

Legislative Analysis



FRAUDULENTLY OBTAINING A CONTROLLED SUBSTANCE OR PRESCRIPTION

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House Bill 6026 as enrolled
Public Act 354 of 2010

House Bill 6027 as enrolled
Public Act 355 of 2010
Sponsor: Rep. Andy Neumann
House Committee: Health Policy
Senate Committee: Health Policy (Discharged)

First Analysis (1-18-11)

BRIEF SUMMARY: House Bill 6026 would make it a felony for an individual to fraudulently obtain or attempt to obtain a controlled substance or a prescription for a controlled substance from a health care provider; allow charges for a first offense to be discharged and dismissed if probation was successfully completed; and allow courts to order participation in certain screening, treatment, or rehabilitation services. House Bill 6027 would place the felony penalties within the sentencing guidelines.

FISCAL IMPACT: The bill would have a fiscal impact on the judiciary and corrections system as discussed below.

THE APPARENT PROBLEM:

"Doctor shopping" refers to the practice of going to different doctors in different medical practices without the doctors' knowledge that other medical professionals are being consulted, all with the intent to obtain prescriptions for the same drug, usually narcotic painkillers such as OxyContin and Vicodin or drugs to treat anxiety or depression. Some "doctor shoppers" became addicted to painkillers when under treatment for an earlier injury or surgery or to other drugs when under treatment for a medical or mental health illness. Others may be selling the drugs on the street. To avoid detection, doctor shoppers fill the prescriptions at multiple pharmacies, sometimes even in different towns.

Overdoses or dangerous drug interactions can occur when patients are able to obtain prescription drugs through doctor shopping. According to a study cited earlier in 2010 by CNN Health that had been published in the May edition of the *American Journal of Preventive Medicine*, hospitalizations for poisoning by prescription opioids, sedatives, and tranquilizers were estimated to have increased 65 percent from 1999 to 2006. In addition, approximately 20,000 people die a year from prescription drug overdoses. Doctor shopping also affects health care costs as patients seek treatment at multiple doctor offices, urgent care facilities, or pain clinics and/or undergo unnecessary or repeated diagnostic tests. For example, Blue Cross Blue Shield of Michigan reported in committee testimony that one patient ran up over \$100,000 in medical costs associated

with unnecessary medical tests and ER costs in an attempt to obtain unneeded prescription drugs.

To combat doctor shopping, Michigan enacted legislation in 2002 that created the Michigan Automated Prescription System (MAPS) - a database that collects data on controlled substance prescriptions dispensed from pharmacies in the state. Physicians and pharmacists who suspect that a patient may be doctor shopping can access the database. Law enforcement agencies can also search the MAPS database when conducting drug investigations. In addition, the Public Health Code makes it a four-year felony offense, with a possible fine up to \$30,000, to knowingly or intentionally obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. Reportedly, however, prosecutors have not found this current prohibition very useful in combatting doctor shopping. Instead, it has been suggested that the health code be amended to simply prohibit fraudulently obtaining a controlled substance or prescription for a controlled substance and allow for steering first offenders into drug courts where they can receive appropriate treatment for drug addictions.

THE CONTENT OF THE BILLS:

House Bill 6026 would amend the Public Health Code (MCL 333.7403a) to make it a crime for an individual to fraudulently obtain or attempt to obtain a controlled substance or a prescription for a controlled substance from a health care provider.

A violation would be a felony punishable by imprisonment up to four years and/or a fine of up to \$5,000.

House Bill 6027 would amend the Code of Criminal Procedure (MCL 777.13m) to put the felony penalties in the sentencing guideline provisions.

House Bill 6026 would also specify that the following privileges do not apply in the cases of obtaining controlled substances or prescriptions by fraud: (1) the physician-patient privilege; (2) the dentist-patient privilege; and (3) any other health professional-patient privilege created or recognized by law.

An individual who in good faith provides access to medical records or information in these cases would be immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

A person who did not have a prior conviction under the bill's provisions could be placed on probation, which could include participation in a drug court. Successful completion of probation could result in the charges being discharged and dismissed (MCL 333.7411).

A court could also order a person who was convicted under the bill to undergo screening and assessment to determine whether he or she would likely benefit from rehabilitative services, including alcohol or drug education and treatment programs. As part of the sentence imposed for a conviction, the court could order the person to participate in and

successfully complete one or more appropriate rehabilitative programs. The person would be responsible to pay the costs of any screening, assessment, and rehabilitative services. Failure to complete a program would be considered a violation of the terms of the probation.

FISCAL INFORMATION:

The bills would have an indeterminate fiscal impact on state and local correctional systems. There are no data to indicate how many offenders would be convicted under the affected provisions of current law. To the extent that violators were sentenced to prison, the average appropriated cost of prison incarceration is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 6026 would have an indeterminate, but likely negligible, fiscal impact on the judiciary. Any fiscal impact to local courts would be the result of increased administrative and adjudicatory costs under the provisions of the bill. Any increased fiscal impact would likely be offset through court costs, fines, and fees.

ARGUMENTS:

For:

Current laws on the books are not working well in combatting the practice of "doctor shopping." In general, "doctor shoppers" are people who became addicted to the drugs they once took for treatment of a medical or mental condition. Now, to feed their addictions, they go to multiple medical providers in order to obtain multiple prescriptions. House Bill 6026 would do several things that current criminal statutes prohibiting obtaining prescriptions or controlled substances by fraud do not address.

First, the current statutes require prosecutors to prove the element of intent; House Bill 6026 would not. The bill also specifically states that doctor-patient privacy privileges would not apply in investigations of suspected doctor shopping. Thus, law enforcement agencies could access not only the information already allowed from the MAPS database, but also individual patient records at the medical practices where suspects obtained their prescriptions. Civil immunity would be extended to the health care providers who provided access to those patient records under the bill. But, a provider (or his or her employee) could still be liable if the release of the records constituted gross negligence or willful and wanton misconduct.

Especially meaningful in light of the fact that most doctor shoppers are people addicted to drugs they once lawfully used are the bill's provisions allowing first-time offenders to be eligible to have their charges discharged and dismissed if they successfully complete probation (which can include participation in a drug treatment court, a program proven to

be highly successful in treating drug addictions) and also allowing a court to order any offender into substance abuse screening and treatment, at the offender's cost. Enactment of House Bill 6026 would give prosecutors another tool in the toolbox, so to speak, and provide a punishment more appropriate in some circumstances than currently available.

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