HOUSE BILL NO. 4659

April 20, 2021, Introduced by Rep. Bellino and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled

"Public health code,"

by amending section 17754a (MCL 333.17754a), as added by 2020 PA 134.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 17754a. (1) Except as otherwise provided under article 8, the federal act, or subsection (5), and subject to subsection (10), beginning October 1, 2021, a prescriber or his or her agent shall electronically transmit a prescription, including a prescription

for a controlled substance, directly to a pharmacy of the patient's choice. A prescription that is transmitted electronically under this section must be in compliance with the health insurance portability and accountability act of 1996, Public Law 104-191, or regulations promulgated under that act, 45 CFR parts 160 and 164, and the data must not be altered or modified in the transmission process. The electronically transmitted prescription must include all of the following information:

(a) The name, address, and telephone number of the prescriber.

(b) Except as otherwise authorized under section 5110, 17744a, or 17744b, the full name of the patient for whom the prescription is issued.

(c) An electronic signature or other identifier that specifically identifies and authenticates the prescriber or his or her agent.

(d) The time and date of the transmission.

(e) The identity of the pharmacy intended to receive the transmission.

(f) Any other information required by the federal act or state law.

(2) The electronic equipment or system utilized in the transmission and communication of prescriptions under this section must provide adequate confidentiality safeguards and be maintained to protect patient confidentiality as required under any applicable federal and state law and to ensure against unauthorized access. The electronic transmission of a prescription under this section must be communicated in a retrievable, recognizable form acceptable to the intended recipient. The electronic form utilized in the transmission of a prescription must not include "dispense as

written" or "d.a.w." as the default setting.

(3) Before dispensing a prescription that is electronically transmitted under this section, the pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the transmitted prescription.

(4) An electronically transmitted prescription that meets the requirements of this section is the original prescription.

(5) The requirement to transmit a prescription electronically under subsection (1) does not apply under any of the following circumstances:

(a) If the prescription is issued by a prescriber who is a veterinarian licensed under this article.

(b) If the prescription is issued under a circumstance in which electronic transmission is not available due to a temporary technological or electrical failure.

(c) If the prescription is issued by a prescriber who has received a waiver from the department under subsection (7).

(d) If the prescription is issued by a prescriber who reasonably believes that electronically transmitting the prescription would make it impractical for the patient who is the subject of the prescription to obtain the prescription drug in a timely manner and that the delay would adversely affect the patient's medical condition. A prescriber who does not electronically transmit a prescription under this subdivision shall document the specific reason for his or her belief that the delay would adversely affect the patient's medical condition.

(e) If the prescription is orally prescribed under section 7333(3) or (4).

(f) If the prescription is issued by a prescriber to be

dispensed outside of this state.

(g) If the prescription is issued by a prescriber who is located outside of this state to be dispensed by a pharmacy located inside of this state.

(h) If the prescription is issued and dispensed in the same health care facility and the individual for whom the prescription is issued uses the drug exclusively in the health care facility. As used in this subdivision, "health care facility" includes, but is not limited to, any of the following:

(*i*) A hospital.

(*ii*) A hospice.

(*iii*) A dialysis treatment clinic.

(*iv*) A freestanding surgical outpatient facility.

(*v*) A skilled nursing facility.

(*vi*) A long-term care facility that provides rehabilitative, restorative, or ongoing skilled nursing care to an individual who is in need of assistance with activities of daily living.

(i) If the prescription contains content that is not supported by the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard.

(j) If the prescription is for a drug for which the FDA requires the prescription to contain content that cannot be transmitted electronically.

(k) If the prescription is issued under circumstances in which the prescriber is not required to include on the prescription a name of a patient for whom the prescription is issued including, but not limited to, a prescription issued under section 5110.

(*l*) If the prescription is issued by a prescriber who is prescribing the drug under a research protocol.

(m) If the prescription is dispensed by a dispensing prescriber.

(n) If the prescription is for a dialysis-related drug that is administered as part of or incident to a home-based dialysis treatment.

(6) If a prescriber has not been granted a waiver from the department under subsection (7) and the prescriber does not electronically transmit a prescription under an exception described in subsection (5), the prescriber shall document the applicable exception and provide that documentation to the department on request.

(7) If a prescriber cannot meet the requirements of subsection (1) or (2), the prescriber may apply to the department for a waiver in a form and manner required by the department. The department shall establish by rule the requirements for obtaining a waiver under this subsection. The rules must not establish requirements that are more stringent than any requirements used by the federal Centers for Medicare and Medicaid Services for waiving the Medicare requirement for the electronic transmission of controlled substance prescriptions. If a prescriber provides evidence satisfactory to the department that the prescriber has received a waiver of the Medicare requirement for the electronic transmission of controlled substances prescriptions from the federal Centers for Medicare and Medicaid Services, the department shall grant a waiver to the prescriber under this subsection. A waiver that is granted by the department under this subsection is valid for a period not to exceed 2 years and is renewable.

(8) A pharmacist who receives a prescription that was not transmitted electronically to the pharmacy may dispense the

prescription without determining whether an exception under subsection (5) applies.

(9) The department, in consultation with the board, shall promulgate rules to implement this section.

(10) If the federal Centers for Medicare and Medicaid Services delays the Medicare requirement for the electronic transmission of prescriptions for controlled substances beyond October 1, 2021, then the department shall delay the implementation date of subsection (1) to the date established by the federal Centers for Medicare and Medicaid Services for the Medicare requirement.