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Senate Bills 155 and 156 (as introduced 2-18-21)
Sponsor: Senator Kevin Daley
Committee: Health Policy and Human Services

Date Completed: 3-18-21

CONTENT

Senate Bill 155 would add Section 17744f to Part 177 (Pharmacy Practice and Drug Control) of the Public Health Code to do all of the following:

- Allow a pharmacist to dispense an emergency supply of insulin to an individual under certain circumstances.
- Require a pharmacist who dispensed an emergency supply of insulin to comply with certain requirements.
- Prohibit an individual from receiving more than three emergency supplies of insulin in one calendar year.
- Specify that a prescriber or pharmacist would not be subject to criminal prosecution, civil liability, or administrative sanction as a result of the pharmacist dispensing an emergency supply of insulin.
- Require the Board of Pharmacy to promulgate rules to implement Section 17744f.

The bill also would amend Part 177 to do the following:

- Include in the definition of "prescription drug" a drug dispensed pursuant to Section 17744f.
- Modify a provision requiring a pharmacist to furnish to the purchaser of a prescription drug a receipt evidencing the transaction.

Senate Bill 156 would amend the Insurance Code to specify an insurer that delivered, issued for delivery, or renewed in the State a health insurance policy that provided coverage for prescription drugs would have to provide coverage for an emergency supply of insulin that was covered under an insured's health insurance policy and that was dispensed to the insured by a pharmacist as provided in Section 17744f.

Senate Bill 156 is tie-barred to Senate Bill 155.

Senate Bill 155

Emergency Supply of Insulin

The bill creates Section 17744f to allow a pharmacist to dispense an emergency supply of insulin to an individual if he or she had a qualified prescription for insulin in his or her name with no remaining authorized refills, the pharmacist completed an assessment of the individual and determined that dispensing an emergency supply of insulin was appropriate for the individual, and the individual had previously had a prescription for insulin dispensed at

the pharmacy. "Emergency supply" would mean up to a 30-day supply. "Qualified prescription for insulin" would mean a prescription for insulin that was issued within the 12-month period immediately preceding the date the individual requests an emergency supply of insulin under Section 17744f.

The Code defines "dispense" as the preparation, compounding, packaging, or labeling of a drug pursuant to a prescription or other authorization issued by a prescriber. Under the bill, the term also would mean the preparation, compounding, packaging, or labeling of a drug pursuant to Section 17744f.

A pharmacist who dispensed an emergency supply of insulin would have to comply with all of the following:

- Before dispensing the emergency supply, make a reasonable effort to communicate with the prescriber who issued the qualified prescription for insulin regarding dispensing the emergency supply of insulin and document the efforts made.
- Within a reasonable period of time, inform the prescriber who issued the qualified prescription for insulin, in writing, that an emergency supply of insulin was dispensed.
- Inform the individual receiving the emergency supply of insulin that the insulin was dispensed.

A pharmacist who dispensed an emergency supply of insulin also would have to document all of the following:

- The name of the individual receiving the emergency supply of insulin and the date it was dispensed.
- The reason for dispensing the emergency supply of insulin.
- Evidence of the individual's qualified prescription for insulin.
- Information on the individual's diabetes management.
- Any other information required by the Board of Pharmacy by rule.

An individual could not receive more than three emergency supplies of insulin in one calendar year.

A prescriber or pharmacist would not be subject to criminal prosecution, civil liability, or administrative sanction as a result of the pharmacist dispensing an emergency supply of insulin.

The Board would have to promulgate rules to implement Section 17744f.

Prescription Drug

Part 177 defines "prescription drug" as a drug to which one or more of the following apply:

- The drug is dispensed pursuant to a prescription.
- The drug bears the federal legend "CAUTION: Federal law prohibits dispensing without prescription" or "Rx only".
- The drug is designated by the Board as a drug that may only be dispensed pursuant to a prescription.

Under the bill, for purposes of Part 177, "prescription drug" also would include a drug dispensed pursuant to Section 17744f.

Receipt for Prescription Drug

Section 17757 of the Code requires a pharmacist to furnish to the purchaser of a prescription drug at the time the drug is delivered to the purchaser a receipt evidencing the transaction that includes certain information, including the serial number of the prescription or a reference to the standing order issued under section 17744e. Under the bill, the receipt also would have to include a reference to Section 17744f if the prescription drug were dispensed pursuant to that section.

Section 17757 also requires the receipt evidencing the transaction to include the name of the prescriber or, if the prescribed under the prescriber's delegatory authority, the name of the delegatee. Under the bill, the if the prescription drug were dispensed under Section 17744f, the receipt also would have to include the name of the original prescriber and the pharmacist who dispensed the prescription drug.

Senate Bill 156

Under the Insurance Code, an insurer that delivers, issues for delivery, or renews in the State a health insurance policy that provides coverage for prescription drugs and limits those benefits to drugs included in a formulary must do the following:

- Provide for participation of participating physicians, dentists, and pharmacists in the development of the formulary.
- Disclose to health care providers and upon request to insureds the nature of the formulary restrictions.
- Provide for exceptions from the formulary limitation when a nonformulary alternative is a medically necessary and appropriate alternative.

Upon request for an expedited review of coverage for a nonformulary alternative based on exigent circumstances, an insurer must make a determination and notify the enrollee or the enrollee's designee and the prescribing physician, or other prescriber, as appropriate, of the determination within 24 hours after the insurer receives all information necessary to determine whether the exception should be granted. If this does not apply, an insurer must make a determination on coverage for a nonformulary alternative and notify the enrollee or the enrollee's designee and the prescribing physician, or other prescriber of the determination within 72 hours after the insurer receives all information necessary for the determination.

Under the bill, these provisions would be subject to Section 3406v.

The bill creates Section 3406v to specify that, beginning on the bill's effective date, an insurer that delivered, issued for delivery, or renewed in the State a health insurance policy that provided coverage for prescription drugs would have to provide coverage for an emergency supply of insulin that was covered under an insured's health insurance policy and that was dispensed to the insured by a pharmacist as provided in Section 17744f of the Public Health Code, which Senate Bill 155 would add.

MCL 333.17703 et al. (S.B. 155)
500.3406o et al. (S.B. 156)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 155

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

Senate Bill 156

The bill likely would have only a marginal impact on the cost of health insurance. Research in other states (particularly Minnesota) indicate a cost for insulin somewhat less than \$1,000 per month. However, Senate Bill 156 would cover a limited situation in which a patient is seeking an emergency supply of insulin, described in Senate Bill 155 (which is tie barred to SB 156) as up to a 30-day supply that would be available to the patient for up to three times per year.

The question is who would use these emergency supplies. The bill likely would apply mostly to patients whose prescription for insulin had expired and who had not sought or received a prescription renewal. These are individuals who are clearly insulin dependent, so the legislation would appear to address what otherwise would be brief gaps in access for people who generally were fully covered for insulin. As such, the bill likely would provide more immediate access to insulin in those situations, avoiding or reducing relatively brief gaps in coverage. This arguably would lead to a marginal increase in costs for insurers because of more consistent coverage. On the other hand, gaps in insulin for those who are dependent on it can lead to adverse medical outcomes that would increase costs. In either case, both the increased and decreased costs would appear to be marginal and the bill as a whole, while leading to fewer gaps in insulin availability, would have only a marginal impact on the cost of insurance and the cost of health care coverage for State and local employees.

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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.