

SJR 20: Prescription Drug Abuse **LCCF09: Considerations and Decision Points**

Prepared for the Children, Families, Health, and Human Services Interim Committee
August 2014

Background

In June, the Children, Families, Health, and Human Services Interim Committee heard public comment about minors picking up prescriptions for narcotic drugs. As a result, the committee asked for a bill draft that would require an adult to pick up those prescriptions.

This briefing paper outlines the contents of LCCF09. It also identifies questions for committee review and discussion.

Dispensing to Minors: Prohibition and Exceptions

LCCF09 would create a new section of state law to generally prohibit the direct dispensing to a minor of any drug listed in Schedules II through V of the state and federal laws that govern controlled substances. The drug would have to be given instead to a parent or legal guardian unless the minor is not living with or in the care of a parent or legal guardian.

Various exceptions in the draft bill would allow dispensing to:

- a foster parent;
- an adult authorized by a parent or legal guardian to obtain health care services for a minor;
- a staff member of a facility that is caring for a minor who is undergoing medical treatment or not living at home for various reasons;
- a minor who is being treated in an emergency situation;
- a minor who is already allowed by law to provide consent for health care; and
- a minor who is 16 years of age or older if the minor is known to the pharmacist. This gives the pharmacist the discretion to give the drug to either the minor or an adult.

Many of the provisions in Section 1 refer to existing state laws. The relevant portions of those laws are listed on pages 3 and 4.

Requirements of Medical Practitioners

As drafted, Section 1 of LCCF09 creates two requirements for certain medical practitioners who prescribe or provide a controlled substance for a minor.

First, the practitioner must note on the prescription order whether a person other than the parent or legal guardian may pick up the prescription. Typically, the practitioner or office staff will know whether a minor is able to provide his or her own consent for health care or whether a person other than the parent is authorized to seek medical care for the minor. The notation will allow a pharmacist to dispense the drug without making a case-by-case determination at the time of sale.

Second, a medical practitioner who directly dispenses a controlled substance prescription to someone other than the parent or guardian must note in the minor's health record who received the drug and why that person was allowed under law to receive the drug.

Enforcement

As drafted, LCCF09 does not create any new penalties for people who violate the dispensing requirement. Instead, violations would be subject to existing laws that allow:

- health care licensing boards to investigate complaints against their licensees and impose sanctions that range from fines to license revocation; and
- criminal prosecution for violations of drug-dispensing laws, with penalties that include fines and jail time.

Drugs Covered by LCCF09

LCCF09 as drafted applies to any drug in Schedules II through V of state and federal laws on controlled substances. These laws "schedule" drugs based on their relative medical benefits and risks.

Schedule II drugs are viewed as having an accepted medical use but also a high potential for abuse and for severe physical or psychological dependence. In contrast, Schedule V drugs are seen as having a low potential for abuse and a limited chance of dependence compared to other scheduled drugs.

The table below shows the types of drugs listed in Schedules II through V.

Category	Types of Drugs
Schedule II	Opioid Painkillers, ADHD Drugs
Schedule III	Products Containing Hydrocodone or Codeine
Schedule IV	Antidepressants, Muscle Relaxers, Sleep Aids
Schedule V	Cough Syrups with Codeine

Committee Considerations and Decision Points

If the committee wants to proceed with LCCF09, members may want to consider and decide the following questions:

1. Should any exception to the dispensing requirement be removed?
2. Should any other exceptions be added?
3. Should the definition of controlled substance in Section 2 include drugs in Schedules II through V? If not, which schedules should be included in the bill?
4. Should the bill include specific penalties for violation or rely instead on enforcement mechanisms that are already in law?

MCA Sections Referenced in LCCF09

Page 1 of the bill draft references Title 41, chapter 5, the Montana Youth Court Act. This act governs minors involved in the criminal justice system, who may be placed in youth detention facilities or other out-of-home settings.

Page 1 also references the definition of health care facility found in 50-5-101.

50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

...

(25) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

Page 2 of bill draft references the following definitions and laws governing minors.

52-2-602. Definitions. For the purposes of this part, the following definitions apply:

...

(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers.

41-1-401. Definitions. As used in this part, the following definitions apply:

(1) "Emancipated minor" means an individual under 18 years of age who:

- (a) is or has been married;
- (b) is separated from the individual's parent, parents, or legal guardian and is self-supporting; or
- (c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

...

41-1-402. Validity of consent of minor for health services. (1) This part does not limit the right of an emancipated minor to consent to the provision of health services or to control access to protected health care information under applicable law.

(2) The consent to the provision of health services and to control access to protected health care information by a health care facility or to the performance of health services by a health professional may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who professes to be or to have been married or to have had a child or graduated from high school;

(b) a minor who professes to be or is found to be separated from the minor's parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the minor or to refer the minor to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which the minor's health

will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as practical except under the circumstances mentioned in this subsection (2).

(3) A minor who has had a child may give effective consent to health service for the child.

(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give consent by reason of physical or mental incapacity.

Title 50, chapter 20, part 5, which requires parental consent for abortion but allows a minor to bypass that requirement by seeking judicial approval, instead. This law has been enjoined while a legal challenge is pending.

Page 2 also references the following law that allows medical practitioners to dispense some drugs directly to a patient.

37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

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