Legislative Analysis

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PRESCRIBER MUST REVIEW "MAPS" REPORT BEFORE PRESCRIBING CONTROLLED SUBSTANCE

Senate Bills 166 (H-3) and 167 (H-3) as adopted on the House floor
Sponsor: Sen. Tonya Schuitmaker
House Committee: Health Policy
Senate Committee: Health Policy ***(Enacted as Public Acts 248 and 249 of 2017)***
Complete to 12-12-17

BRIEF SUMMARY: Senate Bill 166 would amend the Public Health Code to require a licensed prescriber to obtain and review a patient's Michigan Automated Prescription System (MAPS) report before prescribing a Schedule 2 through 5 controlled substance[1] to the patient, with certain exceptions. Senate Bill 167 would include violation of that requirement as grounds for disciplinary action under the Code.

FISCAL IMPACT: Senate Bill 166 would not have any significant fiscal impacts on any units of state or local government.

Senate Bill 167 may result in a minor cost increase for the Department of Licensing and Regulatory Affairs, specifically for the Bureau of Community and Health Systems (BCHS). The BCHS may experience increased costs for additional investigatory functions and for enforcement actions. The bill would not have any fiscal impact for other units of state or local government.

THE APPARENT PROBLEM:

According to the Michigan Prescription Drug & Opioid Abuse Task Force report from October 2015:

> Every state except Missouri has a prescription drug-monitoring program to scrutinize the movement of controlled substances. Michigan's program (the Michigan Automated Prescription System or "MAPS") is an electronic database of schedule II, III, IV, and V controlled substances dispensed in Michigan. MAPS was created by statute in 2002 as part of a nationwide effort to curb prescription drug abuse, and is housed within the Department of Licensing and Regulatory Affairs (LARA). Registration with the system is required for those who *dispense* controlled substances but not for those who *prescribe* controlled substances.[2] [Emphasis in original]

[1] Controlled substances are classified based on the risk of abuse or harm. Schedule 1 drugs include heroin, LSD, and Ecstasy, and have no currently accepted medical use. Schedule 2 drugs have the highest potential for abuse of the medically acceptable drugs and include Dilaudid, OxyContin, and fentanyl.

[2] http://www.michigan.gov/documents/snyder/Presciption_Drug_and_Opioid_Task_Force_Report_504140_7.pdf

In that report, the task force recommended that pharmacists be required to review MAPS before dispensing new prescriptions for Schedule 2 to 5 drugs. Senate Bills 166 and 167 would extend this requirement to all licensed prescribers.

THE CONTENT OF THE BILLS:

Senate Bill 166 would amend Part 73 of the Public Health Code (MCL 333.7303a), which pertains to the Manufacture, Distribution, and Dispensing of Controlled Substances. The bill would require a licensed prescriber to obtain and review a patient's Michigan Automated Prescription System (MAPS) report before prescribing more than a 3-day supply of a Schedule 2 through 5 controlled substance to the patient. This requirement would take effect beginning June 1, 2018, and would not apply under any of the following circumstances:

- If the dispensing occurs in a hospital or freestanding surgical outpatient facility and the controlled substance is administered to the patient in that hospital or facility. (This exception is already carved out in Section 7333a of the Code and retained, with some changes, in SB 47, which would amend that section).

- If the dispensing occurs in a veterinary hospital or clinic and the controlled substance is administered to the patient in that hospital or clinic.

- If the controlled substance is prescribed by a licensed prescriber who is a veterinarian and the controlled substance will be dispensed by a pharmacist.

Additionally under the bill, beginning June 1, 2018, licensed prescribers must register with the MAPS system before prescribing or dispensing a controlled substance to a patient.

Senate Bill 167 would amend the Public Health 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. (These changes are also included in SB 270.)

Additionally, the bill would incorporate the required registry with MAPS and review of MAPS reports also included in SB 166 and described above.

The bill would also amend the sections of the Public Health Code (MCL 333.16221 and 333.16226) that list the grounds for disciplinary subcommittee action and the sanctions that may be administered if those grounds are substantiated. Specifically, the bill would include violation of the requirements described in SBs 166 and 167, as well as failure to provide certain information about opioids before prescribing them (as required in SB 272), as grounds for disciplinary action. Violation of the requirement to be in a bona fide prescriber-patient relationship, or to provide the patient with certain information, would be punishable by probation, limitation, denial, fine, suspension, revocation, or permanent revocation.

Violation of the requirements to register with MAPS and to obtain and review a MAPS report before prescribing a controlled substance would be punishable by denial, fine, reprimand, probation, limitation, suspension, revocation, or permanent revocation.

However, if LARA has a reasonable basis to believe that a licensee has failed to register or to obtain and review a MAPS report, LARA is not required to investigate and may issue a letter notifying the licensee of the violation. The letter would not be considered discipline.

SB 167 would also incorporate the recently enacted offenses concerning female genital mutilation (Public Acts 68 to 79 of 2017)[3] into the Code. It would consider conviction of certain female genital mutilation-related offenses to be grounds for personal disqualification, punishable by permanent revocation of a license. A certified copy of the court record would be considered conclusive evidence of the conviction.

SBs 166 and 167 are tie-barred together, which means that neither could take effect unless the other were also enacted. The bills would take effect 90 days after enactment.

HOUSE COMMITTEE ACTION:

The House Health Policy committee adopted an H-2 substitute for SB 166, which added the second and third exceptions (which cover veterinarians) to the reporting requirements. The committee also adopted an H-2 substitute to SB 167, which incorporated the provisions of other bills in the Senate opioid package into the bill. Specifically, the substitute adds:

- The requirement of a bona fide prescriber-patient relationship before a prescriber could prescribe a schedule 2 to 5 controlled substance (previously included in SB 270).
- The required review of a patient's MAPS report before prescribing a Schedule 2 to 5 controlled substance, with specified exceptions (previously included in SB 166).
- Violation of either of the above offenses, as well as the requirement to provide certain information about opioids before providing them (as described in SB 272), in the list of grounds for disciplinary subcommittee actions.

H-3 substitutes for both bills were adopted on the House floor. These changed the implementation date for several measures, removed a more detailed disciplinary process, and added the option for LARA to send a letter, which would not constitute discipline, in case of violation of the MAPS requirements.

ARGUMENTS:

Against:

According to written testimony submitted by the Epilepsy Foundation, SB 166 could have a negative impact on access to epilepsy medications, as some epilepsy medications are Schedule 5 drugs. Although these drugs do not have the same abuse potential, subjecting

[3] House Fiscal Agency analysis of PAs 68 to 79 of 2017 (House Bills 4636 to 4639, 4641, 4642, 4661, and 4690 and Senate Bills 337, 338, 368, and 369): http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4636-50172F00.pdf

them to the same reporting and monitoring requirements as other drugs could delay patient access and discourage physicians from prescribing the most appropriate medication.

Response:

The blanket "schedules 2 to 5" language was adopted in order to simplify requirements. Reportedly, cough syrup is a Schedule 5 controlled substance and is also one of the most diverted and abused drugs.

POSITIONS:

Representatives of the Department of Licensing and Regulatory Affairs (LARA) testified in support of the bills. (9-27-17)

Representatives of the following organizations indicated support for the bills:

Michigan Lieutenant Governor's office (9-27-17)
Michigan Attorney General's office (10-4-17)
Michigan Pharmacists Association (9-27-17)
Michigan Association of Health Plans (9-27-17)
Michigan Association of Treatment Court Professionals (9-27-17)

The Michigan Veterinary Medical Association supports SB 166. (10-4-17)

A representative of the Michigan State Medical Society testified and indicated neutrality on the bills. (9-27-17)

The Michigan Health and Hospital Association is neutral on SB 166. (9-27-17)

The Michigan Osteopathic Association is neutral on the bills with the adoption of a proposed amendment. (9-27-17)

The Epilepsy Foundation opposes SB 166. (9-27-17)

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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.