



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5131 (Substitute H-1 as passed by the House)
Sponsor: Representative Lesia Liss
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 3-22-12

CONTENT

The bill would amend Parts 74 (Controlled Substances Offenses and Penalties) and 177 (Pharmacy Practice and Drug Control) of the Public Health Code to do the following:

- **Revise references to prescription transmission methods.**
- **Authorize a prescriber to designate an agent to transmit a prescription to a pharmacy.**
- **Allow a prescription contained within a patient's medical chart to be transmitted to a pharmacy.**
- **Authorize a pharmacist to change certain elements of a prescription, after consultation and agreement with the prescriber.**
- **Allow a pharmacist to dispense a prescription from a patient's medical chart for which no quantity was specified after consulting with the prescriber.**

Controlled Substances - Offenses & Penalties

Under Part 74, a practitioner (i.e., a prescriber or pharmacist) may not dispense a prescription for a controlled substance written and signed, transmitted by facsimile, electronic transmission, or any other means of communication by a physician or dentist prescriber licensed in another state, unless the prescription is issued by a prescriber who is authorized under that state's laws to practice dentistry, medicine, or osteopathic medicine and surgery and to prescribe controlled substances.

In this provision, the bill would refer to a controlled substance under a prescription written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication.

(A person who violates this provision is subject to a civil fine of up to \$25,000. If the violation was committed knowingly or intentionally, the person is guilty of a misdemeanor punishable by the same fine and/or imprisonment for up to two years.)

Pharmacy Practice & Drug Control

Definition of "Prescription". Part 177 defines "prescription" as an order for a drug or device written and signed or transmitted by facsimile, electronic transmission, or other means of communication by a prescriber to be filled, compounded, or dispensed. Prescribing is

limited to a prescriber. The bill, instead, would define "prescription" as an order by a prescriber to fill, compound, or dispense a drug or device written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication.

An order transmitted in other than written form must be electronically recorded, printed, or written and dated immediately by the pharmacist. That record constitutes the original prescription. The bill would refer to an order transmitted in other than written or hard-copy form.

The bill would amend a number of references to a prescription throughout Part 177 to reflect the revised definition.

("Prescriber" means a licensed dentist; doctor of medicine, osteopathic medicine and surgery, or podiatric medicine and surgery; optometrist; veterinarian; or other licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or osteopathic medicine and surgery.)

Prescriber; Agent. The bill would add Section 17744 to allow a prescriber to designate an agent to act on the prescriber's behalf or at his or her discretion. A designation would not have to be in writing to be valid. If a designation were contained in a written document, the prescriber or agent could transmit the document to a pharmacy that would dispense a prescription issued by that prescriber.

Currently, "agent" means an authorized person who acts on behalf or at the discretion of a prescriber. The bill would define the term as an individual designated by a prescriber to act on behalf of or at the discretion of that prescriber as provided in Section 17744.

Under Section 17744, only a prescriber acting within the scope of his or her practice could issue a prescription. An agent could prepare and transmit a prescription that the prescriber had signed, including a signature that met the Code's requirements for prescriptions transmitted electronically. The prescriber issuing a prescription and the pharmacist dispensing a drug or device under a prescription would be responsible for all of the requirements of applicable State and Federal law, rules, and regulations.

A prescriber or his or her agent could transmit to a pharmacy a prescription that was contained within a patient's chart in a licensed health facility or agency or other medical institution. Such a prescription created in an electronic format could contain more than six prescriptions, and could contain prescriptions for Schedule 3 through Schedule 5 controlled substances and noncontrolled substances on the same form.

Filling Prescriptions. The bill would prohibit a pharmacist from dispensing a drug or device under a prescription transmitted by facsimile or created in electronic format and printed out for use by the patient unless the document was manually signed by the prescriber. This provision would not apply to a prescription transmitted by a computer to a facsimile machine if the prescription complied with the Code's requirements for prescriptions transmitted electronically.

After consultation with and agreement from the prescriber, a pharmacist could add or change a patient's address, dosage form, drug strength, drug quantity, directions for use, or issue date with regard to a prescription. A pharmacist would have to note the details of the consultation and agreement on the prescription and maintain that documentation with the prescription as required in Section 17752. A pharmacist could not change the patient's name, the prescriber's signature, or, unless authorized to dispense a lower-cost generically equivalent drug product, the controlled substance prescribed.

(Under Section 17752, a prescription must be preserved by a licensee or dispensing prescriber for at least five years. The prescription is not a public record and is subject to disclosure restrictions.)

A prescription contained within a patient's chart in a health facility or agency or other medical institution that was transmitted to a pharmacy under Section 17744 would be the original prescription. If all other requirements of Part 177 were met, a pharmacist would have to dispense a drug or device under such a prescription. A pharmacist could dispense the drug or device, even if the prescription did not contain the quantity ordered. In that case, the pharmacist would have to consult with the prescriber to determine an agreed-upon quantity. The pharmacist would have to record the quantity dispensed on the prescription and maintain that documentation with the prescription as required under Section 17752.

MCL 333.7405 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.