



Ohio Legislative Service Commission

Bill Analysis

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H.B. 267

128th General Assembly
(As Introduced)

Reps. Luckie, Domenick, Murray, Pryor

BILL SUMMARY

- Establishes the Ohio Official Prescription Program and requires the State Board of Pharmacy to implement the Program under the advice of the Ohio Official Prescription Program Advisory Committee created by the bill.
 - Requires the Board to prepare an official Ohio prescription form that meets certain tamper-resistant requirements.
 - Prohibits licensed health professionals from prescribing drugs, and prohibits pharmacists from dispensing a drug, after July 1, 2010, unless the prescription is written on the official Ohio prescription form.
 - Requires all prescribers to pay an annual computer maintenance fee of \$250 to the Board and permits the Board to adjust the fee by rule.
 - Permits the Board to contract with a vendor for the preparation and issuance of official Ohio prescription forms.
 - Requires prescribers to notify the Board of loss, destruction, theft, or unauthorized use of the official Ohio prescription forms.
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CONTENT AND OPERATION

Ohio Official Prescription Program

(R.C. 4729.40 and 4729.403)

The bill establishes the Ohio Official Prescription Program and requires the State Board of Pharmacy to implement the Program under the advice of the Ohio Official

Prescription Program Advisory Committee (see "**Ohio Official Prescription Program Advisory Committee**," below).

Under the Program, the Board is to prepare an official Ohio prescription form that meets all of the following requirements:

(1) Contains one or more industry-recognized features designed to prevent the unauthorized copying of a completed or blank prescription form, the erasure or modification of information written on the prescription form, or the use of counterfeit prescription forms;

(2) Is capable of being automatically validated through pharmacy claims processing systems that use the unique identification number required by the bill (see "**Issuance of official Ohio prescription form**," below) when those processing systems become available;

(3) Complies with federal law requiring prescriptions for covered outpatient drugs paid for by Medicaid to be executed on a tamper-resistant prescription.¹

Prohibitions

(R.C. 4729.401 and 4729.402)

The bill prohibits licensed health professionals² from prescribing drugs in Ohio after July 1, 2010, unless the prescription is written on the official Ohio prescription form. The bill likewise prohibits pharmacists from dispensing a drug after July 1, 2010, unless the prescription for the drug is written on the official Ohio prescription form.

The bill's prohibitions do not apply, however, if (1) a prescription is an electronic or oral order that is later reduced to writing, or (2) a prescription is issued by a

¹ Federal law prohibits Medicaid payments from being made with respect to amounts expended for medical assistance for covered outpatient drugs for which the prescription was executed in written (and non-electronic) form unless the prescription is executed on a tamper-resistant pad (42 U.S.C. 1396b(i)(23)). "Covered outpatient drug" generally means (a) prescription drugs, subject to certain limitations, (b) certain biological products other than vaccines, and (c) insulin (42 U.S.C. 1396r-8(k)(2)).

² Under current law, the following licensed health professionals are authorized to prescribe drugs in the course of professional practice: (1) a dentist, (2) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner holding a certificate to prescribe, (3) an optometrist holding a therapeutic pharmaceutical agents certificate, (4) a physician, including a podiatrist, (5) a physician assistant holding a certificate to prescribe, and (6) a veterinarian. These professionals are also referred to in statute as "prescribers." (R.C. 4729.01(I), not in the bill.)

prescriber working at an institutional facility³ and the drug is to be dispensed at the facility for a patient receiving treatment at the facility and the patient is never in possession of the prescription.

Issuance of official Ohio prescription form

(R.C. 4729.404(A) and 4729.406)

Beginning on January 1, 2010, and upon request of a prescriber and payment of the computer maintenance fee (see "**Computer maintenance fee**," below), the bill requires the State Board of Pharmacy to issue official Ohio prescription forms to the prescriber in quantities and at intervals that the Board determines appropriate. Before issuing the forms, the Board must mark each form with a unique identification number and keep records that indicate which unique numbers are issued to which prescribers.

Beginning on January 1, 2010, the bill prohibits any prescriber from (1) issuing a written prescription on an official Ohio prescription form that was not issued to the prescriber, and (2) transferring the form to another prescriber.

Computer maintenance fee

(R.C. 4729.404(B); Section 2)

The bill requires every prescriber to pay an initial computer maintenance fee of \$125 to the State Board of Pharmacy on January 1, 2010. The Board is to issue official Ohio prescription forms in quantities that the Board determines appropriate to the prescribers that pay the required fee. The prescribers may begin to immediately issue written prescriptions on official Ohio prescription forms.

Then, on June 30, 2010, all prescribers are to begin paying an annual computer maintenance fee to the Board. The fee is to be \$250 until the Board adopts rules establishing amounts for the annual computer maintenance fees. After amounts are established in rules, a prescriber is to pay the applicable computer maintenance fee set by the Board. The annual fee must be paid only if the prescriber's license authorizing the prescriber to issue prescriptions is in effect on the date the fee is due.

³ Under the bill, "institutional facility" means either of the following at which medical care is provided on site and medical records documenting episodes of care, including medications ordered and administered, are maintained: (1) a hospital, or (2) a facility licensed by the State Board of Pharmacy, the Department of Health, the Department of Rehabilitation and Correction, or the Department of Developmental Disabilities (R.C. 4729.401(A)).

Vendor may prepare official Ohio prescription form

(R.C. 4729.405)

The bill permits the State Board of Pharmacy to contract with a vendor for the preparation and issuance of official Ohio prescription forms. To be eligible for the contract, each printing facility used by the vendor to print official Ohio prescription forms must have a two-year history of service organization audits conducted pursuant to the Statement on Auditing Standards Number 70 (SAS 70) of the American Institute of Certified Public Accountants and must maintain such audits annually. If the Board contracts with a vendor, the bill requires the Board to establish security requirements for the procurement of official Ohio prescription forms through the vendor.

Required notification for prescribers

(R.C. 4729.408)

Beginning on January 1, 2010, the bill requires a prescriber to notify the State Board of Pharmacy of (1) any loss, destruction, theft, or unauthorized use of an official Ohio prescription form issued to that prescriber, and (2) any failure to receive official Ohio prescription forms requested by that prescriber. The prescriber is to notify the Board on a form prescribed by the Board and immediately after the prescriber learns of the reason for the notification. In the case of failure to receive the forms, the bill specifies that the notice is to be made within a reasonable time after the prescriber requests the forms. Upon receiving a prescriber's notification, the Board may notify pharmacies and pharmacists of the reported loss, destruction, theft, or unauthorized use of an official Ohio prescription form.

Liability

(R.C. 4729.409)

The bill exempts a pharmacy, pharmacist, or prescriber from liability for damages in a civil action and from being subject to disciplinary action by the State Board of Pharmacy for acting in good faith pursuant to the bill's provisions.

Rule-making authority

(R.C. 4729.4010)

The bill requires the State Board of Pharmacy to adopt rules in accordance with the Administrative Procedure Act that the Board considers necessary to implement the bill's provisions. The bill permits the Board to adopt rules that establish the amount of the computer maintenance fee required by the bill. The Board is permitted to establish

different amounts for computer maintenance fees to be paid by prescribers holding different licenses.

Ohio Official Prescription Program Advisory Committee

(R.C. 4729.407(A) and (F))

The bill creates the Ohio Official Prescription Program Advisory Committee to advise the State Board of Pharmacy on the implementation of the Ohio Official Prescription Program including all of the following matters:

- (1) Compliance of official Ohio prescription forms with the bill's requirements for those forms;
- (2) If applicable, contracts with vendors to prepare and issue the official Ohio prescription forms;
- (3) Evaluating the Program;
- (4) The impact of the Program on pharmacies and suggestions for moderating that impact;
- (5) Rules the Board adopts regarding the Program.

Duration of the Advisory Committee

(R.C. 4729.407(A))

Under the bill, the Committee is set to expire on the earlier of the following:

- (1) The date that the Board determines that the Program is fully operational if the Board does not implement the Program by contracting with a vendor for the preparation and issuance of the official Ohio prescription forms;
- (2) The date that the Board is no longer contracting with a vendor, if the Board initially implements the Program by contracting with a vendor but subsequently chooses not to contract with a vendor.

Advisory Committee membership

(R.C. 4729.407(B) through (E))

The Committee is to consist of the following five members: (1) one member appointed by the Board, (2) one member appointed by the Speaker of the House of Representatives, (3) one member appointed by the President of the Senate, and (4) two



members appointed by the Governor. Initial appointments must be made not later than 90 days after the bill's effective date. Members may be reappointed.

Vacancies are to be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed is to hold office as a member for the remainder of that term or until the Committee expires, whichever occurs sooner. Members are to continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

If the Committee does not expire within three years after initial appointments are made, both of the following apply:

(1) Terms of office are to be for three years, with each term ending on the same day of the same month as did the term that it succeeds.

(2) Each member is to hold office from the date of the member's appointment until the end of the term for which the member was appointed.

However, if the Committee expires within three years after initial appointments are made, terms of office are to be until the Committee expires with each member holding office from the date of the member's appointment until the Committee expires.

HISTORY

ACTION	DATE
Introduced	08-12-09

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