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## PROTECT CONFIDENTIALITY OF PRESCRIPTION INFORMATION

House Bill 4001 (Substitute H-2)  
First Analysis (4-24-02)

Sponsor: Rep. Judith Scranton  
Committee: Health Policy

### ***THE APPARENT PROBLEM:***

Every time a patient visits his or her doctor or has a prescription filled at the local pharmacy, the doctor or pharmacist makes a record of the patient's prescription and/or other health information. Pharmacists and physicians who dispense drugs, as well as those who work in their offices, have access to personal information that their customers and patients generally expect to remain confidential. When a customer goes to a pharmacy to have a prescription filled or when a doctor dispenses a drug directly to a patient, the customer or patient essentially exchanges his or her trust (and payment) for attentive care. Current law allows the health care provider to share information with various parties who have a demonstrable need to know the contents of a prescription—e.g., another licensed health professional who is treating the patient or a person who has been authorized to receive such information by a court order.

Although prescription information is confidential in theory, and most people working in health care settings do everything they can to respect that confidentiality, protecting patients' prescriptions and other medical records is no longer as simple as locking paper documents in a filing cabinet. E-mail and the Internet make it possible for a person to transmit large amounts of data anywhere in the world with the simple click of a button. Given the complex chain of relationships in the modern health care industry, it may even be unclear who is entitled to which information and who is not. At the same time, despite the technological savvy required of people working in modern health care settings, those people are human—sometimes, all too human. A pharmacist, a doctor who dispenses drugs, or an employee who exercises extreme caution when accessing information on a computer in the course of his or her professional duties may inadvertently blurt out the name of a drug prescribed to a customer in the presence of others. A momentary lapse in discretion may create an extremely awkward or embarrassing situation for the patient. Such information is private

and should be kept that way. Legislation has been introduced to bolster the Public Health Code's current confidentiality requirements and to hold dispensing prescribers (i.e., physicians who dispense drugs that they prescribe) to the same standards as pharmacists.

### ***THE CONTENT OF THE BILL:***

Article 15 of the Public Health Code regulates health occupations, including the pharmacy profession. Article 15 specifies that a prescription or other equivalent record on file in a pharmacy is not a public record and that a person having custody of, or access to, a prescription may not disclose the contents of, or provide copies of, the prescription without the patient's authorization, except to certain persons.

House Bill 4001 would amend Article 15 of the health code to require pharmacists, dispensing prescribers, and their employees to "take every reasonable precaution" when discussing the names of prescribed drugs in the presence of persons other than the patient for whom the drugs are prescribed. Just as a prescription or equivalent record on file *in a pharmacy* is not a public record, the bill would additionally specify that a prescription or equivalent record on file in the office of a dispensing prescriber is not a public record. The bill would also require a patient's written consent before pharmacists, dispensing physicians, their employees, or anyone else having access to a prescription or equivalent record could disclose a patient's identity with certain exceptions, revise the code's current disclosure prohibition and list of exceptions, and specify administrative sanctions for violations. More specifically, the bill would do the following:

Confidentiality and exceptions. House Bill 4001 would prohibit pharmacists, dispensing prescribers, their employees, and anyone else having custody of or access to a prescription or equivalent board-approved record of a prescription from disclosing the

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identity of a patient for whom a prescription was issued to a manufacturer, distributor, or any other person, unless the patient gave written, informed consent. The bill would, however, permit disclosure of a patient's identity, without the patient's written consent, if the disclosure was permissible under the code's provision dealing with prescription contents and copies. Currently that provision prohibits a person having custody of or access to a prescription from disclosing its contents or providing copies to persons other than persons specified in that provision of the code, unless the patient authorizes such action. The bill would revise this provision slightly to specify that a pharmacist, dispensing prescriber, employee, or other person having custody of or access to a prescription *or an equivalent (board-approved) record of a prescription* could not disclose the prescription or record's contents or provide copies of the prescription or record without the patient's *written or oral* authorization, except as otherwise provided.

The bill would make several changes to the current list of exceptions to the provision dealing with prescription contents and copies. First, the bill would require pharmacists, dispensing prescribers, and their employees to "take every reasonable precaution under the circumstances to prevent other customers from overhearing or otherwise discerning the name of the prescribed drug." (Current law permits a person having access to a prescription's contents to discuss the contents with the patient for whom the prescription was issued or with another pharmacist, but provides no guidance as to how to conduct such a discussion when others are present.) The bill would clarify that this prohibition does not require a pharmacist or dispensing prescriber to provide a private consultation room or area. Second, the bill would permit disclosure of a prescription or providing copies of a prescription (or equivalent record) to a person representing a public or private health care payment or benefits plan or a health management services provider for the purpose of providing payment, reimbursement, audit, or administration of health care benefits or services or for another purpose required under an agreement between the pharmacy or prescriber and a payment or benefits plan or services provider. Third, the act currently allows prescription contents or copies to be provided to persons engaged in research projects or studies with protocols approved by the Board of Pharmacy. The bill would instead allow prescription (or record) contents or copies to be provided to persons engaged in research projects or studies conducted under specific federal regulations (45 C.F.R. 46 and 21 C.F.R. 50 and 56) which concern

research on human subjects and institutional review boards that review such research.) In each of these cases, and several others that would not be changed by the bill, a prescription's content or copies of the prescription could be provided to the parties specified without the patient's written or oral authorization; moreover, the identity of the patient could be disclosed without the patient's written, informed consent insofar as doing so was involved in providing the prescription's content or copies.

The bill would also specify that the section of the code being amended would not prohibit or restrict access to prescription information for health research as long as patient identifiers had been removed by coding or encryption.

**Sanctions.** Currently, the health code allows the Department of Consumer and Industry Services to investigate activities related to the practice of a health profession by those licensed or registered under the code, to hold hearings, and order testimony. The department must report its findings to the appropriate disciplinary subcommittee, which then is required to impose certain sanctions if it finds that one or more specified grounds for action by the disciplinary subcommittee exists.

The bill would clarify that pharmacists, pharmacies, or dispensing prescribers who violated the bill's provisions were subject to the health code's sanctions for violations of Article 15 of the health code. Sanctions for violations of Article 15 include reprimand; probation; license denial, suspension, revocation, or limitation; restitution; community service; and a fine.

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### **BACKGROUND INFORMATION:**

According to the Department of Health and Human Services, "Congress recognized the need for national patient record privacy standards in 1996 when they enacted the Health Insurance Portability and Accountability Act of 1996." The act encourages health care businesses to engage in electronic transactions, but it also required the Congress to pass further legislation addressing the risks to the security and confidentiality of information that such transactions could pose. When it did not pass such legislation, the act required HHS to promulgate regulations to protect the privacy of patients' health information. HHS's final rule took effect in April 2001, but most covered entities have until April 2003 to comply with the rule's provisions, and HHS has

express authority to change the rule until full compliance is required. HHS describes the current regulatory framework—i.e., the framework that the final rule is intended to improve once it is fully implemented and enforced—as a “patchwork of state laws, leaving gaps in the protection of patients’ privacy and confidentiality.” Late last month, HHS proposed modifications to the final rule that were published in the Federal Register on March 27, 2002. For more, visit the HHS website: <http://www.hhs.gov/ocr/hipaa/bkgrnd.html>.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the bill would have no fiscal impact. (4-24-02)

### ***ARGUMENTS:***

#### ***For:***

A health care provider who shares information about an individual’s prescription with persons who do not need to know that information violates the basic terms of the provider-patient or provider-customer relationship, unless the individual has clearly indicated that he or she understands and agrees with the purposes for which the information is being shared. The bill would improve the current law’s protection of the confidentiality of prescription information by drawing a more appropriate line between those who need access to prescription information and those who do not. For instance, the bill would require pharmacists, dispensing providers, and their employees to take reasonable precautions when filling a prescription or dispensing a prescribed drug in the presence of persons other than the customer or patient for whom the prescription was being filled or drug was being dispensed. Someone who stops by the pharmacy with a co-worker during the lunch hour does not necessarily want her co-worker to know what medicine she is picking up, and a pharmacist who announces over a microphone that Mrs. Smith’s prescription for drug X is ready is clearly acting unprofessionally. The bill would also require that pharmacists, dispensing prescribers, and their employees obtain written, informed consent before sending prescription information that reveals a patient’s identity to a drug manufacturer or distributor. At the same time, the bill acknowledges that the customer-insurer relationship implies that an insurer has a right to know what drugs their customers are asking them to pay for. It would also clarify that prescription information could be shared for health research purposes as long as information identifying the patient for whom the prescription was

written was eliminated from the prescription or record. In the long run, such research helps all customers of the health care system—i.e., everyone. By making such changes, the bill would enhance the current law’s protection of prescription information by ensuring that those who need the information can get it and those who want, but do not need, the information get it only with the customer or patient’s written consent or authorization.

The bill also specifies that a record equivalent to a prescription in a form that has been approved by the Board of Pharmacy is to be treated like to a prescription and that dispensing prescribers are subject to the same provisions as pharmacists. Such changes make sense on the basic principle that equals ought to be treated as equals.

### ***POSITIONS:***

The Department of Consumer and Industry Services supports the bill. (4-23-02)

The Michigan Pharmacists Association supports the bill. (4-23-02)

The American Civil Liberties Union of Michigan supports the bill in concept. (4-24-02)

The Michigan Health and Hospital Association supports the bill. (4-23-02)

Analyst: J. Caver

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.