



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Luckie, Boyd

BILL SUMMARY

Ohio Official Prescription Program

- Establishes the Ohio Official Prescription Program and requires the State Board of Pharmacy to implement and administer the Program.
- Requires the Board to prepare and issue official prescription forms for use by prescribers when issuing prescriptions and permits the Board to contract with a vendor to prepare and issue the forms instead of the Board.
- Requires the Board to cease issuing official prescription forms if the Board determines that at least 90% of all prescriptions are being transmitted to pharmacies through electronic systems.
- Prohibits prescribers from prescribing a drug, and pharmacists from dispensing a drug, 18 months after the bill's effective date, unless the prescription for the drug is written on the official prescription form.
- Requires the Board to assess an annual Program maintenance fee for five years on each prescriber who intends to practice in Ohio during that year.
- Requires the Board to provide pharmacists and the Ohio Department of Job and Family Services with lists containing certain information regarding the unique identification numbers contained on the official prescription forms.

Ohio Automated Rx Reporting System (OARRS) access

- Expands a prescriber's or pharmacist's access to the information in OARRS and requires the information to be reviewed before a drug is prescribed or dispensed.

CONTENT AND OPERATION

Ohio Official Prescription Program

The bill establishes the Ohio Official Prescription Program and requires the State Board of Pharmacy to implement and administer the Program for the purpose of preparing and issuing an official prescription form to be used by prescribers in Ohio. The bill permits the Board to establish an advisory committee to assist with the implementation and administration of the Program. If the Board establishes the committee, the Board must appoint members in such a manner that the constituencies with interests in the Program, as determined by the Board, have representation on the committee.¹

Preparing the official prescription form

Under the Program, the Board is to prepare an official 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) Contains a unique identification number;

(3) Complies with federal law requiring prescriptions for covered outpatient drugs paid for by Medicaid to be executed on a tamper-resistant prescription forms. (Medicaid-covered outpatient drugs include prescription drugs, certain biological products other than vaccines, and insulin.)²

Issuing the official prescription form

Beginning 12 months after the bill's effective date, the Board is to issue, upon request, the official prescription forms to prescribers practicing in Ohio and who have paid the Program maintenance fee required by the bill (see "**Program maintenance fee**" below). Currently, only the following health professionals are authorized under Ohio law to become prescribers: physicians (including podiatrists), dentists, clinical

¹ R.C. 4729.85.

² R.C. 4729.86(A) and 42 U.S.C. 1396r-8(k)(2).

nurse specialists, certified nurse-midwives, certified nurse practitioners, physician assistants, optometrists, and veterinarians.³

If, after requesting the official prescription forms, a prescriber fails to receive the forms, the prescriber must notify the Board within a reasonable time. A prescriber must immediately notify the Board of any loss, destruction, theft, or unauthorized use of an official prescription form issued to the prescriber. A prescriber who fails to comply with either of these requirements is guilty of a fourth degree misdemeanor.⁴

Required use of the official prescription form

Beginning 18 months after the bill's effective date, the bill prohibits a prescriber from issuing a prescription unless it is written on an official prescription form. Depending on when the Board begins issuing the forms, each prescriber at that time will have at least six months to request the forms from the Board and comply with the bill's requirement to use the forms for issuing prescriptions.

A prescriber who violates the prohibition is guilty of a fourth degree misdemeanor. However, this prohibition does not apply to a prescription that meets any of the following criteria:

(1) Is transmitted to a pharmacy through an electronic prescription transmission system or by a facsimile machine;

(2) Is an oral order for drugs that is later reduced to writing;

(3) Is a prescription for a patient in an institutional facility – either a hospital or facility licensed by the Board, Department of Health, Department of Rehabilitation and Correction, or Department of Developmental Disabilities that provides on-site medical care;

(4) Was issued outside of Ohio.⁵

The bill further prohibits prescribers from (1) issuing a written prescription on an official prescription form that was not issued to that prescriber, and (2) transferring a form to another prescriber. These prohibitions also take effect 18 months after the bill's

³ R.C. 4729.86(B)(1).

⁴ R.C. 4729.87, 4729.89(D), and 4729.99(J).

⁵ R.C. 4729.89(A) and (B) and 4729.99(J).

effective date and a prescriber who violates these prohibitions is also guilty of a fourth degree misdemeanor.⁶

The Board may issue the official prescription forms in quantities and at intervals the Board determines appropriate. The bill requires the Board to keep records indicating which unique identification numbers are issued with the forms and which prescribers received those numbers.⁷

Contract to prepare and issue the official prescription form

In lieu of the Board preparing and issuing the official prescription form, the bill permits the Board to contract with a vendor for the preparation and issuance of the forms. To be eligible for the contract, each printing facility used by the vendor to print the 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 the forms through the vendor.⁸

Dispensing a drug pursuant to the official prescription form

Beginning 18 months after the bill's effective date, the bill prohibits a pharmacist from dispensing a drug pursuant to a prescription that is not written on an official prescription form. A pharmacist who violates this prohibition is guilty of a fourth degree misdemeanor.⁹

Ceasing to issue the official prescription form

The Board must cease to issue official prescription forms if the Board determines that at least 90% of all prescriptions are being transmitted to pharmacies through electronic prescription transmission systems. When determining this percentage, the bill requires the Board to select the criteria to be used in making the determination, including the period of time that is to be represented by the percentage.¹⁰

⁶ R.C. 4729.89(E) and (F) and 4729.99(J).

⁷ R.C. 4729.86(B)(2) and 4729.01(I) (not in the bill).

⁸ R.C. 4729.861.

⁹ R.C. 4729.89(C).

¹⁰ R.C. 4729.86(B)(3) and (C).

Program maintenance fee

For five years following the bill's effective date, the bill requires the Board to assess a Program maintenance fee on each prescriber who intends to practice in Ohio during the year for which the fee is assessed. Under the bill, the fees are determined as follows:

- (1) For prescribers who issue 100 or more prescriptions annually, \$100;
- (2) For prescribers who issue fewer than 100 prescriptions annually, \$50;
- (3) For prescribers who serve primarily as instructors at the university or college level, \$50.

For purposes of determining which fee a prescriber must pay, each prescriber must provide to the Board the total number of prescriptions issued by that prescriber in the calendar year immediately preceding the year for which the fee is being assessed.

The bill requires each prescriber to pay an initial Program maintenance fee that is prorated as determined by the Board, to cover the period between the bill's effective date and the following June 30. Thereafter, each prescriber must pay the fee by a date chosen by the Board. If the prescriber does not pay the fee, the bill prohibits the Board from issuing the official prescription forms to the prescriber. A prescriber who issues prescriptions only through an electronic prescription transmission system, except for written prescriptions for controlled substances, is not required to pay the fee.¹¹

Ohio Official Prescription Program Fund

The bill creates the Ohio Official Prescription Program Fund and requires that all moneys received under the law governing the Program be deposited into the Fund. The money in the Fund is to be used solely for purposes of implementing and administering the Program and the Ohio Automated Rx Reporting System (OARRS), so long as OARRS is maintained by the Board.¹²

List of unique identification numbers

List to be provided to pharmacists

Beginning one year after the bill's effective date, the bill requires the Board to provide pharmacists with a list of the unique identification numbers reported by a prescriber as being lost, destroyed, stolen, used without authorization, or not received.

¹¹ R.C. 4729.88 and Section 4.

¹² R.C. 4729.90.

The bill prohibits a pharmacist from dispensing a drug pursuant to a prescription that contains a number on this list.¹³

List to be provided to the Ohio Department of Job and Family Services

Similarly, beginning one year after the bill's effective date *or* when the Ohio Department of Job and Family Services (ODJFS) is capable of utilizing the unique identification numbers for the purposes of prescription drug coverage under the Medicaid program, the bill requires the Board to provide ODJFS with a list of (1) all unique identification numbers marked on the official prescription forms, and (2) the unique identification numbers reported by a prescriber as being lost, destroyed, stolen, used without authorization, or not received. The bill requires ODJFS to deny a prescription drug claim under the Medicaid program if the prescription is not written on the form or contains a number that was reported lost, destroyed, stolen, used without authorization, or not received.¹⁴

List that may be provided to health insurers

Beginning one year after the bill's effective date, the bill permits the Board to provide the list given to ODJFS (as discussed above) to any entity that provides health care coverage for prescription drugs, including a health insuring corporation, sickness and accident insurer, or public or private employer that offers health care benefits through a self-insurance plan or other self-insurance system. The Board is permitted to impose a fee for providing the list to a health care insurer and must establish the amount in rules.¹⁵

The lists provided by the Board to pharmacists, ODJFS, and health insurers may be provided in a format and at intervals established by the Board in rules. As necessary, the Board may update the lists.¹⁶

Liability

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 Board for acting in good faith pursuant to the bill's provisions.¹⁷

¹³ R.C. 4729.871(A).

¹⁴ R.C. 4729.871(B).

¹⁵ R.C. 4729.871(C).

¹⁶ R.C. 4729.871(D).

¹⁷ R.C. 4729.91.

Rule-making authority

The bill requires the Board to adopt rules in accordance with the Administrative Procedure Act that the Board considers necessary to implement and administer the Ohio Official Prescription Program.¹⁸

Ohio Automated Rx Reporting System (OARRS) access

The bill expands a prescriber's or pharmacist's access to the information in OARRS by requiring the Board to grant a prescriber or pharmacist general access to the information and repealing the current law that permits a prescriber or pharmacist to request information from OARRS only on a case-by-case basis for the purpose of providing medical or pharmaceutical treatment to the patient who is the subject of the request. The Board must grant the access to OARRS in a manner that enables each prescriber and pharmacist to review information in the database that pertains to a prescriber's or pharmacist's patient before a prescriber issues a prescription to a patient for a drug included in the database and before a pharmacist dispenses such a drug. The bill also permits the prescriber or pharmacist to review OARRS information for the purpose of providing medical treatment or pharmacist services to the patient at any other time.

The bill exempts a prescriber or pharmacist from liability for damages in a civil action for injury, death, or loss to person or property on the basis that the prescriber or pharmacist did or did not review information in the database pertaining to a patient.¹⁹

Rule-making authority

The bill requires the Board to adopt rules regarding the manner in which prescribers and pharmacists are to be granted access to OARRS.²⁰

HISTORY

ACTION	DATE
Introduced	02-01-11

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¹⁸ R.C. 4729.92.

¹⁹ R.C. 4729.75, 4729.79, and 4729.791.

²⁰ R.C. 4729.83(M).

