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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 420
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. G. Manning

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SUMMARY

- Increases to three (from one) times in a 12-month period the frequency at which a pharmacist may dispense or sell certain drugs on an emergency basis.
- Requires a health benefit plan to cover prescription drugs that are dispensed on an emergency basis if those drugs are already covered by the health benefit plan.
- Prohibits a health benefit plan from imposing a greater cost-sharing requirement for a drug dispensed on an emergency basis than for the drug when dispensed on a regular basis.

DETAILED ANALYSIS

Dispensing drugs on an emergency basis

Requirements

The bill increases the frequency at which a pharmacist may dispense or sell a dangerous drug to a patient without a prescription from a licensed health professional authorized to prescribe drugs (see “**Dispensing limit**” below). Under continuing law, a pharmacist may dispense or sell a dangerous drug without a prescription 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 by rules adopted by the State Board of Pharmacy for providing refills has elapsed;
- The pharmacist is unable to obtain authorization to refill the prescription from the health care professional who issued it 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 limit

Generally, the amount of a drug that a pharmacist may dispense or sell to a patient on an emergency basis without a prescription is limited to a 72-hour supply.² However, a pharmacist may dispense or sell a 30-day supply of a drug or the standard unit of dispensing for the drug if the standard unit of dispensing exceeds a 30-day supply, if both of the following apply: (1) the drug being dispensed is not a controlled substance, and (2) records maintained by the pharmacy demonstrate that the patient has been on a consistent drug therapy.³ 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 not dispense or sell a drug to a patient without a prescription more than once per drug during any 12-month period. For drugs described above that are not controlled substances and when the pharmacy’s records show that the patient has been on a consistent drug therapy, the bill increases this frequency to allow a pharmacist to dispense or sell the drug without a prescription on an emergency basis not more than three times during any 12-month period.⁴

Health benefit plans

Coverage for drugs dispensed on an emergency basis

The bill requires health plan issuers to cover drugs dispensed by a pharmacist on an emergency basis. If a health plan issuer covers a prescription drug under a health benefit plan, the health plan issuer also must cover that drug at least once during a 12-month period if it is dispensed by a pharmacist in accordance with the bill.

Additionally, the health benefit plan may not impose cost-sharing requirements for a drug dispensed in an emergency situation that are greater than the cost-sharing requirements imposed when that drug is dispensed in accordance with a prescription.⁵ 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

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. 3902.50(B).

⁶ R.C. 3902.50(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 the bill's requirement that health benefit plans cover drugs dispensed on an emergency basis might be considered 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	11-26-19

H0420-I-133/ks

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. 3902.50(B).