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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2150

- 03/07/2019 Authored by Schomacker, Morrison, Albright and Moran
- 03/28/2019 The bill was read for the first time and referred to the Committee on Health and Human Services Policy
- 03/28/2019 Adoption of Report: Placed on the General Register
- 05/20/2019 Read for the Second Time
- 05/20/2019 Pursuant to Rule 4.20, returned to the Committee on Health and Human Services Policy
- 02/17/2020 Adoption of Report: Placed on the General Register
- 04/17/2020 Read for the Second Time
- 04/17/2020 Referred to the Chief Clerk for Comparison with S. F. No. 2184
- 04/28/2020 Postponed Indefinitely

1.1 A bill for an act

1.2 relating to health; allowing telemedicine evaluations to be used to prescribe

1.3 medications for erectile dysfunction; amending Minnesota Statutes 2018, section

1.4 151.37, subdivision 2.

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

1.6 Section 1. Minnesota Statutes 2018, section 151.37, subdivision 2, is amended to read:

1.7 Subd. 2. **Prescribing and filing.** (a) A licensed practitioner in the course of professional

1.8 practice only, may prescribe, administer, and dispense a legend drug, and may cause the

1.9 same to be administered by a nurse, a physician assistant, or medical student or resident

1.10 under the practitioner's direction and supervision, and may cause a person who is an

1.11 appropriately certified, registered, or licensed health care professional to prescribe, dispense,

1.12 and administer the same within the expressed legal scope of the person's practice as defined

1.13 in Minnesota Statutes. A licensed practitioner may prescribe a legend drug, without reference

1.14 to a specific patient, by directing a licensed dietitian or licensed nutritionist, pursuant to

1.15 section 148.634; a nurse, pursuant to section 148.235, subdivisions 8 and 9; physician

1.16 assistant; medical student or resident; or pharmacist according to section 151.01, subdivision

1.17 27, to adhere to a particular practice guideline or protocol when treating patients whose

1.18 condition falls within such guideline or protocol, and when such guideline or protocol

1.19 specifies the circumstances under which the legend drug is to be prescribed and administered.

1.20 An individual who verbally, electronically, or otherwise transmits a written, oral, or electronic

1.21 order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug.

1.22 This paragraph applies to a physician assistant only if the physician assistant meets the

1.23 requirements of section 147A.18.

2.1 (b) The commissioner of health, if a licensed practitioner, or a person designated by the
2.2 commissioner who is a licensed practitioner, may prescribe a legend drug to an individual
2.3 or by protocol for mass dispensing purposes where the commissioner finds that the conditions
2.4 triggering section 144.4197 or 144.4198, subdivision 2, paragraph (b), exist. The
2.5 commissioner, if a licensed practitioner, or a designated licensed practitioner, may prescribe,
2.6 dispense, or administer a legend drug or other substance listed in subdivision 10 to control
2.7 tuberculosis and other communicable diseases. The commissioner may modify state drug
2.8 labeling requirements, and medical screening criteria and documentation, where time is
2.9 critical and limited labeling and screening are most likely to ensure legend drugs reach the
2.10 maximum number of persons in a timely fashion so as to reduce morbidity and mortality.

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

2.28 (d) A prescription drug order for the following drugs is not valid, unless it can be
2.29 established that the prescription drug order was based on a documented patient evaluation,
2.30 including an examination, adequate to establish a diagnosis and identify underlying conditions
2.31 and contraindications to treatment:

2.32 (1) controlled substance drugs listed in section 152.02, subdivisions 3 to 5;

2.33 (2) drugs defined by the Board of Pharmacy as controlled substances under section
2.34 152.02, subdivisions 7, 8, and 12;

- 3.1 (3) muscle relaxants;
- 3.2 (4) centrally acting analgesics with opioid activity;
- 3.3 (5) drugs containing butalbital; or
- 3.4 (6) phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.

3.5 For purposes of prescribing drugs listed in clause (6), the requirement for a documented
3.6 patient evaluation, including an examination, may be met through the use of telemedicine,
3.7 as defined in section 147.033, subdivision 1.

3.8 (e) For the purposes of paragraph (d), the requirement for an examination shall be met
3.9 if an in-person examination has been completed in any of the following circumstances:

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

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

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

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

3.17 (5) the referring practitioner has performed an examination in the case of a consultant
3.18 practitioner issuing a prescription or drug order when providing services by means of
3.19 telemedicine.

3.20 (f) Nothing in paragraph (d) or (e) prohibits a licensed practitioner from prescribing a
3.21 drug through the use of a guideline or protocol pursuant to paragraph (a).

3.22 (g) Nothing in this chapter prohibits a licensed practitioner from issuing a prescription
3.23 or dispensing a legend drug in accordance with the Expedited Partner Therapy in the
3.24 Management of Sexually Transmitted Diseases guidance document issued by the United
3.25 States Centers for Disease Control.

3.26 (h) Nothing in paragraph (d) or (e) limits prescription, administration, or dispensing of
3.27 legend drugs through a public health clinic or other distribution mechanism approved by
3.28 the commissioner of health or a community health board in order to prevent, mitigate, or
3.29 treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of
3.30 a biological, chemical, or radiological agent.

4.1 (i) No pharmacist employed by, under contract to, or working for a pharmacy located
4.2 within the state and licensed under section 151.19, subdivision 1, may dispense a legend
4.3 drug based on a prescription that the pharmacist knows, or would reasonably be expected
4.4 to know, is not valid under paragraph (d).

4.5 (j) No pharmacist employed by, under contract to, or working for a pharmacy located
4.6 outside the state and licensed under section 151.19, subdivision 1, may dispense a legend
4.7 drug to a resident of this state based on a prescription that the pharmacist knows, or would
4.8 reasonably be expected to know, is not valid under paragraph (d).

4.9 (k) Nothing in this chapter prohibits the commissioner of health, if a licensed practitioner,
4.10 or, if not a licensed practitioner, a designee of the commissioner who is a licensed
4.11 practitioner, from prescribing legend drugs for field-delivered therapy in the treatment of
4.12 a communicable disease according to the Centers For Disease Control and Prevention Partner
4.13 Services Guidelines.