land border between Michigan and an adjoining state, whose practice may extend into Michigan, but who does not maintain an office in Michigan. Public Act 536 of 2004 extended the exemption to controlled substance prescriptions written by authorized prescribers in Illinois and Minnesota. It has been suggested that a Michigan pharmacist should be allowed to fill a controlled substance prescription written by a physician in any other state.

In a related matter, the Code prohibits a practitioner from issuing more than one prescription for a Schedule 2 controlled substance on a single form, and requires such a prescription to be filled within 60 days after it was written. These provisions evidently make it difficult for mail-order pharmacies to operate in Michigan, since they achieve customer savings by filling prescriptions for up to a 90-day supply, rather than a 30-day supply, for the same copay. Some people believe the one-prescription, 60-day limit should be extended.

CONTENT

Senate Bill 956 (S-1) would amend the Public Health Code to eliminate a prohibition against the dispensing of prescriptions for controlled substances written by a physician in another state, as well as a provision authorizing administrative sanctions for a violation.

Senate Bill 1366 would amend the Code to allow a practitioner to issue multiple prescriptions for up to a 90-day supply of a Schedule 2 controlled substance in accordance with Federal regulations; and allow a Schedule 2 controlled substance prescription to be filled up to 90, rather than 60, days after it was issued.

Senate Bill 1366 is tie-barred to Senate Bill 956. The bills are described below in further detail.

Senate Bill 956 (S-1)

Out-of-State Electronic Prescriptions

Currently, a practitioner may not dispense a prescription for a controlled substance written and signed or transmitted by facsimile, electronic transmission, or other means of communication by a physician prescriber licensed in another state, unless the prescription is issued by a physician prescriber who resides adjacent to the land border between Michigan and an adjoining state or resides in Illinois or Minnesota and is authorized under the laws of that state to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances and whose practice may extend into Michigan, but who does not maintain an office or designate a place to meet patients or receive calls in Michigan. The bill would delete the references to a physician residing adjacent to the land border or in Illinois or Minnesota; and the extension of his or her practice into Michigan, maintaining an office, and designating a place to meet patients or take calls.

Under the Code, a disciplinary subcommittee may fine or reprimand a pharmacist licensee, place a pharmacist licensee on probation, deny, limit, suspend, or revoke a pharmacist's license, or order restitution or community service for a violation or abetting in a violation of Part 177 (Pharmacy Practice and Drug Control) or rules promulgated under it, if the subcommittee finds that certain grounds exist. These include dispensing a prescription for a controlled substance that is written and signed or transmitted by facsimile, electronic transmission, or other means of communication by a physician prescriber in another state, unless the physician prescriber resides adjacent to the land border between Michigan and an adjoining state or resides in Illinois or Minnesota and is authorized to practice under the laws of that state and whose practice may extend into Michigan, but who does not maintain an office or designate a place to meet patients or receive calls in Michigan. The bill would delete the references to a physician residing adjacent to the land border or in Illinois or Minnesota; and the extension of his or her practice into Michigan, maintaining an office, and designating a place to meet patients or take calls.

Definition of "Prescription Drug"

Currently, "prescription drug" means one or more of the following:

- A drug dispensed pursuant to a prescription.
- A drug bearing the Federal legend "CAUTION: federal law prohibits without prescription".
- A drug designated by the Michigan Board of Pharmacy as a drug that may be dispensed only pursuant to a prescription.

Under the bill, the term also would include a drug bearing "Rx only".

Senate Bill 1366

Under the Code, a practitioner may not issue more than one prescription for a Schedule 2 controlled substance on a single prescription form. Under the bill, a practitioner could issue more than one of these prescriptions on a single form in compliance with 21 CFR 1306.12 (described below).

Currently, except for patient with a documented terminal illness, a prescription for a Schedule 2 controlled substance may not be filled more than 60 days after the date it was issued. The bill would extend this period to 90 days.

(Under 21 CFR 1306.12, an individual practitioner may issue multiple prescriptions authorizing a patient to receive a total of up to a 90-day supply of a Schedule 2 controlled substance if all of the following conditions are met:

- Each separate prescription is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice.
- The individual practitioner provides written instructions on each prescription (other than the first prescription, if the practitioner intends for it to be filled immediately) indicating the earliest date on which a pharmacy may fill each prescription.
- The individual practitioner concludes that giving the patient multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

- The issuance of multiple prescriptions is permissible under the applicable state laws.
- The individual practitioner complies fully with all other applicable requirements under the Controlled Substances Act and/or the Controlled Substances Import and Export Act and these regulations as well as any additional requirements under state law.

restrictions related to the prescription of Schedule 2 controlled substances, however, it is possible that some increase in the use of those drugs would occur among Medicaid patients. Accordingly, the State would be responsible for any increase in Medicaid prescription drug expenditures that resulted from passage of the bill.

Fiscal Analyst: Matthew Grabowski

Under the Public Health Code, a substance is placed in Schedule 2 if it has high potential for abuse; it has currently accepted medical use in the U.S., or currently accepted medical use with severe restrictions; and its abuse may lead to severe psychic or physical dependence.)

MCL 333.7405 et al. (S.B. 956)
333.7333 (S.B. 1366)

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

By eliminating the prohibitions against filling out-of-State controlled substance prescriptions and 90-day Schedule 2 prescriptions, the bills would remove barriers to mail-order pharmacies' locating in Michigan. Currently, mail-order pharmacies that wish to fill prescriptions from all over the nation must locate their central processing facilities in states that do not have these restrictions. Additionally, the bills would result in increased convenience for consumers, particularly nonresidents who travel to Michigan, and Michigan residents who seek health care in other states for various reasons.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 956 (S-1)

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

Senate Bill 1366

The bill would bring the Public Health Code into conformity with the relevant Federal regulation. Because the bill would loosen

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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.