

CONTROLLED SUBSTANCE DISPOSAL POLICY IN HOSPICE SETTINGS

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Senate Bill 842 (S-1) as reported from House committee

Sponsor: Sen. Dale Zorn

House Committee: Health Policy

Senate Committee: Health Policy

Complete to 12-9-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 396 of 2018)

SUMMARY:

Senate Bill 842 would amend Parts 74 (Offenses and Penalties) and 214 (Hospices) of the Public Health Code, concerning the disposal of controlled substances in hospice settings.

The bill would require a hospice or hospice residence that provides services in a patient's private home (but not in a health facility or agency or adult foster care facility) to implement a written *controlled substance disposal policy* detailing procedures to mitigate the diversion of controlled substances prescribed to the patient. The policy would have to include all of the following:

- A procedure for offering to assist with disposal of controlled substances.
- A requirement that an *employee* (defined in the bill as a registered professional nurse or licensed practical nurse employed by the hospice or hospice residence) educate the patient on safe disposal techniques and locations.
- Procedures for offering assistance with controlled substance disposal to a patient who revokes hospice care and services.
- A requirement that an employee document the acceptance or rejection of the offer to assist with disposal of controlled substances.
- A requirement that, if an employee assists with disposal, the disposal be witnessed by another competent adult and not take place in the patient's home.

The Department of Licensing and Regulatory Affairs (LARA) would have to promulgate rules to implement the requirement, including rules governing the safe disposal of controlled substances in a patient's private home. A hospice or hospice residence would have to implement the policy beginning 90 days after the rules are promulgated.

Under the bill, a hospice or hospice residence providing services in a patient's home would have to distribute a copy of the policy to the patient or the patient's family, and inform the patient or family that an employee will offer to assist with controlled substance disposal, within five days after the patient is admitted to the hospice or hospice residence and hospice care is provided in the patient's home.

Generally under the Code, certain actions related to controlled substances constitute a misdemeanor. The bill would provide that delivery of a controlled substance for the purpose of disposing of the substance is not a violation.

The bill would take effect 90 days after enactment.

MCL 333.17766 and proposed MCL 333.7423 and 333.21418

HOUSE COMMITTEE ACTION:

The House Committee on Health Policy reported the Senate-passed version of SB 842 without amendment.

BRIEF DISCUSSION:

Michigan, like many other states, has grappled with the ongoing opioid epidemic. The Centers for Disease Control and Prevention reports that on average 115 Americans die each day from an opioid overdose.¹

According to testimony by the bill sponsor in the Senate Health Policy committee, the bill is intended to prevent opioid proliferation and abuse by allowing hospice staff to dispose of medications after the death of a patient. Medications prescribed to a hospice patient become the property of the patient's family after the patient's death, and the family can then choose what to do with the medications. At most, a hospice worker can recommend disposal methods.

In 2017, Florida adopted a policy similar to that described in the bill, in which a hospice agency may, with the permission of a patient's family, assist in the disposal of prescribed medications in the patient's home in a fashion dictated by the hospice agency's written policy, procedure, or system for disposal.² In South Carolina, the ownership of prescribed Schedule 2 through 5 controlled substances transfers to the hospice agency for immediate in-home disposal or mail-back to a DEA-registered collector.³ Ohio,⁴ Delaware,⁵ and New Jersey⁶ are among other states that have statutes pertaining to some type of prescription disposal in a hospice setting.

FISCAL IMPACT:

Senate Bill 842 would not have a significant impact on expenditures or revenues for LARA or any other unit of state or local government. The bill would require LARA to promulgate rules to implement provisions of the bill, but any cost associated with this process would be absorbed by existing departmental appropriations.

POSITIONS:

The following organizations indicated support for the bills (11-28-18):

Michigan Department of Licensing and Regulatory Affairs
Michigan HomeCare and Hospice Association

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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.

¹ <https://www.cdc.gov/drugoverdose/epidemic/index.html>

² <https://www.flsenate.gov/Committees/BillSummaries/2017/html/1492>

³ <https://www.scstatehouse.gov/code/t44c071.php>

⁴ <http://codes.ohio.gov/orc/3712>

⁵ [http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Systems%20Protection%20\(HSP\)/4468.shtml](http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Health%20Systems%20Protection%20(HSP)/4468.shtml)

⁶ <https://legiscan.com/NJ/text/S2970/id/1644807>