



House  
Legislative  
Analysis  
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## PRESCRIPTIONS BY OUT-OF-STATE DOCTORS

### House Bill 4149 (Substitute H-1) First Analysis (5-7-97)

**Sponsor: Rep. Michael Nye**  
**Committee: Health Policy**

#### ***THE APPARENT PROBLEM:***

The Public Health Code currently prohibits pharmacists from filling prescriptions written by physicians from other states. An exception is provided under certain conditions for physicians whose practice is in an adjacent border area with Michigan (approximately within 10 to 20 miles of the Michigan border). Therefore, people vacationing in Michigan who may need to have a prescription refilled typically have to first arrange to see a Michigan doctor to have a new prescription written. Michigan residents seeking treatment at facilities such as the Mayo Clinic in Minnesota and the Cleveland Clinic in Ohio also must often schedule an additional office visit with a Michigan doctor because pharmacists are prohibited from filling the prescriptions. Reportedly, Michigan is one of the few states with such a prohibition. Legislation has been proposed to allow Michigan pharmacists to fill most prescriptions from out-of-state doctors.

#### ***THE CONTENT OF THE BILL:***

Currently, pharmacists are prohibited from filling prescriptions written by doctors who are not licensed by the state of Michigan. The bill would amend the Public Health Code to, among other things, allow pharmacists to fill prescriptions written by out-of-state doctors except for prescriptions for controlled substances. The code defines controlled substances as those substances listed in schedules one to five of Part 72; narcotics and morphine, for example.

The code defines "license" as an authorization issued under Article 15, Occupations, to practice where practice would otherwise be unlawful. The bill would amend the code to expand the definition of "license" to include an authorization issued under the laws of another state where practice would otherwise be unlawful, but only for purposes of a provision pertaining to prescribers -- licensed doctors of medicine (M.D.), licensed doctors of osteopathic medicine and surgery (D.O.), or other licensed health care professionals who prescribe prescription drugs under the delegation of an M.D. or D.O. Under the bill, a pharmacist could dispense a prescription written and signed or transmitted

by other means of communication by an out-of-state physician prescriber, excluding controlled substances, only if the pharmacist exercised his or her professional judgment to determine that the prescription was issued as part of an existing health professional-patient relationship, the prescription was authentic, and the prescribed drug was appropriate and necessary for the treatment of an acute, chronic, or recurrent condition. Dispensing a prescription for a controlled substance from an out-of-state physician prescriber would be prohibited unless the physician prescriber resided adjacent to the land border between Michigan and an adjoining state; was authorized in that state to practice medicine or osteopathic medicine and surgery and to prescribe controlled substances; and whose practice extended into Michigan, but who did not maintain an office or have a place within the state to either meet patients or receive calls. A licensed pharmacist violating this provision could face license sanctions as prescribed by the code. In addition, a violation of this provision, as well as certain other activities pertaining to controlled substances currently prohibited by the code, by pharmacists, prescribers, scientific investigators, or other persons licensed, regulated or permitted to deal with controlled substances by the Michigan Board of Pharmacy would result in a civil fine of up to \$25,000. Knowingly or intentionally breaking the law would be a misdemeanor punishable by up to two years imprisonment, a fine of up to \$25,000, or both.

Currently, an order for a drug or device in a patient's chart in a health facility or other medical institution constitutes the original prescription. The bill would specify that this provision would apply to a health facility or agency licensed under Article 17 of the code or other medical institution. Further, the bill would specify that a prescription would include, but not be limited to, an order for a drug other than a controlled substance by an out-of-state prescriber. Prescribers meeting the criteria for the land border areas would be exempted from this prohibition.

MCL 333.7405 et al.

House Bill 4149 (5-7-97)

**FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, as the bill would add no new responsibilities to state agencies, it would have no state or local fiscal impact. (5-7-97)

**ARGUMENTS:**

**For:**

The bill would go a long way toward reducing unnecessary doctor visits for Michigan residents in order to have prescriptions written in out-of-state clinics rewritten so that Michigan pharmacists can fill them. In addition, the bill will save the trouble of having to find a doctor willing to squeeze a non-patient in for those on maintenance drugs who may need to refill their prescriptions while vacationing in the state. Further, the bill's requirement for pharmacists to exercise their professional judgment as to whether or not a prescribed drug is appropriate and necessary for the treatment of an acute, chronic, or recurrent condition is consistent with the standard of pharmacy practice and reflects upcoming administrative rule changes. Having a standard whereby pharmacists are more involved in the prescription process provides the consumer with an important check and balance system in guarding against such things as drug interactions. The bill's prohibition on filling prescriptions for controlled substances from out-of-state doctors (except for those in adjacent border areas) should prevent any potential diversion problems such as passing off prescriptions from fictional doctors. The bill makes sense for doctors, pharmacists, and consumers.

**POSITIONS:**

The Department of Consumer and Industry Services supports the bill. (5-6-97)

The Michigan State Medical Society supports the bill. (5-7-97)

The Michigan Pharmacists Association supports the bill. (5-7-97)

The Michigan Health and Hospital Association (MHA) supports the bill. (5-7-97)

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.