

ELECTRONIC TRANSMISSION OF PRESCRIPTIONS

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Senate Bill 248 (S-4) as passed by the Senate
Sponsor: Sen. Ruth Johnson

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 254 (S-2) as passed by the Senate
Sponsor: Sen. Dale Zorn

House Committee: Health Policy
Senate Committee: Health Policy and Human Services
Complete to 3-4-20

SUMMARY:

Senate Bills 248 and 254 would amend Parts 73, 161, and 177 of the Public Health Code. Largely, the bills would change the provision that currently allows a prescription to be transmitted electronically, as long as it complies with certain requirements, to require a prescriber or his or her agent to transmit the prescription electronically under those circumstances, beginning January 1, 2021. The prescription, including one for a controlled substance, would have to be transmitted directly to the patient's chosen pharmacy.

Senate Bill 248 would require a *prescriber*¹ (or agent of the prescriber) to transmit prescriptions, including prescriptions for controlled substances, electronically to the patient's pharmacy, beginning January 1, 2021. Currently, the code allows electronic transmission.

Exceptions

However, the requirement to transmit the prescription would not apply under any of the following circumstances:

- The prescription is issued by a licensed veterinarian.
- Electronic transmission is unavailable due to a temporary technological or electrical failure.
- The prescriber has received a waiver from the Department of Licensing and Regulatory Affairs (LARA) based on an inability to electronically transmit prescriptions due to a technical limitation beyond his or her control or other exceptional circumstance. (A prescriber would have to notify LARA if the inability ceased to exist. A waiver would be valid for up to one year and would be renewable).

¹ *Prescriber* is defined in section 17708 of the Public Health Code as a licensed dentist, a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, a licensed doctor of podiatric medicine and surgery, a licensed optometrist certified under Part 174 to administer and prescribe therapeutic pharmaceutical agents, a licensed veterinarian, or another licensed health professional acting under the delegation and using, recording, or otherwise indicating the name of the delegating licensed doctor of medicine or licensed doctor of osteopathic medicine and surgery.

- The prescriber reasonably believes that electronically transmitting the prescription would make it impractical for the patient to obtain the prescription drug in a timely manner and that the delay would adversely affect the patient's medical condition.
- The prescription for a schedule 2 through 5 controlled substance is dispensed orally due to a specified emergency situation.
- The prescription is dispensed outside of Michigan.
- The prescription is dispensed in Michigan but the prescriber is located out of state.
- The prescription is issued and dispensed in the same health care facility and the patient would use the prescription exclusively in that facility, including a hospital, dialysis treatment clinic, freestanding surgical outpatient facility, skilled nursing facility, or long-term care facility providing certain nursing care.
- The prescription is issued for a hospice patient and used exclusively while under the care of the hospice.
- The prescription contains content not supported by the National Council for Prescription Drug Programs' prescriber/pharmacist script standard.
- The prescription is for a drug for which the FDA requires content that cannot be transmitted electronically.
- The prescription is issued under circumstances in which the prescriber is not required to include the name of the patient on the prescription.
- The prescription is prescribed under a research protocol.
- The patient is the subject of the prescription on a voluntary, unpaid basis for which neither the patient nor a third party will be charged or billed.

Rule promulgation

The bill would require LARA, in consultation with the Michigan Board of Pharmacy, to promulgate rules to implement these requirements by July 1, 2020.

Delay of requirement

If the federal Centers for Medicare & Medicaid Services delayed the Medicare requirement for electronic transmission of controlled substance prescriptions beyond January 1, 2021, LARA could, by rule, delay the implementation date to a date that did not exceed the implementation date of the Medicare requirement.

Violation and penalty

Under the bill, if a prescriber failed to electronically transmit a prescription (unless granted a waiver), a disciplinary subcommittee would impose a fine of \$250 for each violation, but the aggregate penalty could not exceed \$5,000 in a calendar year.

MCL 333.16226 and 333.17754

Senate Bill 254 would require a pharmacist to consider, among other factors in determining whether dispensing of a controlled substance is lawful and conducted in good faith, the receipt of a prescription on a prescription form after the requirement to transmit a prescription electronically took effect. Following that consideration and determination, both dispensing of a schedule 2 to 5 controlled substance that was transmitted on a prescription form and electronically transmitted would be considered to be in good faith.

(Additionally, as now, a practitioner could in good faith dispense a schedule 3 to 5 controlled substance upon receipt of a practitioner's oral prescription.)

MCL 333.7333 and 333.16221

The bills are tie-barred together, meaning that neither could take effect unless both were enacted. Each bill would take effect 90 days after its enactment.

FISCAL IMPACT:

Senate Bills 248 and 254, jointly examined, would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). Senate Bill 248 would allow the imposition of a \$250 fine for violations related to the electronic transmission of prescriptions (with a cap of \$5,000 per year for an aggregate fine for multiple violations). Revenue from the fines would depend on the volume of violations and is presently indeterminate, though LARA indicated that any fine revenue would be deposited to the Health Professions Regulatory Fund. LARA would have expanded administrative responsibilities under the bills, including processing prescriber waivers and investigating whether grounds for disciplinary action exist with respect to the contents of the bills. Existing departmental resources would likely be sufficient to absorb these costs and activities. The bills would not affect any other unit of state or local government.

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