

PRESCRIBING CONTROLLED SUBSTANCES VIA TELEHEALTH/ CNS TITLE PROTECTION

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Senate Bill 213 (reported from House committee as H-1)

Sponsor: Sen. Peter MacGregor

House Committee: Health Policy

Senate Committee: Health Policy

Complete to 3-20-17

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

(Enrolled Version)

BRIEF SUMMARY: Senate Bill 213 would amend two acts passed during the 2015-2016 legislative session—Public Acts 359 and 499—to rectify oversights in the bills as enacted. The bill would allow health professionals to prescribe controlled substances using telehealth under certain circumstances, and would also delay title protection for clinical nurse specialists until such time as their function has been defined by the Michigan Board of Nursing. If enacted, this bill would take effect on March 29, 2017, which is the same date as PA 359 takes effect and 11 days before PA 499 takes effect.

FISCAL IMPACT: Senate Bill 213 would likely have a nominal, though negative, fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would require the department to promulgate rules regarding the provision of telehealth services, specifically with respect to obtaining consent for treatment and for prescribing of drugs. The bill would also require the Michigan Board of Nursing to promulgate rules establishing training and competency qualifications for clinical nurse specialists. The rules promulgation would result in minor administrative costs for the department. The bill would not have significant fiscal impacts on other units of state or local government.

THE APPARENT PROBLEM:

Public Act 359 of 2016 (originally Senate Bill 753)¹ provided a framework for telehealth in the Public Health Code, requiring that a health professional obtain the patient's consent before providing telehealth services, prescribing certain standards for drug prescription and provision of telehealth services, and authorizing the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules regarding telehealth. PA 359 will take effect March 29, 2017.

However, according to the sponsor of that bill and SB 213, SB 753 inadvertently failed to account for the unique needs of community mental health and substance abuse disorder clinics. For example, some of the clinics are open 24 hours a day and require the prescription of controlled substances for alcohol and drug detoxification, using telehealth communications, at all hours of the day. Accordingly, SB 213 is intended to make necessary accommodations, and, if enacted, would take effect on the same date as the original bill.

¹ <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-0753-6B614C58.pdf>

The House substitute would also provide a "fix" for PA 499 of 2016, which will take effect April 9, 2017. That bill, initially House Bill 5400 of the 2015-2016 legislative session,² provided for the licensure and regulation of advance practice registered nurses (APRNs). The bill provides "title protection" for certain professions, so that only individuals with the requisite education and experience could hold themselves out as APRNs, certified nurse practitioners, etc. However, the bill provides title protection for clinical nurse specialists without defining (or, actually, instructing the Michigan Board of Nursing to define) the profession. SB 213 would delay the protection for a year in order to give the Board time to promulgate those rules.

THE CONTENT OF THE BILL:

Telehealth revision (PA 359 of 2016/SB 753)

Senate Bill 213 would amend the Public Health Code (MCL 333.16285 and 333.16287), to provide that a health professional acting within the appropriate scope of practice may prescribe a controlled substance via telehealth, provided that the health professional:

- Provides the patient with a referral for other health care services that are geographically accessible, including emergency services, if the health professional deems it medically necessary;
- Makes himself or herself available to provide follow-up health care to the patient or refers the patient to another health professional for follow-up care, after providing the telehealth service; and
- Meets the other requirements for prescribing controlled substances under the Code.

(Currently, a health professional providing telehealth services to a patient can prescribe a drug if it is not a controlled substance and the professional is an eligible prescriber.)

The bill also states that the Department of Licensing and Regulatory Affairs "shall" promulgate rules to implement telehealth provisions; currently, the act says LARA "may" promulgate rules.

Telehealth is defined in Public Act 359 of 2016 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, but is not limited to, telemedicine.

APRN revision (PA 499 of 2016/HB 5400)

Additionally, the House substitute would amend sections 17210 and 17211 of the Public Health Code. The bill would direct the Michigan Board of Nursing to promulgate rules establishing the qualifications for the training and competency of the health profession

² <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-5400-2EEDA80A.pdf>

specialty field of clinical nurse specialist (CNS), and not to grant a CNS certification until those rules take effect.

The title protection granted to other professions under PA 499 would extend to CNSs and clinical nurse specialists-certified (CNS-Cs) beginning 12 months after the rules promulgated by the Board of Nursing take effect.

HOUSE COMMITTEE ACTION:

The House Health Policy Committee's H-1 substitute added the amendment to Public Act 499 of 2016, which addressed title protections for CNSs. Initially, the bill only provided a fix for PA 359; as amended, it addresses both acts.

POSITIONS:

The director of Behavioral Health for the Michigan Department of Health and Human Services (MDHHS) testified in support of the bill. (3-15-17)

A representative of the Michigan Association of Community Mental Health Boards and Community Mental Health for Central Michigan testified in support of the bill. (3-15-17)

The Academy of Integrative Pain Management supports the bill. (3-15-17)

The following organizations support SB 213 as substituted:

- Michigan Association of Colleges of Nursing (3-15-17)
- American Nurses Association–Michigan (3-15-17)
- Coalition of Michigan Organizations of Nursing (3-15-17)
- Ascension Michigan (3-15-17)
- Michigan Health and Hospital Association (3-15-17)
- Michigan Association of Clinical Nurse Specialists (3-15-17)
- Michigan Organization of Nurse Executives (3-15-17)

A representative of the Michigan Pharmacists Association testified as to the organization's neutrality on the bill. (3-15-17)

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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.