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H.B. 37
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. G. Manning

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SUMMARY

- Increases from one to three the number of times that a pharmacist may dispense without a prescription certain drugs to a specific patient within a 12-month period.
- Requires a health insurer to cover prescription drugs dispensed under the bill if those drugs are already covered under the insurer's health benefit plan.
- Prohibits a health insurer from imposing on a drug dispensed in accordance with the bill's provisions a cost-sharing requirement that is greater than that imposed on a drug dispensed with a prescription.

DETAILED ANALYSIS

Dispensing drugs without a prescription

Requirements

The bill increases the number of times within a 12-month period that a pharmacist may dispense or sell to a particular patient certain drugs without a prescription (see "**Dispensing limits**" below). Under continuing law, a pharmacist may do so if all of the following conditions are met:

- The pharmacy where the pharmacist is employed has a record of a prescription for the drug in the name of the patient requesting it, but the prescription does not provide for a refill or the time permitted under State Board of Pharmacy rules for providing refills has elapsed;
- The pharmacist is unable to obtain authorization to refill the prescription from the prescriber or another health care professional responsible for the patient's care;
- In the exercise of the pharmacist's professional judgment, the drug is essential to sustain the patient's life or to continue therapy for the patient's chronic condition, and

failing to dispense or sell the drug to the patient could result in harm to the patient's health.[1]

Dispensing limits

Generally, the amount of a drug that a pharmacist may dispense or sell to a patient without a prescription is limited to a 72-hour supply.[2] However, a pharmacist may exceed that limit if both of the following apply: (1) the drug is not a controlled substance, and (2) records maintained by the pharmacy demonstrate that the patient has been on a consistent drug therapy.[3] In such a circumstance, the pharmacist may dispense or sell not more than a 30-day supply of the drug based on the original prescription or, if the drug's standard dispensing unit is greater than a 30-day supply, not more than the standard unit. When dispensing or selling a drug without a prescription, a pharmacist must exercise professional judgment in determining the amount of a drug to be dispensed or sold.

Under current law, a pharmacist may dispense or sell a drug to a patient without a prescription not more than once per drug during any 12-month period. But, for a drug described above that is not a controlled substance and when the pharmacy's records show that the patient has been on a consistent drug therapy, the bill increases this frequency, allowing a pharmacist to dispense or sell the drug without a prescription not more than three times during any 12-month period.[4]

Health insurance coverage

Coverage for drugs dispensed without a prescription

If a health insurer covers a prescription drug under its health benefit plan, the bill requires the insurer to cover that drug at least once during a 12-month period when it is dispensed by a pharmacist without a prescription in accordance with the bill's provisions.[5]

Additionally, the health insurer is prohibited from imposing cost-sharing requirements on a drug dispensed without a prescription that are greater than those imposed on that drug when dispensed under a prescription. The bill defines "cost-sharing requirement" as the cost to a covered person under a health benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirement.[6]

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[1] R.C. 4729.281(A).

[2] R.C. 4729.281(B)(1).

[3] R.C. 4729.281(B)(2).

[4] R.C. 4729.281(D)(1).

[5] R.C. 3902.70(B).

[6] R.C. 3902.70(A)(1).

Affected plans

The bill's requirements apply to health benefit plans delivered, issued for delivery, modified, or renewed on or after the bill's effective date.[7]

Exemption from review by the Secretary of Insurance

There is an argument that by requiring health insurers to cover drugs dispensed in accordance with the bill's provisions, the bill might establish a mandated health benefit. Under current law, if the General Assembly enacts a provision for mandated health benefits, that provision cannot be applied to any health benefit plan until the Superintendent of Insurance determines that the provision can be applied fully and equally in all respects to employee benefit plans subject to the federal "Employee Retirement Income Security Act of 1974" (ERISA),[8] and to employee benefit plans established or modified by the state or any of its political subdivisions. The bill exempts its requirements from this restriction.[9]

HISTORY

Action	Date
Introduced	02-03-21

H0037-I-134/ar

[7] Section 3 of the bill.

[8] 29 United States Code 1001 *et seq.*, not in the bill. ERISA is a comprehensive federal statute governing the administration of employee benefit plans. ERISA generally precludes state regulation of benefits offered by private employers that self-insure their benefit programs. Larger employers frequently choose to establish their own health insurance plans for their employees in lieu of purchasing coverage from a sickness and accident insurer or health insuring corporation.

[9] R.C. 3902.70(B).