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H.B. 37
134th General Assembly

Final Analysis

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Primary Sponsor: Rep. Manning

Effective date: June 1, 2022

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SUMMARY

- Increases from one to three the number of times that a pharmacist may dispense certain refills without a prescription to a specific patient within a 12-month period.
- Requires a health insurer to cover prescription drugs dispensed under the act if those drugs are already covered under the insurer's health benefit plan, and prohibits the insurer from imposing 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 act increases the number of times within a 12-month period that a pharmacist may dispense 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 practices 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 for providing refills has elapsed;
- The pharmacist is unable to obtain authorization to refill the prescription from the prescriber or another prescriber responsible for the patient's care;

- In the exercise of professional judgment, the pharmacist determines that the drug is essential to sustain the patient's life or to continue therapy for the patient's chronic condition, and failing to dispense the drug could result in harm to the patient's health.¹

Dispensing limits

Law maintained by the act generally limits to a 72-hour supply the amount of a drug that a pharmacist may dispense to a patient without a prescription. It further restricts a pharmacist from doing so more than once per drug.² An exception exists, however, when the patient has been on a consistent drug therapy with a noncontrolled substance.³ In those circumstances, a supply greater than 72 hours may be dispensed.

Under prior law, the exception permitted dispensing only once per drug in any 12-month period. The act authorizes dispensing not more than three times during any 12-month period. The dispensing may not be consecutive in time. The act maintains a requirement that a pharmacist must exercise professional judgment in determining the amount of a drug to be dispensed.⁴ The table below summarizes dispensing limits under the act as compared to prior law.

Dispensing limits for consistent drug therapy without a prescription		
Frequency	The act	Prior law
First time in a 12-month period	Authorizes a pharmacist to dispense 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.	Same.
Second or third time in a 12-month period	Authorizes a pharmacist to dispense a seven day supply or, if the drug is packaged in a manner that provides more than a seven-day supply, the lowest available supply.	Dispensing not authorized.

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(B)(2) and (3).

Health insurance coverage

Coverage for drugs dispensed without a prescription

If a health insurer covers a prescription drug under its health benefit plan, the act requires the insurer to cover that drug when it is dispensed by a pharmacist without a prescription in accordance with the act'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. Preexisting law 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

Affected plans

The act's requirements apply to health benefit plans delivered, issued for delivery, modified, or renewed on or after May 30, 2022, the act'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 act's provisions, the act might establish a mandated health benefit. Under continuing law, health benefits mandated by the General Assembly 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 act exempts its requirements from this restriction.⁹

⁵ R.C. 3902.62(B).

⁶ R.C. 3902.50(C), not in the act.

⁷ Section 3 of the act.

⁸ 29 United States Code 1001 *et seq.*, not in the act.

⁹ R.C. 3902.62(B).

HISTORY

Action	Date
Introduced	02-03-21
Reported, H. Health	05-03-21
Passed House (92-3)	05-05-21
Reported, S. Health	01-26-22
Passed Senate (30-1)	02-09-22
House concurred in Senate amendments (95-3)	02-16-22
