Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4225 (as enrolled)
Senate Bill 128 (as enrolled)
Sponsor: Representative Bronna Kahle (H.B. 4225)
Senator Curtis Hertel, Jr. (S.B. 128)
House Committee: Health Policy
Ways and Means
Senate Committee: Health Policy and Human Services

Date Completed: 6-25-19

RATIONALE

According to the National Institute on Drug Abuse, opioid abuse and addiction is a serious national crisis related to public health and social and economic welfare. More than 130 people die every day in the United States from opioid overdoses. Additionally, a 2015 report from the Michigan Prescription Drug and Opioid Abuse Task Force indicated that the number of drug overdose deaths in the State had more than tripled since 1999, and that, in 2015, Michigan ranked 15th in the nation for drug overdose deaths. The report proposed recommendations to address the issue including additional training for prescribers, the elimination of doctor-shopping, and an update to the Michigan Automated Prescription System (MAPS).

In response to the epidemic, and with recommendations from the 2015 report, the Michigan Legislature enacted Public Acts 246 through 249 of 2017. Among other things, the package of bills amended the Public Health Code to prohibit a prescriber from prescribing a Schedule 2 to 5 controlled substance to a patient unless he or she is in a bona fide prescriber-patient relationship and has obtained and reviewed a MAPS report concerning that patient.

Some have concerns, however, that these provisions inadvertently make it more difficult for hospice patients to receive the care that they need. Hospices provide care and comfort to individuals with a life-limiting condition during their final days. A hospice often assists in pain management for its patients, and frequently does so in the patient's home, because many hospice patients have difficulty traveling to a doctor's office. To assist in pain management, nurses who provide hospice care often dispense Schedule 2 to 5 controlled substances. Some contend that the circumstances of hospice care require flexibility in doctors' schedules and prescriptions, and that the bona fide prescriber-patient relationship and MAPS report requirements hinder a hospice's ability to provide comfort and care for patients in their final days. Accordingly, it has been suggested that the patients under the care of a hospice be exempted from certain requirements related to a bona fide prescriber-patient relationship and MAPS report.

CONTENT

House Bill 4225 would amend Part 73 (Manufacture, Distribution, and Dispensing) of the Public Health Code to exempt a patient who was under the care of a hospice from certain requirements related to the prescription of a controlled substance listed in Schedules 2 to 5.

Senate Bill 128 would amend the Public Health Code to revise the definition of "bona fide prescriber-patient relationship".

The bills are tie-barred.

House Bill 4225

Under Part 73, a prescriber who holds a controlled substances license may administer or dispense a controlled substance listed in Schedules 2 to 5 without a separate controlled substances license. Generally, the Code prohibits a licensed prescriber from prescribing a controlled substance listed in Schedules 2 to 5 unless he or she is in a bona fide prescriber-patient relationship with the patient for whom the controlled substance is being prescribed. Under the bill, this requirement would not apply for a patient who was under the care of a hospice.

Part 73 also requires a licensed prescriber to obtain and review a report concerning a patient from MAPS before prescribing or dispensing to a patient a controlled substance in a quantity that exceeds a three-day supply. This requirement does not apply under certain circumstances, for example, if the controlled substance is prescribed by a veterinarian.

The requirement to obtain a MAPS report also would not apply if the patient were under the care of a hospice and the MAPS report was obtained and reviewed when the patient was admitted to the hospice.

Under the Code, "bona fide prescriber-patient relationship" means a treatment or counseling relationship between a prescriber and a patient in which 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 through telehealth.
-- The prescriber has created and maintained records of the patient's condition in accordance with medically accepted standards.

The bill would delete the definition for "bona fide prescriber-patient relationship" (which would be recodified as described below).

Senate Bill 128

Under the bill, "bona fide prescriber-patient relationship" would mean a treatment or counseling relationship between a prescriber and a patient in which the following are present:

-- The prescriber has reviewed the patient's relevant medical or clinical records and completed an assessment of the patient's medical history and current medical condition, including a relevant medical evaluation of the patient conducted in person or through telehealth as that term is defined in Section 16283.
-- The prescriber has created and maintained records of the patient's condition in accordance with medically accepted standards.

(Section 16283 of the Code defines "telehealth" as the use of electronic information and telecommunication technologies to support or promote long distance clinical health care, patient and professional health-related education, public health, or health administration. Telehealth may include telemedicine.)

MCL 333.7303a (H.B. 4225)
333.7104 (S.B. 128)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to testimony before the Senate Committee on Health Policy and Human Services, Public Acts 247 through 249 of 2017 hinder pain and symptom management in a hospice setting for patients. In a hospice patient's final days, nurses provide almost all health care in a patient's home with the use of Schedule 2 to 5 controlled substances. Nurses often contact doctors in person, by phone, or during interdisciplinary team consultations to secure medication orders for their patients. Requiring a doctor to maintain a bona fide prescriber-patient relationship with a hospice patient is not often feasible; hospice patients usually cannot travel to a doctor for a personal visit, and hospices sometimes care for patients whose residences are hours away from their doctors' offices. Additionally, there is an insufficient number of doctors to make personal visits to hospice patients, or use telehealth methods, to meet those requirements, especially considering the constant care provided to a hospice patient.

Similarly, the requirement to check MAPS before prescribing a Schedule 2 to 5 controlled substances is cumbersome for hospice care providers. Nurses use controlled substances to treat pain, as well as coughing, fatigue, difficulty breathing, depression, seizures, anxiety, and insomnia. The variability of these health issues often forces nurses who provide hospice care to check MAPS 60 times or more a day. Creating exemption for patients under the care of a hospice from the bona fide patient-prescriber relationship requirement, and requiring a prescriber to check MAPS once at the beginning of a hospice patient's treatment, would allow nurses to provide more comfortable and effective care during the patient's final days.

Opposing Argument

The requirement to check MAPS for the prescription of a Schedule 2 to 5 controlled substances offers security against drug abuse and drug diversion. Creating an exemption for hospice patients could hinder those efforts to combat the opioid epidemic. As mentioned, hospice care often takes place in a patient's residence around his or her family. Checking a MAPS report only at the outset of a patient's care under hospice could allow the patient or family members to divert controlled substances for personal consumption or illicit sales. Additionally, a hospice patient also could pass away well before using the full prescription. Family members or licensed nurses could dispose of the prescription improperly, which could lead to opportunities for drug abuse or drug diversion.

Response: Hospice care offers additional safety against drug abuse and diversion. As part of his or her job, a licensed nurse must account daily for all prescriptions given to the patient. This ensures that patients use the Schedule 2 to 5 controlled substances properly. At the end of a patient's life, nurses who have built a relationship with the patient's family also oversee medication reconciliation. Additionally, hospice care providers currently place safe boxes in patients' homes where there could be a risk of drug diversion.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Raczkowski

SAS\A1920\s128ea