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REGISTRATION OF CONTACT LENS PROVIDERS

House Bill 5376

Sponsor: Rep. Gilda Z. Jacobs

House Bill 5377

Sponsor: Rep. Gary Woronchak

House Bill 5378

Sponsor: Rep. Stephen Ehardt

House Bill 5379

Sponsor: Rep. Artina Tinsley Hardman

Committee: Health Policy
Complete to 11-5-01

A SUMMARY OF HOUSE BILLS 5376, 5377, 5378, AND 5379 AS INTRODUCED 11-1-01

Article 15 of the Public Health Code regulates health care professions, charging the Department of Consumer and Industry Services (CIS) with the authority and duties related to licensing and registering health care professionals. House Bills 5376-5379 would establish a system of registration for contact lens providers within the Department of Consumer and Industry Services (CIS). The bills would specify various requirements for contact lens providers as well as prescribing ophthalmologists and optometrists and would provide for the imposition of sanctions for violations of these requirements. The bills are tie-barred.

House Bill 5377 would amend the code (MCL 333.18601) to add a part that would require “contact lens providers,” excluding pharmacists licensed in Michigan, to register with CIS. A “contact lens provider” would be defined as “a person, whether located within or outside of Michigan, who dispenses, sells, or provides contact lenses to a Michigan resident.” CIS would prescribe the form of the registration form, which would have to include the contact lens provider’s name and telephone number, as well as the provider’s principal address and the addresses of all other offices in the state. If the provider did not maintain a principal office in the state, the registration form would have to contain the name and address of the person having custody of the provider’s records, and the name of a resident agent in the state for acceptance of service of process. The form would also have to contain a declaration that the provider would comply with all applicable laws and regulations in the conduct of its business in the state. The department would register a contact lens provider upon proper application and payment of a \$20 fee. Every two years a provider would have to apply for a renewal of the registration and pay a \$30 renewal fee. A physician or optometrist would not be required to register until his or her license renewal date that immediately followed the bill’s effective date, and a pharmacist licensed under the code would not be required to register at all.

House Bills 5376-5379 (11-5-01)

House Bill 5378 would amend the code (MCL 333.18605 and 333.18607) to prohibit a contact lens provider from dispensing, selling, or providing contact lenses to a state resident without an unexpired contact lens prescription containing the following information: the dioptric power; the base curve or inside radius of curvature; the diameter; the color or tint; the lens wearing schedule; the date of issuance; the patient's name; the prescription expiration date; the number of permitted refills; the typed or commercially printed name, office address, and telephone number of the prescribing physician or optometrist; and the signature of the prescribing physician or optometrist. A prescription for soft hydrophilic contact lenses would also have to specify the brand or trade name, the quantity of lenses to be dispensed, the number of allowable refills, and any special features. A prescription for rigid gas permeable contact lenses would have to specify, in addition to the general information required, the peripheral curve or curves, including curvature and width, the optical zone diameter, the center thickness, the lens material, and any special features. The bill would specify that the patient's health record does not constitute a contact lens prescription.

A prescription would have to be based upon a comprehensive vision and eye health examination, a diagnostic trial contact lens evaluation, and a follow-up evaluation of the contact lens on the patient's eye by the prescriber. The evaluation would be presumed complete if there was no contact lens related appointment scheduled within thirty days after the patient's most recent visit to the prescribing physician or optometrist. A provider could not refill a contact lens prescription that was within 60 days of its expiration date with more than the quantity of replacement lenses needed through the expiration date based on the prescribed wearing schedule. If the original written contract lens prescription was not available to a provider, the provider would have to confirm the specifics of the prescription with the prescriber (or his or her agent), prior to providing the contact lenses and would have to maintain a written record of that communication. The prescriber would have to confirm the specifics of the prescription with the provider within two days of a request.

House Bill 5376 would amend the code (MCL 333.18609 and 333.18611) to require a physician or optometrist to release a contact lens prescription to a patient or as directed by the patient unless the prescription had expired, the patient had not paid the physician or optometrist for goods or services previously rendered, or the physician or optometrist made a good faith determination that giving the patient the prescription could jeopardize the patient's ocular health. If the physician or optometrist denied a request because he or she perceived a possible danger to the patient's ocular health, he or she would have recorded the reason for denial in a patient's record. If a physician or optometrist gave a patient a prescription, and the patient had the prescription filled by a person other than the physician or optometrist (or a person employed or contracted by him or her), the physician or optometrist would not be liable in a civil action for damages for an injury to the patient caused directly or indirectly by the manufacturing, packaging, or dispensing of the contact lenses.

House Bill 5379 would amend the code (333.18613) to impose several additional requirements on contact lens providers. First, contact lens providers would have to fill all contact lens prescriptions accurately and according to the specific orders of the written prescription. Second, a provider would have to maintain records for contact lenses shipped, mailed, or otherwise delivered or provided to state residents for five years and make them available to CIS upon request. Third, a provider would have to provide a telephone number, to

be included with each supply of contact lenses, for responding to questions and complaints. Fourth, a provider would have to disclose in any price advertisement any required membership fees, enrollment fees, and any shipping fees. Finally, a provider would have to provide with each supply of contact lenses a written notice that substantially conformed to the following:

“WARNING: IF YOU EXPERIENCE ANY UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGES, OR REDNESS, REMOVE YOUR CONTACT LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR CONTACT LENSES AGAIN.”

The bill would also amend the code (MCL 333.16221 and 333.16226) to specify sanctions for violations of the proposed requirements for contact lens providers, and prescribing ophthalmologists and optometrists. Article 15 of the code authorizes CIS to investigate activities related to the practice of a health professional by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings and order testimony and must report its findings to the “appropriate disciplinary subcommittee.” The chair of each professional board or task force—e.g., the board of nursing or the board of pharmacy—appoints one or more disciplinary subcommittees to impose sanctions on licensees, registrants, or applicants under its jurisdiction for one or more violations enumerated in the general provisions of Article 15.

House Bill 5379 would also specify that the disciplinary subcommittee would impose one or more of the following sanctions for violations of the bills’ various requirements: restitution, probation, a reprimand, a fine, or the denial, revocation, suspension, or limitation of a license, registration, or application for registration. Moreover, a disciplinary subcommittee could impose an administrative fine of not more than \$10,000 for such violations.

The bill would also amend a general provision that is not specific to the bills’ requirements for contact lens providers and prescribing ophthalmologists and optometrists. The code directs the appropriate disciplinary subcommittee to punish proven violations of general duty, consisting of negligence or failure to exercise due care, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession. The code also directs the subcommittee to sanction one or more instances of eleven different types of personal disqualification. Currently the code states that a disciplinary subcommittee may impose a fine of up to, but not exceeding, \$250,000 for proven violations of general duty or personal disqualification. The bill would specify that a disciplinary subcommittee could impose an *administrative* fine of not more than \$250,000. Although this change would apply to contact lens providers, ophthalmologists, and optometrists who were found guilty of violations of general duty or personal disqualification, it would also apply to all other health care professionals regulated under Article 15.

Analyst: J. Caver

■ 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.