

A bill for an act
relating to health; changing provisions for prescribing legend drugs; amending
Minnesota Statutes 2007 Supplement, section 151.37, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2007 Supplement, section 151.37, subdivision 2, is
amended to read:

Subd. 2. **Prescribing and filing.** (a) A licensed practitioner in the course of
professional practice only, may prescribe, administer, and dispense a legend drug, and may
cause the same to be administered by a nurse, a physician assistant, or medical student or
resident under the practitioner's direction and supervision, and may cause a person who
is an appropriately certified, registered, or licensed health care professional to prescribe,
dispense, and administer the same within the expressed legal scope of the person's practice
as defined in Minnesota Statutes. A licensed practitioner may prescribe a legend drug,
without reference to a specific patient, by directing a nurse, pursuant to section 148.235,
subdivisions 8 and 9, physician assistant, or medical student or resident to adhere to
a particular practice guideline or protocol when treating patients whose condition falls
within such guideline or protocol, and when such guideline or protocol specifies the
circumstances under which the legend drug is to be prescribed and administered. An
individual who verbally, electronically, or otherwise transmits a written, oral, or electronic
order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug.
This paragraph applies to a physician assistant only if the physician assistant meets the
requirements of section 147A.18.

(b) A licensed practitioner that dispenses for profit a legend drug that is to be
administered orally, is ordinarily dispensed by a pharmacist, and is not a vaccine, must

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file with the practitioner's licensing board a statement indicating that the practitioner dispenses legend drugs for profit, the general circumstances under which the practitioner dispenses for profit, and the types of legend drugs generally dispensed. It is unlawful to dispense legend drugs for profit after July 31, 1990, unless the statement has been filed with the appropriate licensing board. For purposes of this paragraph, "profit" means (1) any amount received by the practitioner in excess of the acquisition cost of a legend drug for legend drugs that are purchased in prepackaged form, or (2) any amount received by the practitioner in excess of the acquisition cost of a legend drug plus the cost of making the drug available if the legend drug requires compounding, packaging, or other treatment. The statement filed under this paragraph is public data under section 13.03. This paragraph does not apply to a licensed doctor of veterinary medicine or a registered pharmacist. Any person other than a licensed practitioner with the authority to prescribe, dispense, and administer a legend drug under paragraph (a) shall not dispense for profit. To dispense for profit does not include dispensing by a community health clinic when the profit from dispensing is used to meet operating expenses.

(c) A prescription or drug order for a legend drug is not valid if it is based ~~solely~~ on an online questionnaire or telephone consultation, unless it can be established that the prescription or order was also based on a documented patient evaluation, including a physical examination, adequate to establish a diagnosis and identify underlying conditions and contraindications to treatment. For the purposes of this paragraph, the requirement for a physical examination is met if any of the following occurs:

(1) the prescribing practitioner physically examines the patient at the time the prescription or drug order is issued;

(2) the prescribing practitioner has performed a prior physical examination of the patient;

(3) another prescribing practitioner practicing within the same group or clinic as the prescribing practitioner has physically examined the patient;

(4) a consulting practitioner to whom the prescribing practitioner has referred the patient has physically examined the patient; or

(5) the referring practitioner has performed a physical examination when a consulting practitioner issues a prescription or drug order when providing services by means of telemedicine, provided that in all cases the physical examination is adequate to establish a diagnosis and identify underlying conditions and contraindications to treatment. Nothing in this paragraph prohibits a licensed practitioner from prescribing a drug through the use of a guideline or protocol under paragraph (a).

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3.1 (d) No pharmacist employed by, under contract to, or working for a pharmacy
3.2 licensed under section 151.19, subdivision 1, may dispense a legend drug based on a
3.3 prescription which the pharmacist knows, or would reasonably be expected to know,
3.4 is not valid under paragraph (c).

3.5 (e) No pharmacist employed by, under contract to, or working for a pharmacy
3.6 licensed under section 151.19, subdivision 2, may dispense a legend drug to a resident of
3.7 this state based on a prescription which the pharmacist knows, or would reasonably be
3.8 expected to know, is not valid under paragraph (c).