



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

## BILL ANALYSIS



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

Senate Bill 842 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Dale W. Zorn  
Committee: Health Policy

Date Completed: 8-20-18

### **RATIONALE**

Hospice is a healthcare approach that focuses on maintaining or improving the quality of life for a patient whose illness, disease, or condition is unlikely to improve. Hospice provides supportive and palliative care to manage a patient's pain and other symptoms so that he or she may live as comfortably as possible. Generally, hospice care is provided in a patient's home for patients whose life expectancy is six months or less if his or her illness, disease, or condition runs its course. Often, a hospice patient is prescribed opioids, such as oxycodone, hydrocodone, codeine, or fentanyl, for his or her pain management.

Reportedly, drug diversion (when one person's lawfully prescribed medications are obtained or used illegally by another person) from hospice patients is not uncommon. In order to prevent future misuse, abuse, and diversion of unused prescription opioids, it has been suggested that hospice service providers should be required to develop and implement a controlled substance disposal policy that would allow hospice employees to assist in the safe disposal of unused controlled substances.

### **CONTENT**

**The bill would amend the Public Health Code to require a hospice or hospice residence providing services in a patient's private home to establish and implement a written controlled substance disposal policy, and to ensure that the patient or his or her family received a copy of the policy.**

Specifically, the Department of Licensing and Regulatory Affairs (LARA) would have to promulgate rules to implement the bill's provisions, including rules governing the safe disposal of controlled substances in a patient's private home.

Within 90 days after LARA promulgated rules, a hospice or hospice residence that provided services in a patient's private home would have to establish and implement a written controlled substance disposal policy establishing procedures to be followed to mitigate the diversion of controlled substances that were prescribed to the patient. The policy would have to include all of the following:

- A procedure for offering to assist with the disposal of a controlled substance that was prescribed to a patient as part of his or her hospice plan of care.
- A requirement that an employee provide the patient or his or her family with education on safe disposal locations for a controlled substance and techniques for the safe disposal of a controlled substance when the patient no longer needed it or at the time of death.
- Procedures for offering assistance with the disposal of a controlled substance to a patient who revoked hospice care and services.

- A requirement that an employee document whether the patient or his or her family accepted or refused an offer to assist with the disposal of a controlled substance when the patient no longer needed it or at the time of death.
- A requirement that if an employee assisted with the disposal of a controlled substance, the disposal would have to be performed in the patient's home.

Additionally, a controlled substance disposal policy would have to include a requirement that if an employee assisted with the disposal of a controlled substance, the disposal would be performed and witnessed in either of the following ways:

- Performed by the employee and witnessed by another competent adult.
- Performed by the patient or his or her family and witnessed by another competent adult.

("Patient's family" would mean a relative or caregiver who has been designated by the patient. "Employee" would mean a registered professional nurse or a licensed practical nurse who is employed by a hospice or hospice residence. "At the time of death" would mean within 72 hours after a patient's death. "Patient's private home" would mean a patient's home. The term "home" would not include a residence established by a patient in a health facility or agency or a residence established by a patient in an adult foster care facility licensed under the Adult Foster Care Facility Licensing Act.)

A hospice or hospice residence that provided services in a patient's private home would have to ensure that all of the following were met within five days of admission to the hospice or hospice residence and providing hospice care or services to the patient in his or her private home:

- A copy of the controlled substance disposal policy was distributed to the patient or his or her family and an offer to discuss the procedures included in the policy was made to the patient or family.
- The patient and his or her family were informed that an employee would offer to assist with the disposal of a controlled substance that was included in the patient's hospice plan of care at the time of death or when the patient no longer needed the controlled substance.

The delivery of a controlled substance under these provisions for the purpose of disposing of the controlled substance would not be a violation of Article 7 (Controlled Substances) of the Code. (Article 7 generally governs the prescription, administration, and dispensation of controlled substances, and prescribes penalties and sanctions for the unauthorized manufacture, delivery, and possession of controlled substances.)

The bill would take effect 90 days after its enactment.

MCL 333.17766 et al.

## **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**

Hospice's role is to provide comfort to a terminally ill patient in his or her final months, weeks, or days, and one of the goals of this type of care is to alleviate the patient's pain. A variety of medications or dosages may be used in order to best manage the patient's pain. Additionally, because there is no way to predict exactly when a patient may die, there is always the potential for unused prescription opioids, even if they are prescribed in limited quantities. This means that there is an increased opportunity for these unused medications to be misused. However, federal law prohibits hospice from assisting with medication disposal.

In 2010, Congress passed the Secure and Responsible Drug Disposal Act aimed at decreasing prescription drug abuse. The Act authorizes the United States Drug Enforcement Administration (DEA) to develop and implement regulations that detail the disposal of unused or unwanted prescribed controlled substances. However, some people expressed concerns regarding the lack of provisions for hospice and other homecare programs to dispose of controlled substances on behalf of patients. The DEA addressed those concerns in 2014 when it issued its final rule on the secure disposal of controlled substance. The DEA specified that under the Disposal Act, an ultimate user (a person who has lawfully obtained, and possess, a controlled substance for his own use or for the use of a member of his household) may deliver a controlled substance to another person for disposal. Otherwise, a home hospice or homecare provider may not receive the controlled substance for the purpose of disposal. Therefore, a home hospice or homecare provider may not dispose of a patient's pharmaceutical controlled substances unless otherwise authorized by law (for example, under state law) to dispose of the decedent's personal property.

Currently, Michigan does not have a statute governing the secure disposal of controlled substance, so hospice or homecare personnel are not permitted to advise or assist with the disposal of unused medications.

The bill would require a hospice or hospice residence that provided services in a patient's private home to establish and implement a controlled substance disposal policy. Hospices providing in-home patient care have the best opportunity to provide for the safe disposal of any unused medications. Throughout a patient's care, hospice personnel are required to count, track, and provide documentation of medication use. Disposal of these medications easily could be managed in a similar manner. Also, hospice personnel assist families in understanding what happens following a family member's death, and the safe disposal of unused medications is part of this conversation.

Like most of the country, Michigan continues to see the effects of the opioid epidemic, and one of the primary reasons for the high rate of opioid overdoses is the easy access to highly addictive controlled substances. By allowing hospice workers to assist in the disposal of controlled substance, the bill would mitigate the risk of diversion of patients' medications. It also would allow hospice employees to provide the appropriate education and assistance for the safe disposal of excess or unused patient medications.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have a minor fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would not have an impact on local units of government.

The Department would need to create new rules or amend existing rules (most likely Hospice Licensure Rules, R 325.13101 - 325.13543) to implement the proposed controlled substances disposal policy requirements for hospices. The costs for rule promulgation are nominal, and are typically absorbed by the department responsible for the new rules. Those costs include labor, notice publication, and at least one public hearing. Additionally, as the new rules would require hospices to create and implement new procedures, there could be additional costs to LARA to determine compliance with the rules during hospice inspections or licensure application review.

Fiscal Analyst: Michael Siracuse

SASVA1718\842a

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.