Legislative Analysis

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BONA FIDE PRESCRIBER-PATIENT RELATIONSHIP REQUIRED

Senate Bill 270 (S-3) as passed by the Senate
Sponsor: Sen. Steven Bieda
House Committee: Health Policy
Senate Committee: Health Policy
Complete to 9-17-17

SUMMARY:

Senate Bill 270 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. Instances in which a bona fide relationship are not required may be defined by the Department of Licensing and Regulatory Affairs (LARA), in consultation with certain interested parties (described below) within a year of the date this bill takes effect. Additionally, with certain exceptions, the prescriber must provide follow-up care or refer the patient to a licensed prescriber for follow-up care. Finally, the bill would prescribe disciplinary sanctions for violation of the relationship requirement.

The bill defines a ***bona fide prescriber-patient relationship*** 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.

(A ***prescriber*** is defined in Section 17708 of the 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 physician's assistant, a licensed optometrist certified under Part 174 to administer and prescribe therapeutic pharmaceutical agents, an advanced practice registered nurse as that term is defined in Section 17201 who meets the requirements of Section 17211a, 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.)

Exceptions to a bona fide prescriber-patient relationship

Within one year of the date this bill takes effect, LARA, in consultation with certain interested parties, may promulgate rules describing the circumstances under which a bona fide prescriber-patient relationship is not required for purposes of prescribing a schedule 2 to 5 controlled substance, as otherwise required in this bill. The interested parties would include: 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.

In instances in which the parties determine a bona fide prescriber-patient relationship is not required, the parties may prescribe an alternative requirement which must be met in order to prescribe a schedule 2 to 5 controlled substance.

Follow-up care

Under the bill, if a licensed prescriber prescribes a controlled substance under the new rule, the prescriber must provide follow-up care to monitor the efficacy of the controlled substance as a treatment of the patient's medical condition. If unable to provide follow-up care, the prescriber must refer the patient for follow up care to the patient's primary care provider or, if the patient does not have a primary care provider, to another licensed prescriber who is geographically accessible to the patient.

Violation of the bona fide prescriber-patient relationship

Additionally, the bill would add violation of the new requirement for a bona fide prescriber-patient relationship when prescribing certain controlled substances to the list of grounds for disciplinary subcommittee action. When one of these grounds is alleged, LARA must investigate the allegation, and may hold hearings, administer oaths, and order the taking of relevant testimony in the course of its investigation. After its investigation, LARA must provide a copy of the administrative complaint to the appropriate subcommittee. If the subcommittee finds that one or more of the grounds exist, it must proceed with the sanctions detailed in Section 16226 of the Code.

Under the bill, if the requirement is violated, a prescriber would be subject to probation, limitation, denial, fine, suspension, revocation, or permanent revocation.

MCL 333.7303a, 333.16221, and 333.16226, and proposed 333.16204e

FISCAL IMPACT:

Senate Bill 270 would likely result in minor cost increases for the Department of Licensing and Regulatory Affairs (LARA). There would not be significant costs to other units of state or local government.

The bill would create several new responsibilities for LARA, specifically for the Bureau of Community and Health Systems (BCHS). LARA would be required to promulgate rules in conjunction with several state boards that regulate the medical professions. The BCHS would be responsible for investigating instances where a bona fide relationship does not exist between a patient and a prescriber. Section 16226 of the bill would allow LARA to assess fees on prescribers who violate the new provisions, which would allow the department to mitigate some of its costs.

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