



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 352 (as enrolled)  
House Bill 4405 (as enrolled)  
House Bill 4434 (as enrolled)  
Sponsor: Senator Bill Hardiman (S.B. 352)  
Representative Gretchen Whitmer (H.B. 4405)  
Representative Scott Hummel (H.B. 4434)  
Senate Committee: Health Policy  
House Committee: Health Policy

**PUBLIC ACT 73 of 2005**  
**PUBLIC ACT 85 of 2005**  
**PUBLIC ACT 72 of 2005**

Date Completed: 8-3-05

### **RATIONALE**

Due to increasing health care costs, many employer-sponsored and individual health care plans either require or offer financial incentives for subscribers to use mail-order pharmacy companies. Reportedly, consumers often can receive medication from mail-order pharmacies at a significant discount--sometimes, more than 50%--off the price at a traditional retail pharmacy. Since the beginning of fiscal year 2004-05, mail-order pharmacies have been able to contract with the State to provide prescription drugs for the Medicaid program. The Public Health Code, however, authorized administrative sanctions against a pharmacist who used the mail to fill prescriptions that were received by mail, meaning that Michigan pharmacies could not compete with out-of-State mail-order pharmacies for State contracts. Evidently, because of the loss of business to mail-order pharmacies, many local pharmacies had to lay off pharmacists or close. It was suggested that the possibility of sanctions should be eliminated so that Michigan pharmacists may operate mail-order services and compete for the Medicaid contracts, and that community pharmacies should be allowed to engage in centralized prescription processing, which many out-of-State competing mail-order firms use to do business.

### **CONTENT**

**House Bill 4434** amended the Public Health Code to allow a pharmacy to

**perform centralized prescription processing services or outsource those services to another pharmacy if certain conditions are met.**

**Senate Bill 352** amended the Public Health Code to exempt pharmacies that share a real-time, on-line database or other equivalent means of communication, and pharmacies that transfer prescriptions pursuant to a written contract for centralized prescription processing services, from the procedure established in the Code for refilling a copy of a prescription from another pharmacy.

**House Bill 4405** amended the Public Health Code to eliminate the authority of a disciplinary subcommittee to impose sanctions against a pharmacist for employing the mail to sell, distribute, or deliver a drug that requires a prescription when the prescription for the drug is received by mail.

Under House Bill 4434, "centralized prescription processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, reviewing drug use, completing claims adjudication, obtaining refill authorizations, initiating therapeutic interventions, and

other functions related to the practice of pharmacy.

Senate Bill 352 and House Bill 4434 were tie-barred to each other. All of the bills took effect on July 19, 2005. They are described below in further detail.

#### **House Bill 4434**

Under the bill, a pharmacy may perform centralized prescription processing services or outsource those services to another pharmacy if all of the following conditions are met:

- The pharmacies have the same owner or have a written contract outlining the services to be provided and the responsibilities and accountabilities of each pharmacy in fulfilling the terms of the contract in compliance with Federal and State laws and regulations.
- The pharmacies share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to prepare a prescription drug order.
- The pharmacies comply with Federal and State laws and regulations.

A pharmacy that performs, or contracts for, centralized prescription processing services must maintain a policy and procedures manual, along with documentation that implementation is occurring, and each must be made available to the Michigan Board of Pharmacy for inspection and review upon request. The manual must include at least a detailed description of how the pharmacies will do the following:

- Maintain appropriate records to identify the responsible pharmacist, or pharmacists, in the various stages of the drug product preparation, dispensing, and counseling process.
- Track the prescription drug order during each step in the drug product preparation, dispensing, and counseling process.
- Identify on the prescription label each pharmacy involved in the preparation and dispensing of the prescription drug order.
- Provide adequate security to protect the confidentiality and integrity of a patient's protected health information.
- Implement and maintain a quality improvement program for pharmacy services designed to monitor and

evaluate objectively and systematically the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

#### **Senate Bill 352**

Under the Code, a pharmacist may refill a copy of a prescription from another pharmacy if the original prescription has remaining authorized refills, and the copy is issued according to the following procedure:

- The pharmacist issuing a written or oral copy of a prescription must cancel the original prescription and record the cancellation.
- The copy must be a duplicate of the original prescription as well as include the prescription number, the name of the pharmacy issuing the copy, the date it was issued, and the number of authorized refills remaining.
- The pharmacist receiving a copy of the prescription must exercise reasonable diligence to determine whether it is valid.
- All other copies furnished must be used, and clearly marked, for information purposes only.

Under the bill, these provisions do not apply to pharmacies that share a real-time, on-line database or transfer prescriptions pursuant to a written contract for centralized prescription processing services as provided in House Bill 4434.

#### **House Bill 4405**

Under the Code, the Department of Community Health may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The Department must report its findings to the appropriate disciplinary subcommittee, which must impose administrative sanctions if it finds that certain grounds exist. Previously, a disciplinary subcommittee could fine or reprimand a licensed pharmacist, place a licensed pharmacist on probation, deny, limit, suspend, or revoke a pharmacist's license, or order restitution or community service for employing the mail to sell, distribute, or deliver a prescription drug by mail, when the prescription was received through the mail. The bill eliminated that ground for disciplinary action.

MCL 333.17752 (S.B. 352)  
333.17753 (H.B. 4434)  
333.17708 et al. (H.B. 4434)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bills will help to level the playing field for local pharmacies by enabling them to compete with large mail-order operations. As a cost-saving measure, the State of Michigan decided to enter into contracts with mail-order pharmacies to provide prescription drugs for the Medicaid program in the current fiscal year. Because Michigan pharmacists were prohibited from delivering medication through the mail if the prescription was received by mail, the State had to give the contracts to out-of-State companies. Due to Michigan's sluggish economy, there recently has been much emphasis placed on attracting and retaining business in Michigan, and giving priority to Michigan companies to perform certain functions, when possible. The bills are consistent with these efforts in that they allow local pharmacies to compete for the contracts.

Mail-order pharmacies typically are large companies that have one central receiving address to which patients mail their prescriptions and several facilities throughout the nation that warehouse specific drugs and actually fill the prescriptions. Due to their smaller customer bases, local pharmacies process a smaller volume of prescriptions, making a large system of drug warehouses uneconomical. To keep mail-order services cost-effective, local pharmacies must contract with other companies to perform the centralized processing function appropriate to the size of their operations. Under Section 17752 of the Public Health Code, however, a prescription on file in a pharmacy is not a public record, and its contents may not be disclosed without the patient's authorization to any person, subject to certain exceptions. Section 17752 allows a pharmacist to refill a copy of a prescription from another pharmacy only if the pharmacist follows a specific procedure. The Michigan Board of Pharmacy maintained that this section essentially prohibited Michigan pharmacies

from contracting with other companies for centralized processing services. The bills expressly allow local pharmacies to contract for centralized prescription processing, provided that appropriate measures are taken to track prescription drug orders.

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

### **Senate Bill 352 and House Bill 4434**

Pharmacies making use of an on-line database or a centralized prescription processing service for the transfer of prescriptions likely will see a reduction in administrative cost. This may lead to moderate cost savings to the State for prescriptions filled for Medicaid fee-for-service recipients, people insured through State employee health plans, and individuals treated at State-run medical facilities.

### **House Bill 4405**

Health insurers, including Michigan Medicaid, currently use mail order firms for the provision of prescription drugs for enrollees. Permitting pharmacies in Michigan to participate in mail order pharmacy will increase competition for this business and may bring about minor reductions in the price of these drugs. Michigan-based pharmacists also will have the opportunity to expand their business offerings to include mail order pharmaceuticals, which may create an opportunity for increased revenue to these firms, generating a positive, indeterminate tax revenue gain for the State.

Under the former law, a pharmacy that provided prescription drugs through the mail was subject to discipline through the Michigan Board of Pharmacy, including a fine of up to \$5,000 per violation. Technically, under the bill, revenue from the fine will no longer be available to the State, although the Department of Community Health could not report a single instance in which a Michigan-based pharmacy violated the mail order prohibition.

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.