

HOUSE BILL NO. 4659

April 20, 2021, Introduced by Rep. Bellino and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17754a (MCL 333.17754a), as added by 2020 PA
134.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17754a. (1) Except as otherwise provided under article 8,
2 the federal act, or subsection (5), and subject to subsection (10),
3 beginning October 1, 2021, a prescriber or his or her agent shall
4 electronically transmit a prescription, including a prescription

1 for a controlled substance, directly to a pharmacy of the patient's
2 choice. A prescription that is transmitted electronically under
3 this section must be in compliance with the health insurance
4 portability and accountability act of 1996, Public Law 104-191, or
5 regulations promulgated under that act, 45 CFR parts 160 and 164,
6 and the data must not be altered or modified in the transmission
7 process. The electronically transmitted prescription must include
8 all of the following information:

9 (a) The name, address, and telephone number of the prescriber.

10 (b) Except as otherwise authorized under section 5110, 17744a,
11 or 17744b, the full name of the patient for whom the prescription
12 is issued.

13 (c) An electronic signature or other identifier that
14 specifically identifies and authenticates the prescriber or his or
15 her agent.

16 (d) The time and date of the transmission.

17 (e) The identity of the pharmacy intended to receive the
18 transmission.

19 (f) Any other information required by the federal act or state
20 law.

21 (2) The electronic equipment or system utilized in the
22 transmission and communication of prescriptions under this section
23 must provide adequate confidentiality safeguards and be maintained
24 to protect patient confidentiality as required under any applicable
25 federal and state law and to ensure against unauthorized access.
26 The electronic transmission of a prescription under this section
27 must be communicated in a retrievable, recognizable form acceptable
28 to the intended recipient. The electronic form utilized in the
29 transmission of a prescription must not include "dispense as

1 written" or "d.a.w." as the default setting.

2 (3) Before dispensing a prescription that is electronically
3 transmitted under this section, the pharmacist shall exercise
4 professional judgment regarding the accuracy, validity, and
5 authenticity of the transmitted prescription.

6 (4) An electronically transmitted prescription that meets the
7 requirements of this section is the original prescription.

8 (5) The requirement to transmit a prescription electronically
9 under subsection (1) does not apply under any of the following
10 circumstances:

11 (a) If the prescription is issued by a prescriber who is a
12 veterinarian licensed under this article.

13 (b) If the prescription is issued under a circumstance in
14 which electronic transmission is not available due to a temporary
15 technological or electrical failure.

16 (c) If the prescription is issued by a prescriber who has
17 received a waiver from the department under subsection (7).

18 (d) If the prescription is issued by a prescriber who
19 reasonably believes that electronically transmitting the
20 prescription would make it impractical for the patient who is the
21 subject of the prescription to obtain the prescription drug in a
22 timely manner and that the delay would adversely affect the
23 patient's medical condition. A prescriber who does not
24 electronically transmit a prescription under this subdivision shall
25 document the specific reason for his or her belief that the delay
26 would adversely affect the patient's medical condition.

27 (e) If the prescription is orally prescribed under section
28 7333(3) or (4).

29 (f) If the prescription is issued by a prescriber to be

1 dispensed outside of this state.

2 (g) If the prescription is issued by a prescriber who is
3 located outside of this state to be dispensed by a pharmacy located
4 inside of this state.

5 (h) If the prescription is issued and dispensed in the same
6 health care facility and the individual for whom the prescription
7 is issued uses the drug exclusively in the health care facility. As
8 used in this subdivision, "health care facility" includes, but is
9 not limited to, any of the following:

10 (i) A hospital.

11 (ii) A hospice.

12 (iii) A dialysis treatment clinic.

13 (iv) A freestanding surgical outpatient facility.

14 (v) A skilled nursing facility.

15 (vi) A long-term care facility that provides rehabilitative,
16 restorative, or ongoing skilled nursing care to an individual who
17 is in need of assistance with activities of daily living.

18 (i) If the prescription contains content that is not supported
19 by the National Council for Prescription Drug Programs
20 Prescriber/Pharmacist Interface SCRIPT Standard.

21 (j) If the prescription is for a drug for which the FDA
22 requires the prescription to contain content that cannot be
23 transmitted electronically.

24 (k) If the prescription is issued under circumstances in which
25 the prescriber is not required to include on the prescription a
26 name of a patient for whom the prescription is issued including,
27 but not limited to, a prescription issued under section 5110.

28 (l) If the prescription is issued by a prescriber who is
29 prescribing the drug under a research protocol.

1 **(m) If the prescription is dispensed by a dispensing**
2 **prescriber.**

3 **(n) If the prescription is for a dialysis-related drug that is**
4 **administered as part of or incident to a home-based dialysis**
5 **treatment.**

6 (6) If a prescriber has not been granted a waiver from the
7 department under subsection (7) and the prescriber does not
8 electronically transmit a prescription under an exception described
9 in subsection (5), the prescriber shall document the applicable
10 exception and provide that documentation to the department on
11 request.

12 (7) If a prescriber cannot meet the requirements of subsection
13 (1) or (2), the prescriber may apply to the department for a waiver
14 in a form and manner required by the department. The department
15 shall establish by rule the requirements for obtaining a waiver
16 under this subsection. The rules must not establish requirements
17 that are more stringent than any requirements used by the federal
18 Centers for Medicare and Medicaid Services for waiving the Medicare
19 requirement for the electronic transmission of controlled substance
20 prescriptions. If a prescriber provides evidence satisfactory to
21 the department that the prescriber has received a waiver of the
22 Medicare requirement for the electronic transmission of controlled
23 substances prescriptions from the federal Centers for Medicare and
24 Medicaid Services, the department shall grant a waiver to the
25 prescriber under this subsection. A waiver that is granted by the
26 department under this subsection is valid for a period not to
27 exceed 2 years and is renewable.

28 (8) A pharmacist who receives a prescription that was not
29 transmitted electronically to the pharmacy may dispense the

1 prescription without determining whether an exception under
2 subsection (5) applies.

3 (9) The department, in consultation with the board, shall
4 promulgate rules to implement this section.

5 (10) If the federal Centers for Medicare and Medicaid Services
6 delays the Medicare requirement for the electronic transmission of
7 prescriptions for controlled substances beyond October 1, 2021,
8 then the department shall delay the implementation date of
9 subsection (1) to the date established by the federal Centers for
10 Medicare and Medicaid Services for the Medicare requirement.