

PHARMACY: REQUIRE TO DELIVER LAWFULLY PRESCRIBED DRUGS OR DEVICES

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House Bill 5164 (Substitute H-3)

Sponsor: Rep. Lisa Brown

Committee: Judiciary

Complete to 9-21-09

SUMMARY OF HOUSE BILL 5164 AS REPORTED FROM COMMITTEE 09-09-09

The bill would do the following:

- Require pharmacies to have available prescription drugs and devices, and FDA-approved drugs and devices restricted to distribution by pharmacies.
- Provide exemptions from the requirement (for example, if the drug or device was unavailable or the prescription was fraudulent).
- If out of stock or not available under the exemptions, provide a therapeutically equivalent drug or device in a timely manner.
- Prohibit certain conduct by pharmacies and subject violators to disciplinary actions under the health code.
- Require the Department of Community to investigate consumer complaints.

House Bill 5164 would add a new section to the Public Health Code (MCL 333.17744). A pharmacy would be required to deliver lawfully prescribed drugs or devices to patients, as well as distribute FDA-approved drugs and devices for restricted distribution by pharmacies (i.e., emergency contraception, also known as the morning after pill). If this cannot be done, the pharmacy must provide a therapeutically equivalent drug or device in a timely manner consistent with reasonable expectations for filling a prescription.

A pharmacy would be exempt from these requirements in any of the following or substantially similar circumstances:

- There was an obvious or known error in the prescription, inadequacy in the instructions, or known contraindications or an incompatible prescription.
- A national or state emergency existed or guidelines had been issued affecting the availability, usage, or supplies of drugs or devices.
- The pharmacy lacks expertise or necessary equipment to safely produce, store, or dispense the drug or device, such as drug compounds or storage for nuclear medicine.
- The prescription might be fraudulent.
- The drug or device is unavailable.

A pharmacy would have to provide a patient (or his or her agent) a timely alternative for appropriate therapy if the prescribed drug or device was not in stock or the prescription couldn't be filled for one of the above listed reasons. Consistent with customary pharmacy practice, this could include obtaining the drug or device. Alternatives could include, but not be limited to, discussing the concerns listed above with the health care professional who prescribed the medication or device (i.e., doctor, nurse practitioner, or physician's assistant) or to obtain authorization to provide a therapeutic equivalent; returning the unfilled prescription to the patient if requested; as permitted under law, transmitting the prescription information to another pharmacy of the patient's choice; or offering to locate a nearby pharmacy that has the drug or device in stock.

Certain conduct would be prohibited and would subject the pharmacy to discipline or other enforcement actions under the health code. Prohibited conduct would include:

- Destruction of unfilled lawful prescriptions.
- Refusal to return a lawful prescription.
- Violation of a patient's privacy.
- Discrimination against patients or their agents in a manner prohibited by state or federal laws.
- Failure on a persistent basis to have FDA-approved pregnancy prevention drugs or devices available for delivery.

Nothing in the bill would require pharmacies to deliver a drug or device without payment of their usual and customary or contracted charge. Further, a person who believed a violation of the bill occurred could report the violation to the Department of Community Health. The department would have to investigate each complaint and notify the complainant, in writing, of the results of the review or investigation of the complaint as well as any action proposed to be taken.

BACKGROUND INFORMATION:

The bill is virtually identical to House Bill 6049 (H-1) as reported from the House Judiciary Committee last session. The bill failed to see floor action.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ 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.