

**Commission to Study Allowing Pharmacists to Prescribe or Make Available via
Protocol Oral Contraceptives and Certain Related Medications**

Meeting Minutes
October 31, 2017

Opening

The meeting of the Commission to Study Allowing Pharmacists to Prescribe or Make Available via Protocol Oral Contraceptives and Certain Related Medications was called to order at 1:00PM on October 31, 2017 in Room 205, Legislative Office Building by Representative Mariellen MacKay.

Present

Rep Mariellen MacKay; Rep William Marsh; Robert Stout; Michael Bullek; Gary Sobelson; Jennifer Frizzell; Sara Kellogg Meade; Patricia Tilley; Amy Schneider; Sen Donna Soucy; Rep Peter Schmidt; Lyndsay Schommer.

Approval of minutes

Representative William Marsh moved to approve the minutes from October 24, 2017. The motion was seconded by Michael Bullek. The minutes were approved.

Presentations

The primary purpose of this meeting was to hear from Attorney Nancy Smith with regard to questions about proposed legal immunities and options for structuring standing orders.

Nancy Smith opened the conversation by re-stating her understanding of the Commission's questions. It was her understanding that the CDC has not made the same efforts to expand access to contraception as they had done with naloxone. While there is significant public health benefit to increased access to contraception, there does not appear to be the same urgent need that would suggest that government would need to bypass the doctor patient relationship. Exceptions to this doctor patient relationship construct were made for the recent bill to promote expedited partner therapy for treatment of sexually transmitted disease. Similar to naloxone, this was considered to address an urgent public health threat.

Attorney Smith described that there are inherent risks to standing orders and legal immunities. They can possibly be challenged. Both would have to meet the clinical standard of care. If there is consensus that it meets the standard of care, then the prescriber or those working under the umbrella of the standing order would have general protection. National standards or guidelines also reduce the risk. If there is no consensus about the standard of care, it could be challenged.

The Court is not likely “to close the courtroom door” for a potential challenge, but the key is to ensure that you are working under this consensus of the standard of care. There have been other occasions where the government has demonstrated that there can be limits on liability for functions considered to urgently needed to protect public health health, such as naloxone administration.

It was noted by Commission members that CDC has a standard of care regarding contraception guidelines and this would likely be used to structure any standing order. It was also noted that the Medical Society wishes to see increased access to contraception, but is still interested in understanding how to protect its members from potential liability.

Commission members noted that there is a balancing test between increasing access to contraception and the right for an individual to pursue remedies if there was a perceived wrong or injury.

There was additional conversation from the Commission about who decides if increasing access to contraception constitutes a public health emergency?

Nancy Smith stated that the issue of increasing access to contraception is a policy issue, but the standard of care is based upon the science.

The Commission asked clarifying questions about potentially imposing age limits to address concerns of parental rights. Commission members discussed that minors already have access to over the counter contraception such as condoms and have the right to seek confidential medical care for reproductive health issues. Minors are empowered to make these decisions and providers have the right to provide care to a mature minor.

There were additional questions about what could potentially happen if a woman misrepresents her medical history and a negative health outcome occurred. Nancy Smith stated that she assumed that you would have to rely on the customer’s representation. The Commission agreed that this is why there should be standard patient education with acknowledgement from the customer that she understood the risks.

The Commission also discussed the concern for vulnerable populations of women, those who have low literacy or who are not English speakers- many of whom would likely benefit from increased access. How do we provide protections for these groups?

Nancy Smith noted that again, this is a policy question.

New Business

Representative Marsh suggested that if we pursued language that includes working with the Boards of Medicine and Pharmacy, we can establish a standard of care and then we may not need further immunity.

Senator Soucy noted that the situation between contraception and more urgent public health matters such as expedited partner therapy is different. While there is consensus on the benefit of increasing access to contraception, there is not the same level of urgency nor the same need for urgency in extending additional protections for liability. She also urged the Commission to consider whether this bill would in fact expand access to those that most need access or just making it easier for a population that already has access to medical care.

Commission members discussed that contraception available within pharmacies would, in fact, expand access for additional populations. The legislature has historically been supportive of public health efforts especially when these efforts are supported by the Boards of Medicine and Pharmacy. Rulemaking authority would also provide another check and balance and ultimately provide more protections. If we only think about liability, we would not do anything.

It was noted that we could agree to a standard of care on this issue.

Jennifer Frizzell suggested that we should include language that specifically requires public insurers to support this model of care. The women most likely to benefit from expanded access are low income. It was noted that if Medicaid supports this model, commercial insurers are likely to follow.

Representative MacKay reminded the Commission that there are only two meetings left for the Commission to come to consensus (or not); write a report; and determine whether or not to support legislation.

The report will document whether the Commission recommended legislation and/or document where the Commission came to consensus and where they may have been continued disagreements. When the Commission meets on November 9th members should be prepared to discuss the actual language of a bill. We should be able to list where we agree and disagree.

Representative MacKay requested that members submit in writing their concerns and forward them to Reps Marsh and MacKay and DC Bates.

Adjournment

Meeting was adjourned by Representative Mariellen MacKay. The next general meeting will be November 9, 2017, Room 205 of the Legislative Office Building.

Minutes submitted by: Patricia Tilley