

# Legislative Analysis



## **BONA FIDE PRESCRIBER-PATIENT RELATIONSHIP FOR HOSPICE**

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**Senate Bill 128 (H-2) as reported from House committee**  
**Sponsor: Sen. Curtis Hertel, Jr.**  
**1st House Committee: Health Policy**  
**2nd House Committee: Ways and Means**  
**Senate Committee: Health Policy and Human Services**  
**Complete to 6-19-19**

**SUMMARY:** Senate Bill 128 would amend the Public Health Code to exempt hospice patients from the requirement that a bona fide prescriber-patient relationship exist before a prescriber could prescribe a Schedule 2 to 5 controlled substance. It would also add the definition of “bona fide prescriber-patient relationship” to Part 71 (General Provisions) of Article 7 (Controlled Substances) of the code.

The bill is tie-barred to House Bill 4225, which means that it could not take effect unless House Bill 4225 were also enacted. (See **Background**, below.)

MCL 333.7104

**FISCAL IMPACT:** Senate Bill 128 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or on other units of state or local government.

### ***THE APPARENT PROBLEM:***

2017 PA 249 (Senate Bill 167)<sup>1</sup> required that there be a bona fide prescriber-patient relationship before a licensed provider could prescribe a controlled substance listed in Schedules 2 to 5. However, there was a concern that this requirement would unintentionally affect hospice patients’ ability to receive pain medication to address their serious and rapidly changing health needs. Accordingly, 2018 PA 101 (House Bill 5678)<sup>2</sup> pushed this requirement, which was to take effect March 31, 2018, to March 31, 2019 (or the date by which exemptions to the relationship would be defined). The bill is seen as an effort to address the concern permanently.

### ***HOUSE COMMITTEE ACTION:***

According to committee testimony, the H-2 substitute to SB 128 replaced a tie-bar to SB 127 with one to HB 4225, in an effort to make the bill package both a bipartisan and bicameral set of legislation. (See **Background**, below.)

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<sup>1</sup> House Fiscal Agency analysis of PAs 248 and 249/SBs 166 and 167 of 2017: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0166-A26310EB.pdf>

<sup>2</sup> House Fiscal Agency analysis of PA 101/HB 5678 of 2018: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5678-B893753A.pdf>

***BACKGROUND:***

House Bill 4225, the companion bill to SB 128, would amend the Public Health Code to exempt a person from the requirement that a prescriber obtain and review a Michigan Automated Prescription System (MAPS) report before prescribing or dispensing more than a three-day supply of a controlled substance as long as the following requirements were met:

- The person was under the care of hospice.
- The MAPS report was obtained and reviewed when the person was admitted to hospice.

It would also remove the definition of “bona fide prescriber-patient relationship” from Part 73 (Manufacture, Distribution, and Dispensing) of Article 7 (Controlled Substances) of the code.

HB 4225 is reciprocally tie-barred to SB 128, which means that neither bill could take effect unless both were enacted.

MCL 333.7303a

***POSITIONS:***

The following organizations indicated support for the bill (6-6-19):

- Michigan Homecare and Hospice Association
- Michigan Association of Health Plans
- Michigan Council of Nurse Practitioners

Legislative Analyst: Jenny McNerney  
Fiscal Analyst: Marcus Coffin

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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.