



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 689 (as enacted)
House Bill 4161 (as enacted)
Sponsor: Senator Tom George (S.B. 389)
Representative Richard LeBlanc (H.B. 4161)
Senate Committee: Health Policy
House Committee: Health Policy

PUBLIC ACT 3 of 2010
PUBLIC ACT 150 of 2009

Date Completed: 4-23-10

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 increased, some people expressed concern that several provisions of Michigan's Public Health Code related to controlled substance prescriptions presented a barrier to these pharmacies' operations, leading the firms to locate and expand their business in other states.

Previously, under the Code, a practitioner (e.g., a pharmacist) could 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 resided adjacent to the land border between Michigan and an adjoining state, and did not maintain an office in Michigan, although his or her practice could extend into this State. Public Act 536 of 2004 extended the exemption to controlled substance prescriptions written by authorized prescribers in Illinois and Minnesota. More recently, it was 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 previously prohibited a practitioner from issuing more than one prescription for a Schedule 2 controlled substance (such as morphine or codeine) on a single form, and required such a prescription to be filled within 60 days after it was written. These provisions evidently made 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 believed the one-prescription, 60-day limit should be expanded.

CONTENT

Senate Bill 689 amended the Public Health Code to allow a practitioner to issue multiple prescriptions for up to a 90-day supply of a Schedule 2 controlled substance; and allow a Schedule 2 controlled substance prescription to be filled up to 90, rather than 60, days after it is issued.

House Bill 4161 amended the 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.

House Bill 4161 took effect on November 19, 2009. Senate Bill 689 took effect on February 4, 2010.

Senate Bill 689

Previously, under the Code, a practitioner could not issue more than one prescription for a Schedule 2 controlled substance on a single prescription form. Under the bill, a practitioner may issue more than one of these prescriptions on a single form.

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

(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.)

House Bill 4161

Previously, a practitioner could 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 was issued by a physician prescriber who resided adjacent to the land border between Michigan and an adjoining state or resided in Illinois or Minnesota and was authorized under the laws of that state to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances and whose practice might extend into Michigan, but who did not maintain an office or designate a place to meet patients or receive calls in Michigan.

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. Previously, these included dispensing a prescription for a controlled substance that was 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 met the same criteria as described above.

The bill amended both of these provisions by deleting the criterion that the out-of-State physician prescriber reside adjacent to the land border between Michigan and an adjoining state or live in Illinois or Minnesota. The bill also deleted the provisions under which the physician's practice could extend into Michigan but the physician could not maintain an office or designate a place to meet patients or receive calls in this State.

Under the bill, then, a practitioner may not dispense a prescription for a controlled substance written by a physician prescriber licensed in another state, and a pharmacist who does so is subject to sanctions, unless the physician prescriber is authorized under the other state's laws to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances.

The Code defines "prescription drug" as 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 includes a drug bearing "Rx only".

MCL 333.7333 (S.B. 689)
333.7405 et al. (H.B. 4161)

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

Mail-order pharmacies that wish to fill prescriptions from across the nation have to locate their central processing facilities in states that do not have the restrictions that Michigan had. By eliminating the prohibitions against filling out-of-State controlled substance prescriptions and 90-

day Schedule 2 prescriptions, the bills remove barriers to mail-order pharmacies' locating in Michigan. Additionally, the bills will 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

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

Fiscal Analyst: Steve Angelotti

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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.