

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Bureau of Professional Licensing

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Pharmacy - General Rules

5. Rule numbers or rule set range of numbers:

R 338.471 – R 338.592

6. Estimated time frame:

12 months

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The Pharmacy – General Rules provide the licensing requirements and regulate the practice of pharmacists, pharmacies, manufacturers, wholesale distributors, and wholesale distributor-brokers.

The rules will be amended to implement Sections 17724, 17724a, and 17744g of the Public Health Code, MCL 333.17724, MCL 333.17724a, and MCL 333.17744g, concerning pharmacists ordering and administering qualified immunizing agents, ordering qualified laboratory tests and dispensing medications based on the results, and prescribing hormonal contraceptives. Further, all rules will be reviewed, updated, and revised for clarity as needed.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

MCL 333.16141 authorizes the Department to promulgate rules to promote the effective and consistent administration of Article 15 of the Public Health Code. MCL 333.16145 authorizes the Board to promulgate rules necessary or appropriate to fulfill its functions as prescribed in Article 15. MCL 333.16148 authorizes the Department to promulgate training standards for identifying victims of human trafficking. MCL 333.16204 authorizes the Board to promulgate rules for continuing education in pain and symptom management for licensure renewal if continuing education is a condition for license renewal. MCL 333.16287 authorizes the Department, in consultation with the Board, to promulgate rules to implement telehealth services. MCL 333.17724 authorizes the Department, in consultation with the Board, to promulgate rules to implement the ordering and administration of a qualified immunizing agent by a pharmacist. MCL 333.17724a authorizes the Department, in consultation with the Board, to promulgate rules to implement the ordering and administration of qualified laboratory tests by a pharmacist. MCL 333.17744g authorizes the department, in consultation with the Board, to promulgate rules to implement pharmacist prescribing of a hormonal contraceptive patch, a self-administered hormonal contraceptive, an emergency contraceptive, or a vaginal ring hormonal contraceptive. MCL 333.17731 authorizes the Department, in consultation with the Board, to promulgate rules requiring each applicant for license renewal to complete as part of the continuing education or proficiency examination requirement an appropriate number of hours or courses in pain and symptom management. MCL 333.17737 authorizes the Board to promulgate rules to establish standards for an internship program and participation therein by interns and preceptors. MCL 333.17739 authorizes the Department, in consultation with the Board, to promulgate rules authorizing functions performed by a pharmacy technician in addition to those functions authorized under MCL 333.17739. MCL 333.17742a authorizes the Department, in consultation with the Board, to establish requirements for licensure for remote pharmacies. MCL 333.17744f authorizes the Board to promulgate rules to implement the dispensing of an emergency supply of insulin by a pharmacist. MCL 333.17746 authorizes the Board to promulgate rules concerning hospice medication box exchange programs. MCL 333.17748a authorizes the Department, in consultation with the Board, to promulgate rules regarding conditions and facilities for the compounding of nonsterile and sterile pharmaceuticals. MCL 333.17748e authorizes the Department, in consultation with the Board, to establish requirements for licensure as a wholesale distributor-broker. MCL 333.17754a authorizes the Department to establish by rule the requirements for obtaining a waiver from electronically transmitting a prescription, and authorizes the Department, in consultation with the Board, to promulgate rules to implement MCL 333.17754a. MCL 333.17757 authorizes the Department, in consultation with the Board, to promulgate rules to implement price information, notice, and receipt requirements for prescription drugs. MCL 333.17767 authorizes the Board to promulgate rules necessary or appropriate to the licensing of pharmacists, drugs, dispensers, manufacturers, wholesale distributors, and wholesale distributor-brokers.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 333.16141; MCL 333.16145; MCL 333.16148; MCL 333.16174; MCL 333.16175; MCL 333.16178; MCL 333.16182; MCL 333.16184; MCL 333.16186; MCL 333.16201; MCL 333.16204; MCL 333.16205; MCL 333.16215; MCL 333.16287; MCL 333.17707; MCL 333.17722; MCL 333.17724; MCL 333.17724a; MCL 333.17744g; MCL 333.17731; MCL 333.17737; MCL 333.17739; MCL 333.17742a; MCL 333.17742b; MCL 333.17744f; MCL 333.17746; MCL 333.17748; MCL 333.17748a; MCL 333.17748b; MCL 333.17748e; MCL 333.17751; MCL 333.17753; MCL 333.17754a; MCL 333.17757; MCL 333.17760; MCL 333.17761; MCL 333.17767; MCL 333.17775; Executive Reorganization Order No. 1991-9, MCL 338.3501; Executive Reorganization Order No. 1996-2, MCL 445.2001; Executive Reorganization Order No. 2003-1, MCL 445.2011; and Executive Reorganization Order No. 2011-4, MCL 445.2030.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

The proposed rules are required by sections 16148, 16204, 16287, 17724, 17724a, 17744g, 17731, 17737, 17744f, 17748e, 17754a of the Public Health Code, MCL 333.16148, MCL 333.16204, MCL 333.16287, MCL 333.17724, MCL 333.17724a, MCL 333.17744g, MCL 333.17731, MCL 333.17737, MCL 333.17744f, MCL 333.17748e, MCL 333.17754a.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The Drug Supply Chain Security Act, (DSCSA) Public Law 113-54 and corresponding federal regulations include requirements to develop and enhance drug supply chain security. They establish a federal system for tracing prescription drug products through the pharmaceutical distribution supply chain and include product tracing requirements for entities in the drug supply chain, including manufacturers, repackagers, wholesale drug distributors, and pharmacies. They also require the Food and Drug Administration (FDA) to establish federal standards for licensing of wholesale drug distributors and third-party logistics providers. States may not regulate tracing that is inconsistent with, more stringent than, or in addition to the federal requirements. States are also preempted from establishing licensure requirements that are inconsistent with or below the minimum standards established by federal law for wholesale distributors and third-party logistics providers. The DSCSA and federal regulations require a wholesale drug distributor and third-party logistics provider to maintain licensure in the state from which the drug is distributed and in most cases the state into which the drug is distributed if those states have a licensure process. State licensure information including significant discipline must be reported to the FDA on an annual basis.

The rules adopt the pharmaceutical compounding standards of the United States Pharmacopeia (USP), published by the United States Pharmacopeial Convention, and the regulations regarding good manufacturing practices for finished pharmaceuticals set forth in 21 CFR sections 211.1 to 211.208 (1978). Some aspects of the practice of pharmacy, such as the labeling of prescription drugs, are regulated by the Federal Food, Drug, and Cosmetic Act of 2016, 21 USC sections 351 to 399g and have been adopted by the rules.

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act and corresponding Code of Federal Regulations, 42 CFR 423, require electronic prescribing under Medicare Part D for Schedule II to V controlled substances and provide for exceptions to this requirement. Section 17754a of the Public Health Code, MCL 333.17754a, requires the Department to establish by rule the requirements for obtaining a waiver from electronically transmitting all prescriptions, including controlled substances. The rules provide for a waiver from electronic prescribing in certain circumstances. Most, but not all of the circumstances are consistent with the SUPPORT Act.

Under the Controlled Substances Act, (CSA), 21 USC 801 et seq., the federal government regulates the practice of pharmacy with respect to controlled substances and chemicals used in the manufacture of controlled substances and requires pharmacies to register or self-certify with the Drug Enforcement Administration (DEA). A pharmacy must maintain a state license to obtain a DEA registration.

Taking into consideration the federal laws and regulations referenced above, each state establishes its own requirements with respect to the licensing requirements of pharmacists, pharmacies, manufacturers of prescription drugs and devices (manufacturer), wholesale distributors of prescription drugs and devices (wholesale distributor), and wholesale distributor-brokers of prescription drugs and devices (wholesale distributor-broker). There are no other known laws, rules or other legal requirements that conflict with or duplicate the proposed rules.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

No. The subject matter of these rules is not currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules are not expected to exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes. The Department works with various associations, pharmacies, lobbyists, and members of the public in preparing the proposed rules.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The rules were last amended effective February 29, 2024. There have been no technological factors, economic conditions or other factors that would necessitate amendment of the rules.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

Yes

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.