HB 626

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 626 (Delegate Mandel, *et al.*)
Health and Government Operations

Prescription Safety Act

This bill adds prescription format and content requirements, requires the health occupations boards to monitor compliance with the requirements, authorizes drugs to be dispensed by a pharmacist on an electronically transmitted prescription, and creates a credit against the State income tax for individuals or corporations that transmit prescriptions electronically to a pharmacy.

The bill takes effect July 1, 2006 and applies to tax years 2006 through 2009. The tax credit provisions of the bill terminate June 30, 2010.

Fiscal Summary

State Effect: The extent of any State revenue loss depends on the number of medical practitioners who purchase eligible software and cannot be reliably estimated. Under one set of circumstances, State revenues could decrease by approximately $2.2 million in FY 2007. Department of Health and Mental Hygiene (DHMH) special fund expenditures are expected to increase by at least $50,000 in FY 2007 to educate providers and the general public about prescription format and content requirements. General fund expenditures would increase by approximately $32,900 in FY 2007, which reflects one-time tax form changes and computer programming expenses.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF/SF Revenue	(-)	(-)	(-)	(-)	$0
GF Expenditure	32,900	0	0	0	0
SF Expenditure	50,000	-	-	-	-
Net Effect	($82,900)	$0	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local highway user revenues distributed from the corporate income tax could decrease minimally due to credits being claimed against the corporate income tax. No effect on expenditures.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Prescription Requirements

The bill allows drugs to be dispensed by a pharmacist on an electronically transmitted prescription from a health care practitioner authorized to prescribe.

It also adds prescription format and content requirements that each prescription contain certain information to make the prescription easier to read. For example, prescribers would be required to spell out abbreviations and include information such as the reason the drug was prescribed and the patient's age. The health occupations boards that oversee health care practitioners authorized by law to prescribe drugs must ensure compliance with these requirements. A pharmacist is not responsible for ensuring compliance with these requirements.

The Secretary of Health and Mental Hygiene must work with the health occupations boards and health practitioner professional associations to educate prescribers, pharmacists, and the public concerning the requirements. The health occupations boards must provide continuing education credits for training concerning the requirements and investigate for possible disciplinary action any complaint regarding a prescription's format and content.

It gives the Secretary of Health and Mental Hygiene, the State Board of Pharmacy, or agents of either entity, the authority to enter a permit holder's pharmacy and audit their prescription records for compliance with the prescription format and content requirements or investigate a complaint against a pharmacist, a health care practitioner, or a consumer regarding prescription format and content.

Tax Credit

An individual or corporation may claim a credit against the State income tax in an amount equal to 50% of the cost of a software application that transmits prescriptions

electronically to a pharmacy. The credit allowed may not exceed $1,000 or the tax liability in that tax year. Any unused portion of the credit may not be carried forward to any other tax year.

The State Board of Pharmacy must establish standards for certifying electronic prescription software applications. To qualify for the tax credit, an individual or corporation must receive a statement from the State Board of Pharmacy certifying that the software application for which the individual or corporation is seeking the tax credit meets the board's standards for electronic transmission of prescriptions. An individual or corporation must file proof of board certification in the manner required by the Comptroller.

Current Law: A drug intended for use by human beings and in any of the following classifications may be dispensed by a pharmacist only on a written or oral prescription from a health practitioner authorized to prescribe the drug:

- a habit-forming drug;
- a drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a health practitioner authorized by law to administer such a drug; and
- a drug limited by an approved application to use under the professional supervision of a health practitioner authorized by law to administer the drug.

A prescription may be written or oral. A pharmacist may not dispense a drug on an oral prescription unless the pharmacist writes out and files the prescription.

Chapter 503 of 2004 requires written prescriptions by a health care practitioner prescribing a drug to be legible and established a DHMH workgroup to study the issue of prescription legibility and make recommendations for statutory or regulatory changes. A report was due by November 1, 2004 to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee. Chapter 43 of 2005 extended the reporting deadline for the workgroup. A final report was due by August 15, 2005.

Chapter 291 of 2005 created a Task Force to Study Electronic Health Records and the current potential expansion of electronic health record utilization in Maryland, including: electronic transfer, electronic prescribing, computerized physician order entry, and the cost of implementing those functions. The task force, staffed by DHMH, must report its findings to the Governor and the General Assembly by December 31, 2007.

Statute does not address electronic health records (EHRs). The Board of Examiners of Psychologists' regulations require a psychologist to maintain the confidentiality of a patient's written and electronic records when storing and disposing of those records.

No similar State tax credit exists for the purchase of software that enables prescriptions to be sent electronically to a pharmacist. These purchases, however, can typically be deducted as a business expense, which typically decreases federal and State tax liability.

Federal Electronic Health Care Initiatives

The federal Health Insurance Portability and Accountability Act (HIPAA) requires the Department of Health and Human Services to establish national standards for electronic health care transactions and addresses health information security and privacy issues. A federal regulation implementing the HIPAA privacy and security requirements established the "Privacy Rule" which guarantees patients access to their medical records, gives them more control over how their protected health information is used and disclosed, and provides an avenue of recourse if their medical privacy is compromised.

Protected health information is any health information that identifies an individual and is maintained or exchanged electronically or in hard copy.

Health care organizations covered by the Privacy Rule are all health care providers who electronically transmit certain administrative and financial health information, all health plans, and all health care clearinghouses.

The federal Medicare Prescription Drug Improvement and Modernization Act of 2003 requires the Centers for Medicare and Medicaid Services to develop standards for electronic prescribing. On January 17, 2006, Health and Human Services Secretary Mike Leavitt announced the launch of a pilot project to test initial standards for electronic prescribing. The pilot project will measure the impact of electronic prescribing data transmission systems on patient safety and quality of care.

In April 2004, President George W. Bush issued an Executive Order calling for widespread adoption of interoperable EHRs within 10 years and established the National Coordinator for Health Information Technology.

Background: This bill is based on the final recommendations of the Maryland Legibility of Prescriptions Workgroup. The workgroup concluded that eliminating handwritten prescriptions is the first step in preventing medical errors due to illegible and unclear prescriptions and improving patient safety. The workgroup finds that e-prescribing, in conjunction with an electronic medical record system, is the ideal system for prescribers

and pharmacists. However, the workgroup finds that the cost of converting to such a system and dealing with the emerging and changing technology would make mandating e-prescribing in 2006 unrealistic.

The President's Information Technology Advisory Committee made various recommendations in its 2004 report on EHRs. Those recommendations include:

- increasing federal support of demonstration studies measuring the costs of public and private National Health Information Infrastructure and EHR investments and practices;
- having diverse regional or statewide demonstrations of exchanging health information involving multiple private or federal caregivers;
- convening a federal task force under the National Health Information Technology coordinator to identify real and perceived legal impediments to clinicians, hospitals, laboratories, and pharmacies from sharing EHRs;
- developing a single set of EHR standards that can be implemented across all federally implemented EHRs and shared with the private sector;
- providing federal incentives to incorporate the Systemized Nomenclature of Medicine, Clinical Terms (which is available for free through the Department of Health and Human Services) into EHRs;
- developing a single set of data standards for the most common forms of clinical information; and
- conducting research and development in human machine interfaces for use in the health care sector.

Health care providers need financial incentives to adopt information technology that allows for exchanging health care information, according to a 2004 report by Connecting for Health. Connecting for Health is a public-private collaborative focusing on establishing an interconnected health information infrastructure. The report advises that small- and medium-sized practices will need financial incentives to recover most of their EHR costs, ranging from $12,000 to $24,000 per full-time physician per year. This translates to approximately $3 to $6 per patient visit.

The Institute for Safe Medication Practices urges physicians to use electronic prescribing systems to prevent medication errors. According to the institute, physicians in this country handwrite nearly every prescription. As a result of poor handwriting, pharmacists make more than 150 million calls to physicians annually to clarify what the doctor prescribed. The institute called for the elimination of handwritten prescriptions by 2003.

A 1999 Institute of Medicine report showed prescription medication errors kill up to 7,000 people in the United States annually. Drug-related morbidity and mortality costs almost $77 billion each year.

CareFirst BlueCross BlueShield is in its second year of a pilot program testing personal digital assistants (PDAs) and one-year licenses for e-prescribing software provided for free to 500 physicians. The first year of the pilot program ran from September 2004 through August 2005. During that period, more than 387,000 electronic prescriptions were generated. Using the software, a physician generates an electronic prescription and transmits it directly to a patient's pharmacy. The software allows physicians access to CareFirst's entire drug formulary and alerts prescribers to potential interactions a drug they are prescribing could have with another drug a patient is taking or an allergy a patient has. Prescribers also have access through the software to a patient's medication history for the past 10 years from the health plan's claims database. In its first year, CareFirst says it saved almost $624,000 because of a decrease in adverse drug events.

Approximately 60% of the physicians participating in the first year of the pilot program used the e-prescribing systems enough to qualify to have the software licensing fees subsidized for the second year of the pilot program. Physicians eligible to continue with the pilot program wrote 50 prescriptions a month for the 12-month pilot period and wrote an average of 50 prescriptions a month during the last three months of the pilot. Physicians who did not meet these targets were allowed to keep their PDAs but were required by CareFirst to pay the software licensing fees during the pilot program's second year. CareFirst advises that software and licensing fees averaged approximately $1,500 annually per physician and that the PDAs were purchased at a cost of approximately $500.

State Revenues: The actual cost of the bill, which cannot be reliably estimated at this time, depends on the number of eligible medical practitioners that purchase eligible software and claim a credit against their tax liability.

However, *for illustrative purposes only*, based on the number of health practitioners in the State, personal and corporate income tax revenues could decrease by approximately $2.2 million in fiscal 2007. This estimate is based on the following facts and assumptions:

- The State Board of Physicians estimates that it will issue 1,400 new licenses and 10,200 renewals in fiscal 2006. The board renewed 12,425 licenses in fiscal 2006.
- The State Board of Nursing estimates that 2,600 individuals in the nursing profession are authorized by law to prescribe prescriptions.

- The Bureau of Labor Statistics estimates that there are 2,120 dentists in Maryland.
- An average credit of $750 will be claimed.
- Ten percent of eligible individuals will claim the credit.

The Department of Legislative Services (DLS) advises that the number of medical practitioners that would claim the credit cannot be reliably estimated. To the extent that a higher number of practitioners claim the credit than estimated, State revenues could decrease more than estimated. **Exhibit 1** lists the estimated loss in revenues associated with different percentages of practitioners claiming the credit.

Exhibit 1
Estimated Annual Revenue Loss
HB 626

Percent of Practitioners Claim the Credit	Revenue Loss ($ in Millions)
5%	1.1
10%	2.2
25%	5.4
50%	10.8
75%	13.5
100%	21.7

State Expenditures: DLS estimates that, as the primary boards affected, the State Board of Physicians and the State Board of Pharmacy would together spend at least $50,000 in special funds in fiscal 2007 educating prescribers, pharmacists, and the public on the bill's prescription format and content requirements. Special fund expenditures related to increased investigation and disciplinary actions could not be reliably estimated but are expected to increase.

In future years, special fund expenditures for the affected health occupations boards could increase for additional educational activities.

The Comptroller's Office reports that it would incur a one-time expenditure increase of $32,850 in fiscal 2007 to add the credit to the personal and corporate income tax forms.

This includes data processing changes to the SMART income tax return processing and imaging systems and testing.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Department of Health and Mental Hygiene; CareFirst Blue Cross/Blue Shield; *Maryland Legibility of Prescriptions Workgroup: Final Report to the General Assembly*, Department of Health and Mental Hygiene, August 15, 2005; *Revolutionizing Health Care Through Information Technology*, President's Information Technology Advisory Committee, June 2004; *Financial, Legal and Organizational Approaches to Achieving Electronic Connectivity in Healthcare*, Connecting for Health, October 2004; U.S. Department of Health and Human Services; *A Call to Action: Eliminate Handwritten Prescriptions Within 3 Years*, Institute for Safe Medication Practices; *Sunset Review: Evaluation of the State Board of Physicians*, Department of Legislative Services, October 2005; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2006
nas/ljm

Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510