

Legislative Analysis



REVISE ALLOWABLE ACCESS TO ELECTRONIC DATA SYSTEM FOR CONTROLLED SUBSTANCES

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House Bill 4192 as introduced
Sponsor: Rep. Paul Scott
Committee: Health Policy

First Analysis (3-14-11)

BRIEF SUMMARY: The bill would allow the Department of Community Health to provide data relating to the dispensing and prescribing of certain controlled substances to a practitioner for the purpose of determining whether prescriptions he or she had written had been dispensed.

FISCAL IMPACT: House Bill 4192 would result in minimal administrative costs, if any, for the Department of Community Health (DCH) as the Public Health Code would be amended to allow DCH to provide data to a practitioner or other person who is authorized to prescribe controlled substances for the purposes of determining if the prescriptions written have been dispensed.

THE APPARENT PROBLEM:

Recently, the Michigan Dental Association has requested legislation that the association believes would help dentists to identify fraudulent acts by their own employees concerning controlled substances – primarily, narcotic pain relievers. In a recent incident, staff members of a dental practice were using the dentist's license to write prescriptions for controlled substances for themselves and for others (some of which were intended for sale on the streets).

The Department of Community Health maintains an electronic database that keeps tracks of the prescriptions written and filled in the state for controlled substances, but statute limits who has access to the data in the database. Generally speaking, access is limited for purposes of law enforcement and review by the affected licensing boards. A health professional authorized to prescribe or dispense controlled substances cannot currently review his or her own prescribing history to see if any abnormalities stand out. For instance, dentists may only prescribe for limited types of drugs and typically do so for only for a few days' worth of drugs at a time. If drugs for which they normally do not prescribe show up in their prescribing history, or for greater number of pills than usual, it may be a sign of fraudulent activity on the part of a staff member, or that a prescription pad had been stolen, or that one or more patients were illegally altering their own prescriptions.

Some believe that if dentists, as well as other prescribers, could review their own prescribing history records, incidents of fraud, abuse, and illegal diversion of controlled substances could be reduced.

THE CONTENT OF THE BILL:

The bill would allow the Department of Community Health to provide data relating to the dispensing and prescribing of certain controlled substances to a practitioner for the purpose of determining whether prescriptions he or she had written had been dispensed.

The Department of Community Health (DCH) maintains an electronic system – the Michigan Automated Prescription System, or MAPS – for monitoring Schedule 2, 3, 4, and 5 controlled substances that are dispensed by veterinarians and licensed pharmacists and dispensing prescribers. The data collected includes patient identifiers, the name and quantity of the controlled substance dispensed, the date dispensed, and the name of the prescriber and dispenser. Notwithstanding any practitioner-patient privilege, the director of the DCH is permitted by statute to provide data obtained by the electronic monitoring system to the licensing boards of those authorized to prescribe, administer, or dispense controlled substances; departmental employees; law enforcement officials who enforce drug laws; a state-operated Medicaid program; governmental employees who hold a search warrant or subpoena for the records; a practitioner or pharmacist who requests information for the purpose of providing medical or pharmaceutical treatment to a current patient; or an individual under contract to administer the electronic monitoring system.

House Bill 4192 would amend the Public Health Code (MCL 333.7333a) to add "a practitioner or other person who is authorized to prescribe controlled substances" to the list described above. However, access would be limited to the purpose of determining if prescriptions written by that practitioner or other person had been dispensed.

The bill would also delete an obsolete provision requiring a report by October 1, 2002, on the need for a paper prescription form that would minimize the potential for forgery.

(Note: The health code prohibits a person who receives data or any report from the DCH containing any patient identifiers of the electronic system from providing it to any other person or entity except by a court order.)

ARGUMENTS:

For:

The bill would simply allow a doctor or dentist who writes prescriptions for controlled substances, such as narcotic pain relievers like Vicodin, to review his or her own prescribing histories in the MAPS database. By so doing, the prescriber can spot irregularities that may mean that a staff member is fraudulently calling in prescriptions, using electronic transmissions to submit prescriptions, or even writing scripts on the prescriber's prescription pads. Sometimes, it may be that a patient is altering a prescription in order to get a greater quantity of pills or more refills than what had been prescribed.

Currently, a prescriber can search the MAPS database by a specific patient's name. But, a physician or dentist cannot do a general search by his or her own name to see if any

irregularities or patterns that seem out of the ordinary appear. So, if a prescriber suspected abuse or fraud on the part of a specific patient, he or she could check on that patient by name. But prescribers have no way to check prescriptions attributed to them to see if they can identify any irregularities that could mean that some type of fraudulent activity may be going on. If something was spotted, the appropriate law enforcement officials could be alerted and an investigation done. As for penalties for employees who use their bosses' name to write prescriptions, legislation that was enacted at the end of last year (Public Acts 354 and 355) may apply. That legislation makes it a felony to fraudulently obtain or attempt to obtain a controlled substance or a prescription for a controlled substance from a health care provider. Thus, the bill has the potential to reduce incidents of fraud and abuse related to controlled substances. Meanwhile, the health code establishes strict confidentiality criteria regarding patient identifiers that prescribers must abide by.

POSITIONS:

Representatives of the Michigan Dental Association testified in support of the bill. (3-3-11)

The Michigan Academy of Family Physicians indicated support for the bill. (3-3-11)

Blue Cross Blue Shield of Michigan indicated support for the bill. (3-3-11)

The Michigan Pharmacists Association indicated support for the bill. (3-3-11)

The Michigan Osteopathic Association indicated support for the bill. (3-3-11)

The Michigan State Medical Society indicated support for the bill. (3-3-11)

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■ 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.