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BILL ANALYSIS

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House Bill 6323 (Substitute H-2 as passed by the House)
Sponsor: Representative Gary A. Newell
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 12-6-06

CONTENT

The bill would amend the Public Health Code to allow prescriptions to be transmitted via facsimile or electronic transmission; extend regulations regarding smoking in public places to hospitals; and prohibit an individual from smoking on hospital property, except under certain circumstances.

Electronic Prescriptions

Currently, "prescription" means an order for a drug or device written and signed or transmitted by other means of communication by a prescriber to be filled, compounded, or dispensed. An order transmitted in other than written form must be recorded or written and immediately dated by the pharmacist, and that record constitutes the original prescription. The term includes an order for a drug, excluding a controlled substance except under certain circumstances, written and signed or transmitted by other means of communication by a physician prescriber licensed to practice in a state other than Michigan (subject to provisions described below). The bill also would refer to an order transmitted by facsimile or electronic transmission, and allow a prescription transmitted in other than written form to be electronically recorded or printed. Additionally, the bill would refer to an order transmitted by facsimile or electronic transmission by an out-of-State physician prescriber.

The Code prohibits a practitioner from dispensing a prescription for a controlled substance written and signed or transmitted by a physician prescriber licensed to practice 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 under the laws of that state to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances, and the physician's practice extends into Michigan but he or she does not maintain an office or designate a place to meet patients or receive calls in Michigan. The bill would include in this provision a prescription for a controlled substance transmitted by facsimile, electronic transmission, or other means of communication by an out-of-State physician.

The Code allows a supervising physician to delegate in writing to a pharmacist practicing in a hospital pharmacy within a licensed hospital the receipt of complimentary starter dose drugs, subject to certain exceptions. When the delegated receipt occurs, both the pharmacist's name and the supervising physician's name must be used, recorded, or otherwise indicated in connection with each receipt. The pharmacist may dispense a prescription for complimentary starter dose drugs written or transmitted by other means of

communication by a prescriber. The bill also would allow the pharmacist to dispense such a prescription by facsimile or electronic transmission.

A pharmacist may dispense a prescription written and signed or transmitted by other means of communication by a physician prescriber in another state, subject to certain exceptions, only if the pharmacist in the exercise of his or her professional judgment determines all of the following:

- That the prescription was issued pursuant to an existing physician-patient relationship.
- That the prescription is authentic.
- That the prescribed drug is appropriate and necessary for the treatment of an acute, chronic, or recurrent condition.

The bill would include in this provision a prescription transmitted by facsimile or electronic transmission by an out-of-State physician.

Under the bill, except as provided in Article 7 (Controlled Substances) and the Federal Food, Drug, and Cosmetic Act, a prescription could be transmitted electronically as long as it were transmitted in compliance with the Federal Health Insurance Portability and Accountability Act or regulations promulgated under it, by a prescriber or the prescriber's authorized agent and the data were not modified or altered in the transmission process. An electronically transmitted prescription would have to contain all of the following information:

- The prescriber's name, address, and telephone number.
- The full name of the patient for whom the prescription was issued.
- An electronic signature or other identifier that identified specifically and authenticated the prescriber or the prescriber's authorized agent.
- The time and date of the transmission.
- The identity of the pharmacy intended to receive the transmission.
- Any other information required by the Federal Food, Drug, and Cosmetic Act or State law.

("Electronically transmitted prescription" would mean the communication of an original prescription or refill authorization by electronic means, including computer to computer, computer to facsimile machine, or electronic mail transmission that contains the same information it contained when the prescriber or authorized agent transmitted the prescription. The term would not include a prescription or refill transmitted by telephone or facsimile machine.

"Electronic signature" would mean an electronic sound, symbol, or process attached to or logistically associated with a record and executed or adopted by a person with the intent to sign the record. "Sign" would mean to affix one's signature manually to a document or to use an electronic signature when transmitting a prescription electronically.)

The electronic equipment or system used in the transmission and communication of prescriptions would have to provide adequate confidentiality safeguards and be maintained to protect patient confidentiality as required under any applicable Federal and State law and to ensure against unauthorized access. The electronic transmission of a prescription would have to be communicated in a retrievable, recognizable form acceptable to the intended recipient. The electronic form used in the transmission of a prescription could not include "dispense as written" or "D.A.W." as the default setting.

Before dispensing a prescription that was electronically transmitted, the pharmacist would have to exercise professional judgment regarding its accuracy, validity, and authenticity.

An electronically transmitted prescription that met the bill's requirements would be the original prescription.

Under the Code, a disciplinary subcommittee of the Department of Community Health 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 disciplinary subcommittee determines that certain grounds exist. These include dispensing a prescription for a controlled substance that is written and signed or transmitted by a physician prescriber in another state, unless that physician lives in a state specified in the Code. The bill also would refer to a prescription transmitted by facsimile or electronic transmission by an out-of-State prescriber.

Smoking

The bill would amend Part 126 (Smoking in Public Places) to prohibit an individual from smoking on hospital property unless he or she were a patient and the prohibition would be detrimental to his or her treatment as defined by medical conditions identified by the collective hospital medical staff.

"Hospital property" would mean a facility, building, structure, or other real estate owned, leased, or otherwise controlled by a hospital. The term would not include a hospital long-term care unit or an enclosed, indoor area owned or otherwise controlled by a hospital but leased to another person for commercial purposes that are unrelated to the provision of health care products or services.

Under Part 126, the term "health facility" means a health facility or agency licensed under the Code, except a home for the aged, nursing home, county medical care facility, hospice, or hospital long-term care unit. The bill also would exclude a hospital and specifies that "hospital" would mean that term as defined in Section 20106. (That section defines "hospital" as a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. The term does not include a mental health hospital licensed or operated by the Department of Community Health or a hospital operated by the Department of Corrections.)

Under Part 126, a person or State or local governmental agency that owns or operates a public place that violates Section 12605 or 12607 (which the bill would amend) must be directed to comply with Part 126 and is subject to a civil fine of up to \$100 for a first violation and up to \$500 for a second or subsequent violation. Under the bill, this provision also would apply to a person or State or local governmental agency that owned or operated a hospital.

Under Section 12605, the State or local governmental agency or the person who owns or operates a public place may designate a smoking area. Existing physical barriers and ventilation systems must be used to minimize the toxic effect of smoke in both smoking and adjacent nonsmoking areas. If smoking is permitted in a public place, the governmental agency or person who owns or operates the public place must develop a written policy for the separation of smokers and nonsmokers that provides, at a minimum, for nonsmokers to be located closest to the source of fresh air, for special consideration to be given to individuals with a hypersensitivity to tobacco smoke, and for a procedure to receive, investigate, and take action on complaints.

Section 12607 requires the governmental agency or person who owns or operates a public place, at a minimum, to do all of the following in order to prevent smoking:

- Post signs stating that smoking in that public place is prohibited, except in designated smoking areas.
- Arrange seating to provide, as nearly as practicable, a smoke-free area.
- Implement and enforce the policy for the separation of smokers and nonsmokers.

The bill would amend Section 12607 to require a person who owned or operated a hospital, at a minimum, to post signs or the international "no smoking" symbol at the entrance to and in every building in conspicuous places that were visible to patients, employees, and visitors stating that smoking on hospital property was prohibited, pursuant to Part 126.

Under Part 126, in addition to any other enforcement action authorized by law, a person alleging a violation of the part may bring a civil action for appropriate injunctive relief, if the person has used a public place, child caring institution, child care center, health facility, or private practice office of an individual who is licensed under the Code within 60 days after the civil action is filed. The bill would include a hospital in this provision.

The bill's amendments to Part 126 would take effect on January 1, 2008.

MCL 333.7405 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Use of electronically transmitted prescriptions could increase administrative efficiency and decrease fraud for entities that dispense pharmaceutical products. This could lead to a minor decrease in the cost of providing health insurance for employees of State or local government and those enrolled in the Medicaid program. State- or locally operated medical facilities also could see a small decrease in administrative cost through greater use of electronic prescribing.

Individuals who violated the smoking prohibition on hospital property could be subject to a civil fine. This would increase State restricted revenue available to public libraries.

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.