



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 213 (as enrolled)
Sponsor: Senator Peter MacGregor
Senate Committee: Health Policy
House Committee: Health Policy

Date Completed: 3-29-17

RATIONALE

As technology advances, the use of electronic information systems and telecommunication technologies in the delivery of health care, or telehealth, is becoming increasingly common. These technologies allow health care providers the opportunity to conduct office visits remotely and monitor their patients at home. In response to concerns about the need for patient protections, Public Act 359 of 2016 was enacted to regulate health professionals' use of telehealth services. The Act's amendments to the Public Health Code, which will take effect on March 29, 2017, include a provision prohibiting health professionals from prescribing controlled substances via telehealth. Evidently, this prohibition will prevent health professionals from providing medical treatment to patients seeking mental and behavioral health services. In order to ensure access to care and medication needed by these patients, some people have suggested that the State should allow health professionals to prescribe controlled substances via telehealth.

In another matter, Public Act 499 of 2016 amended the Public Health Code to enact provisions regarding advanced practice registered nurses and clinical nurse specialists (CNSs). The amendments, which will take effect on April 9, 2017, include a provision granting title protection to an individual who is a CNS or a clinical nurse specialist-certified (CNS-C). Some people believe that, if the Michigan Board of Nursing promulgates rules for an individual who is a CNS or a CNS-C, the title protection afforded under the Act might prohibit an individual currently practicing as a CNS or CNS-C in Michigan from using his or her professional credentials until the rules are completed. To prevent this, it was suggested that the title protection granted to an individual who is a CNS or a CNS-C should not apply until after the rule promulgation process.

CONTENT

The bill would amend the Public Health Code to do the following:

- **Allow a health professional who is a prescriber acting within the scope of his or her practice in prescribing a drug and who is providing a telehealth service to prescribe a controlled substance.**
- **Require a health professional who prescribed a drug to comply with requirements concerning referrals and follow-up services.**
- **Require the Department of Licensing and Regulatory Affairs to promulgate rules to implement the Code's provisions regarding telehealth services.**
- **Require the Michigan Board of Nursing to promulgate rules establishing the qualifications for the training and competency of clinical nurse specialists.**
- **Provide that the Board could not grant a specialty certification as a clinical nurse specialist until after the rules took effect.**
- **Restrict the use of titles related to clinical nurse specialists beginning 12 months after the rules took effect.**

Telehealth Services

The Code specifies that a health professional providing a telehealth service may prescribe a drug to a patient if the health professional is a prescriber and the drug is not a controlled substance. Under the bill, a health care professional providing a telehealth service to a patient would be allowed to prescribe the patient a drug if both of the following were met:

- The health professional was a prescriber acting within the scope of his or her practice in prescribing the drug.
- If the health professional were prescribing a controlled substance, he or she met the requirements applicable to that health profession for prescribing a controlled substance.

The bill also would require a health professional who prescribed a drug to comply with both of the following:

- If the health professional considered it medically necessary, he or she would have to provide the patient with a referral for other health care services geographically accessible to the patient, including emergency services.
- After providing a telehealth service, the health professional, or a health professional acting under the delegation of another health professional, would have to make himself or herself available to provide follow-up health care services to a patient or refer the patient to another health professional for follow-up health care services.

Under the Code, the Department of Licensing and Regulatory Affairs, in consultation with a health profession licensing board, may promulgate rules to implement the provisions of the Code concerning telehealth services. The bill, instead, would require the Department to promulgate such rules.

("Telehealth service" means a health care service that is provided through telehealth. "Telehealth" means 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. It includes telemedicine, as defined in the Insurance Code (the use of an electronic medium to link patients with health care professionals in different locations).

"Prescriber" means a licensed dentist; licensed doctor of medicine, osteopathic medicine and surgery, or podiatric medicine and surgery; a licensed optometrist certified to administer and prescribe therapeutic pharmaceutical agents; a licensed veterinarian; 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 osteopathic medicine and surgery.)

Clinical Nurse Specialists

The Code permits the Michigan Board of Nursing to grant a specialty certification to a registered professional nurse who has advanced training beyond that required for initial licensure, who has demonstrated competency through examination or other evaluative processes, and who practices in one of the following health profession specialties:

- Nurse midwifery.
- Nurse anesthetist.
- Nurse practitioner.
- Clinical nurse specialist.

The bill would require the Michigan Board of Nursing to promulgate rules establishing the qualifications for the training and competency of the health profession specialty field of clinical nurse specialist. The Board could not grant a specialty certification as a clinical nurse specialist until after the effective date of the promulgated rules.

The Code restricts the use of certain words, titles, and letters only to those people authorized to use them. The restricted titles include "clinical nurse specialist", "C.N.S.", "clinical nurse specialist-certified", and "C.N.S.-C.". Under the bill, those titles would be restricted beginning 12 months after the effective date of the rules.

MCL 333.16285 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

Public Act 359 of 2016 will have unforeseen consequences by prohibiting health professionals from prescribing controlled substances via telehealth. Without the ability to prescribe controlled substances, mental health clinicians may be barred from providing care to individuals who have limited access to mental and behavioral health services. Telehealth is used to treat disorders such as anxiety, depression, attention deficit hyperactivity disorder, obsessive-compulsive disorder, schizophrenia, bipolar disorder, and post-traumatic stress disorder, and to provide medication-assisted recovery as well as alcohol detoxification. Telehealth enhances psychological services by allowing psychiatrists to support clients between visits and prescribe prescriptions. Since many community mental health (CMH) facilities are not able to hire psychiatrists, the prescription of controlled substances via telehealth allows CMH facilities and their provider networks to better serve their patients. Without the amendments proposed by the bill, Public Act 359 will have a negative impact on the public mental and behavioral health system in the State.

Many facilities that operate opioid treatment and alcohol detoxification programs also prescribe controlled substances via telehealth. These treatment facilities do not have a large number of controlled substances on-site, so prescribing controlled substances via telehealth has been helpful in treating their patients.

Additionally, telehealth improves access to care for individuals who live in remote areas. If health professionals do not have the ability to prescribe controlled substances to patients via telehealth, patients may face long wait times for treatment or be forced to travel long distances to see providers. Some treatments in certain areas of the State also might be discontinued, resulting in service disruptions.

Supporting Argument

Title protection allows health care professionals to identify their specialty by their educational level. However, because the Michigan Board of Nursing may promulgate rules for a clinical nurse specialist and a clinical nurse specialist-certified, the title protection granted by Public Act 499 of 2016 might prohibit a CNS or CNS-C currently practicing in Michigan from using his or her credentials until the rules are completed. By specifically requiring the Board to promulgate rules for the CNS field, and delaying the title protection until the rules were promulgated, the amendments would allow a CNS and CNS-C to identify himself or herself by his or her professional credentials through the rule promulgation process.

Opposing Argument

Using telehealth as a method of prescribing controlled substance could lead to abuse, specifically with oxycodone, hydrocodone, and other drugs that are frequently misused or abused.

Response: These issues could be addressed through rules promulgated by the Department of Licensing and Regulatory Affairs and the Department of Health and Human Services.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a minor, but negative fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), and no fiscal impact on local units of government. Under the bill, LARA would be required to promulgate administrative rules regarding telehealth services. Rule promulgation would result in some new administrative costs that would likely be minor, but would vary with the relative complexity of the rules promulgated. These costs would be borne by existing resources within LARA.

Fiscal Analyst: Josh Sefton

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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.