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BILL ANALYSIS



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Senate Bill 166 (as enacted)
Sponsor: Senator Curtis S. VanderWall
Senate Committee: Health Policy and Human Services
House Committee: Health Policy

PUBLIC ACT 80 of 2022

Date Completed: 1-5-23

CONTENT

The bill amends Article 15 (Occupations) of the Public Health Code to do the following:

- Allow a pharmacist to dispense a drug or device pursuant to a prescription transmitted by a prescriber in another state or province of Canada if the pharmacist determines certain conditions are met.**
- Allow a pharmacist to dispense a drug or device pursuant to a prescription transmitted by an advanced practice registered nurse prescriber or physician's assistant prescriber in another state or province of Canada without determining whether the advanced practice registered nurse prescriber or physician's assistant prescriber is authorized under the laws of the other state or province of Canada to issue the prescription under certain circumstances.**
- Modify various definitions.**

The bill will take effect on the 91st day after the Legislature adjourns sine die.

Definitions

Under Section 16106 of the Code, "license", except as otherwise provided, means an authorization issued under Article 15 to practice where practice would otherwise be unlawful. License includes an authorization to use a designated title which use would otherwise be prohibited under Article 15 and may be used to refer to a health profession subfield license, limited license, or a temporary license.

For purposes of the definition of "prescriber" contained in Section 17708 only, license includes an authorization issued under the laws of another state, or the country of Canada to practice in that state or in the country of Canada, where practice would otherwise be unlawful, and is limited to a licensed doctor of medicine, a licensed doctor of osteopathic medicine and surgery, 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. The bill deletes this provision.

Section 17708 defines "prescriber" 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; subject to Part 174 (Optometry), a licensed optometrist; subject to Section 17211a, an advanced practice registered nurse; a licensed veterinarian; 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; or a registered professional nurse who

holds a specialty certification as a nurse anesthetist when he or she is engaging in the practice of nursing and providing anesthesia and analgesia services.

Under the bill, as used in the definition of "prescriber", "advanced practice registered nurse" means that term as defined in Section 17201 (a registered professional nurse who has been granted a specialty certification under Section 17210 in one of the following health profession specialty fields: a) nurse midwifery, b) nurse practitioner, or c) clinical nurse specialist) and would include a licensed advanced practice registered nurse. "License" means that term as defined in Section 16106 (except as otherwise provided, an authorization issued under Article 15 to practice where practice would otherwise be unlawful. License includes an authorization to use a designated title which use would otherwise be prohibited under the article and may be used to refer to a health profession subfield license, limited license, or a temporary license) and includes an authorization issued under the laws of another state or province of Canada to practice a profession in Section 17708 in that state or province of Canada where practice would otherwise be unlawful.

Under Section 17708, "prescription" means an order by a prescriber to fill, compound, or dispense a drug or device written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication. An order transmitted in other than written or hard-copy form must be electronically recorded, printed, or written and immediately dated by the pharmacist, and that record is considered the original prescription. In a health facility or agency licensed under Article 17 or other medical institution, an order for a drug or device in the patient's chart is considered for the purposes of this definition the original prescription. For purposes of Part 177 (Pharmacy Practice and Drug Control), prescription also includes a standing order issued under Section 17744e.

Currently, subject to Section 17751, prescription includes an order for a drug, not including a controlled substance except under circumstances described in Section 17763(e), written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber who is licensed to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine in another state. The bill deletes reference to "a physician prescriber, dentist prescriber, or veterinarian prescriber who is licensed to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine in another state" and, instead, refers to "a prescriber in another state or province of Canada".

Out-of-State Prescribers

The Code prohibits a pharmacist from dispensing a drug requiring a prescription under the Federal Food, Drug, and Cosmetic Act or State law except under authority of an original prescription or an equivalent record of an original prescription approved by the board. A pharmacist may dispense a drug pursuant to an original prescription received at a remote pharmacy if the pharmacist receives, reviews, and verifies an exact digital image of the prescription received at the remote pharmacy before the drug is dispensed at the remote pharmacy.

Currently, the Code allows a pharmacist to dispense a prescription written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber in another state, but not including a prescription for a controlled substance except under circumstances described in Section 17763(e), only if the pharmacist in the exercise of his or her professional judgment determines all of the following:

- Except as otherwise authorized, if the prescriber is a physician or dentist, that the prescription was issued pursuant to an existing physician-patient or dentist-patient relationship.
- That the prescription is authentic.
- That the prescribed drug is appropriate and necessary for the treatment of an acute, chronic, or recurrent condition.

(Section 17763(e) generally specifies that it is grounds for disciplinary action for a pharmacist licensee to dispense a prescription for a controlled substance unless the prescription is issued by a physician prescriber, dentist prescriber, or veterinarian prescriber in another state, unless the prescription is issued by a physician prescriber, dentist prescriber, or veterinarian prescriber who is authorized under the laws of that state to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine and to prescribe controlled substances.)

Instead, under the bill, a pharmacist may dispense a drug or device pursuant to a prescription written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a prescriber in another state or province of Canada, but not including a prescription for a controlled substance except under circumstances described in Section 17763(e). Before dispensing a drug or device pursuant to a prescription, the pharmacist, in the exercise of his or her professional judgment, must determine all of the following:

- Except as otherwise authorized, if the prescriber is not a veterinarian, the prescription was issued pursuant to an existing prescriber-patient relationship.
- That the prescription is authentic.
- That the prescribed drug is appropriate and necessary for the treatment of an acute, chronic, or recurrent condition.

The Code requires a pharmacist or a prescriber to dispense a prescription only if the prescription falls within the scope of practice of the prescriber. A pharmacist may not knowingly dispense a prescription after the death of the prescriber or patient. The bill refers to a *drug or device pursuant to a prescription*.

Additionally, under the bill, notwithstanding any provision of Section 17751, a pharmacist who receives a prescription from an advanced practice registered nurse prescriber or physician's assistant prescriber in another state or province of Canada may dispense the drug or device without determining whether the advanced practice registered nurse prescriber or physician's assistant prescriber is authorized under the laws of the other state or province of Canada to issue the prescription.

MCL 333.16106 et al.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

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

Fiscal Analyst: Jonah Houtz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.