

EXTEND EFFECTIVE DATE FOR PRESCRIBER-PATIENT RELATIONSHIP

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House Bill 5678 as enacted
Public Act 101 of 2018

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

Sponsor: Rep. Bronna Kahle
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 6-20-18

BRIEF SUMMARY: House Bill 5678 would amend the Public Health Code move back the date by which a prescriber-patient relationship would be required to prescribe Schedule 2 to 5 controlled substances. The relationship requirement was instituted by Public Act 249 of 2017 (Senate Bill 167),¹ which took effect December 27, 2017, with the relationship requirement to take effect March 31, 2018.

FISCAL IMPACT: House Bill 5678 would not have a fiscal impact on any units of state or local government.

THE APPARENT PROBLEM:

Among other initiatives intended to combat the recent opioid epidemic, a series of House and Senate bills were recently enacted to place limits on the prescribing and dispensing of opioids, and to require the provision of more and better information. Enacted as Public Acts 246-255,² those ten bills are intended to represent a first step toward stemming the opioid crisis in the state.

Public Act 249 of 2017 prohibited a prescriber from prescribing a Schedule 2 to 5 controlled substance unless a prescriber-patient relationship existed, beginning March 31, 2018, unless otherwise specified under rules to be promulgated by the Department of Licensing and Regulatory Affairs (LARA) and specified medical boards. Some raised concerns that such an early effective date would not leave time to account for the special needs of certain patients, including hospice patients. Unlike most patients, hospice patients are prescribed controlled substances for the purposes of palliative or comfort care, and the controlled substances must be readily adjustable in order to deal with rapidly changing needs at the end of life. Some worried that requiring a prescriber-patient relationship would add an unnecessary barrier to pain management for these patients.

¹ House Fiscal Agency analysis of SB 166/PA 248 and SB 167/PA 249 of 2017:

<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0166-A26310EB.pdf>

² House Bills 4403, 4406, 4407, and 4408/PAs 253, 254, 255, and 246 of 2017:

<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4403-79CB217E.pdf>

Senate Bills 270, 273, and 274/ PAs 247, 250, and 251 of 2017:

<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0270-C0E9CC17.pdf>

Senate Bills 166 and 167/ PAs 248 and 249 of 2017:

<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0166-A26310EB.pdf>

Senate Bill 47/PA 252 of 2017:

<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0047-B155A855.pdf>

In response to these concerns, House Bill 5678 would push back the date by which a prescriber-patient relationship would be required to March 31, 2019, or on the date on which the rules are promulgated if that date is before March 31, 2019.

THE CONTENT OF THE BILL:

Public Act 249 of 2017 amended the Code to provide that, beginning March 31, 2018, a licensed provider may not prescribe a controlled substance listed in Schedules 2 to 5 unless the prescriber is in a bona fide prescriber-patient relationship with the patient being prescribed the controlled substance. Additionally, with certain exceptions, the prescriber must provide follow-up care or refer the patient to a licensed prescriber for follow-up care.

A ***bona fide prescriber-patient relationship*** was defined for purposes of that section as a treatment or counseling relationship between a prescriber and a patient in which both of the following are present:

- The prescriber has reviewed the patient's relevant medical or clinical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant medical evaluation of the patient conducted in person or via telehealth.
- The prescriber has created and maintained records of the patient's condition in accordance with medically accepted standards.

Public Act 247 of 2017 provided that, not later than December 27, 2018, LARA, in consultation with the Michigan Board of Medicine, the Michigan Board of Osteopathic Medicine and Surgery, the Michigan Board of Dentistry, the Michigan Board of Podiatric Medicine and Surgery, the Michigan Board of Optometry, the Michigan Task Force on Physician's Assistants, and the Michigan Board of Nursing, may promulgate rules describing when a bona fide prescriber-patient relationship would not be required in order to prescribe a Schedule 2 to 5 controlled substance. Those rules may include an alternate requirement for prescribing Schedule 2 to 5 drugs.

The bill would move the date by which a bona fide prescriber-patient relationship would be required in order to prescribe Schedule 2 to 5 controlled substances to March 31, 2019 (or on the date when the rules defining exceptions are promulgated). Because it would be after the date the exceptions to the relationship would be defined by LARA and the boards, it is hoped that any patient groups that would otherwise be adversely and unintentionally affected by the relationship requirement would be accounted for in the exceptions.

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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.