May 23, 2018

Department of Licensing and Regulatory Affairs
Bureau of Professional Licensing– Boards and Committees Section
Attention: Policy Analyst
P.O. Box 30670
Lansing, MI 48909-8170

Dear Policy Analyst:

The Michigan Healthcare Stakeholders Opioid Stewardship Collaborative, on behalf of fifteen of our member organizations, along with the Health Care Association of Michigan and Michigan County Medical Care Facilities Council respectfully request your consideration of alternative language to that currently proposed in Administrative Rule 338.3161a(3). While well-intentioned, the current language proposed by the Michigan Department of Licensing and Regulatory Affairs (LARA) does not fully address the range of issues created by the new definition of "bona fide prescriber patient relationship" that severely restrict the ability to provide quality care to patients in a variety of common clinical situations.

According to MCL 333.7303a, beginning March 31, 2019, or upon the promulgation of rules if sooner, a licensed prescriber shall not prescribe a controlled substance listed in schedules 2 to 5 unless the prescriber is in a "bona fide prescriber-patient relationship." The statute defines "bona fide prescriber-patient relationship" to mean "a treatment or counseling relationship between a prescriber and a patient in which both of the following are present:

- The prescriber has reviewed the patient's relevant medical or clinical records and completed a full assessment of the patient's medical history and current medical conditions, including a relevant medical evaluation of the patient conducted in person or via telehealth.

- The prescriber has created and maintained records of the patient's condition in accordance with medically accepted standards.

A provision was also included in the law that specifically allows the Department, in consultation with the applicable licensing boards and Physician Assistants Task Force, to promulgate rules identifying situations in which a bona fide prescriber-patient relationship as specifically defined is not necessary or when alternative requirements may be appropriate.

The undersigned organizations believe this new definition of "bona fide prescriber-patient relationship" severely restricts the ability to provide quality care to patients during situations in which a prescriber is providing coverage for an unavailable colleague, another licensed member of the health care team has evaluated the patient, there is a transition of care from one setting to another, or medical emergency.

The language currently in the proposed rule simply states that a prescriber can delegate the performance of the assessment and in-person or telehealth medical evaluation to another person pursuant to existing law. Concerns with this language include:

- Delegation and supervision as defined under MCL 333.1625 does not apply in all situations.
- Delegation can only be made to an individual who is otherwise qualified by education, training, or experience to perform the delegated task.
- Delegated tasks must fall within the scope of practice of the delegating licensee's profession and be performed under the licensee's supervision.
- Physician assistants, as subfield licensees, are precluded from delegating tasks to other licensed or non-licensed individuals.

- Physicians do not delegate to and supervise other physicians when on-call or providing coverage. They act under their own prescribing authority.
- Delegation requires supervision and, in many cases (i.e., cross coverage and shift changes), the statutorily required conditions comprising supervision such as availability for communication, review and consultation, as well as establishing pre-determined procedures and protocols are not within the prescriber's purview.
- Certain tasks like diagnosis cannot be delegated to a person not trained to make diagnoses.

Violation of the delegation and supervision provisions of the Public Health Care can result in disciplinary action that could jeopardize a prescriber's license, credentialing and privileges.

To ensure that this issue is resolved without needlessly interrupting patient care or adversely impacting professional licensing, the language needs to recognize that, in certain scenarios, an in-person/telehealth medical evaluation may be repetitive, impractical or an impediment to the timely delivery of care to a patient. It is during these scenarios that a bona fide relationship, as defined in the statute, should be excepted or the prescriber deemed to be compliance. Examples include:

- On-call, coverage and cross-coverage situations in which the prescriber with the bona fide prescriber-patient relationship is not available.
- Transitions of care from one setting to another such as from hospital to nursing home or hospice.
- Another licensed health professional completes the medical evaluation but is not the one who will be issuing the prescription.
- Medical emergencies in which the patient needs to be stabilized.
- Admissions to nursing care facilities when the accepting prescriber is not available for a face-to-face evaluation at the time of admission.

In proposing amendatory language, it is the intent of our organizations to be inclusive of the above-mentioned scenarios while also ensuring appropriate review of medical records, an assessment of the patient's current medical condition, and proper documentation. Therefore, our organizations urge LARA to replace the current language in proposed Administrative Rule 338.3161a(3) with the following language:

> (3) Notwithstanding Section 7303a of the Act, MCL 333.7303a and subrule (1) of this Rule, and pursuant to Section 16204e, MCL 333.16204e, a prescriber shall be deemed to have a bona fide prescriber-patient relationship under one or more of the following circumstances:
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> (a)The prescriber has reviewed the patient's relevant medical or clinical records, medical history and any change in medical condition, is acting on behalf of a prescriber described in subrule (2) who is not available, and provides documentation in the patient's medical record in accordance with medically accepted standards of care.
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> (b) The prescriber is following or modifying the orders of a prescriber who has an established bona fide prescriber-patient relationship described in subrule (2) with a hospital in-patient, hospice patient, or nursing care facility resident and provides documentation in the patient's medical record in accordance with medically accepted standards of care.

(c) The prescriber is prescribing for a patient for whom the tasks listed in subrule (2)(a) and (2)(b) have been performed by an individual licensed under article 15 as authorized by law and documentation is provided in the patient's medical record in accordance with medically accepted standards of care.

(d) The prescriber is treating a patient in an emergency medical situation. For the purposes of this subdivision, "emergency medical situation" means a situation that, in the prescriber's good faith professional judgment, creates an immediate threat of serious risk to life or health of the patient for whom the controlled substance prescription is being prescribed.

(e) The prescriber is prescribing or ordering a schedule 2 to 5 controlled substance for a patient being admitted to a nursing care facility, the tasks identified in subrule (2)(a) and (2)(b) are completed in accordance with R 325.20602, and documentation is provided in the patient's medical record in accordance with medically accepted standards of care.

Prescribers must be able to provide timely, appropriate and non-duplicative care to patients. Failure to do so will result in patients going to emergency departments or suffering needlessly. Our organizations are committed to working with the LARA, the respective licensing boards, the Legislature, and other stakeholders to ensure the proposed rule is appropriately modified.

Thank you for your consideration.

Respectfully submitted,

Health Care Association of Michigan
Michigan Academy of Family Physicians
Michigan Academy of Physician Assistants
Michigan Association of Health Plans
Michigan Chapter-American Academy of Pediatrics
Michigan College of Emergency Physicians
Michigan County Medical Care Facilities Council
Michigan Council of Nurse Practitioners
Michigan Health and Hospital Association
Michigan Pharmacists Association
Michigan Primary Care Association
Michigan Psychiatric Society
Michigan Osteopathic Association
Michigan Society of Addiction Medicine
Michigan Society of Interventional Pain Physicians
Michigan State Medical Society
Michigan Veterinary Medical Association