

**SUBSTITUTE FOR
HOUSE BILL NO. 5326**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7333a, 7422, 17708, and 17757 (MCL 333.7333a,
333.7422, 333.17708, and 333.17757), section 7333a as amended by
2012 PA 44, section 7422 as added by 2014 PA 313, section 17708 as
amended by 2016 PA 49, and section 17757 as amended by 2014 PA 525,
and by adding section 17744e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333a. (1) The department shall establish, by rule, an
2 electronic system for monitoring schedule 2, 3, 4, and 5 controlled
3 substances dispensed in this state by veterinarians, and by
4 pharmacists and dispensing prescribers licensed under part 177 or
5 dispensed to an address in this state by a pharmacy licensed in
6 this state. The rules ~~shall~~**MUST** provide an appropriate electronic

1 format for the reporting of data including, but not limited to,
2 patient identifiers, **AND** the name of the controlled substance
3 dispensed, **THE** date of dispensing, **THE** quantity dispensed, **THE**
4 prescriber, and **THE** dispenser. The department shall require a
5 veterinarian, pharmacist, or dispensing prescriber to utilize the
6 electronic data transmittal process developed by the department or
7 the department's contractor. A veterinarian, pharmacist, or
8 dispensing prescriber shall not be required to pay a new fee
9 dedicated to the operation of the electronic monitoring system and
10 shall not incur any additional costs solely related to the
11 transmission of data to the department. The rules promulgated under
12 this subsection ~~shall~~**MUST** exempt both of the following
13 circumstances from the reporting requirements:

14 (a) The administration of a controlled substance directly to a
15 patient.

16 (b) The dispensing from a health facility or agency licensed
17 under article 17 of a controlled substance by a dispensing
18 prescriber in a quantity adequate to treat a patient for not more
19 than 48 hours.

20 (2) Notwithstanding any practitioner-patient privilege, the
21 director of the department may provide data obtained under this
22 section to all of the following:

23 (a) A designated representative of a board responsible for the
24 licensure, regulation, or discipline of a practitioner, pharmacist,
25 or other person ~~who~~**THAT** is authorized to prescribe, administer, or
26 dispense controlled substances.

27 (b) An employee or agent of the department.

1 (c) A state, federal, or municipal employee or agent whose
2 duty is to enforce the laws of this state or the United States
3 relating to drugs.

4 (d) A state-operated ~~medicaid~~ **MEDICAID** program.

5 (e) A state, federal, or municipal employee who is the holder
6 of a search warrant or subpoena properly issued for the records.

7 (f) A practitioner or pharmacist who requests information and
8 certifies that the requested information is for the purpose of
9 providing medical or pharmaceutical treatment to a bona fide
10 current patient.

11 (g) An individual with whom the department has contracted
12 under subsection (8).

13 (h) A practitioner or other person ~~who~~ **THAT** is authorized to
14 prescribe controlled substances for the purpose of determining if
15 prescriptions written by that practitioner or other person have
16 been dispensed.

17 (i) Until December 31, 2016, the health care payment or
18 benefit provider for the purposes of ensuring patient safety and
19 investigating fraud and abuse.

20 (3) Except as otherwise provided in this part, **A PERSON SHALL**
21 **USE** information submitted under this section ~~shall be used only~~ for
22 bona fide drug-related criminal investigatory or evidentiary
23 purposes or for the investigatory or evidentiary purposes in
24 connection with the functions of a disciplinary subcommittee or 1
25 or more of the licensing or registration boards created in article
26 15.

27 (4) A person ~~who~~ **THAT** receives data or any report under

1 subsection (2) containing any patient identifiers of the system
2 from the department shall not provide it to any other person ~~or~~
3 ~~entity~~ except by order of a court of competent jurisdiction.

4 (5) Except as otherwise provided in this subsection, reporting
5 under subsection (1) is mandatory for a veterinarian, pharmacist,
6 and dispensing prescriber. However, the department may issue a
7 written waiver of the electronic reporting requirement to a
8 veterinarian, pharmacist, or dispensing prescriber who establishes
9 grounds that he or she is unable to use the electronic monitoring
10 system. The department shall require the applicant for the waiver
11 to report the required information in a manner approved by the
12 department.

13 (6) In addition to the information required to be reported
14 annually under section 7112(3), the controlled substances advisory
15 commission shall include in the report information on the
16 implementation and effectiveness of the electronic monitoring
17 system.

18 (7) The department, in consultation with the controlled
19 substances advisory commission, the Michigan board of pharmacy, the
20 Michigan board of medicine, the Michigan board of osteopathic
21 medicine and surgery, the ~~Michigan~~ **DEPARTMENT OF** state police, and
22 appropriate medical professional associations, shall examine the
23 need for and may promulgate rules for the production of a
24 prescription form on paper that minimizes the potential for
25 forgery. The rules ~~shall~~ **MUST** not include any requirement that
26 sequential numbers, bar codes, or symbols be affixed, printed, or
27 written on a prescription form or that the prescription form be a

1 state produced prescription form. In examining the need for rules
2 for the production of a prescription form on paper that minimizes
3 the potential for forgery, the department shall consider and
4 identify the following:

5 (a) Cost, benefits, and barriers.

6 (b) Overall cost-benefit analysis.

7 (c) Compatibility with the electronic monitoring system
8 required under this section.

9 (8) The department may enter into 1 or more contractual
10 agreements for the administration of this section.

11 (9) The department, all law enforcement officers, all officers
12 of the court, and all regulatory agencies and officers, in using
13 the data for investigative or prosecution purposes, shall consider
14 the nature of the prescriber's and dispenser's practice and the
15 condition for which the patient is being treated.

16 (10) The data and any report containing any patient
17 identifiers obtained from the data are not public records and are
18 not subject to the freedom of information act, 1976 PA 442, MCL
19 15.231 to 15.246.

20 (11) Beginning February 1, 2013 and through February 1, 2016,
21 the department may issue a written request to a health care payment
22 or benefit provider to determine if the provider has accessed the
23 electronic **MONITORING** system as provided in subsection (2)(i) in
24 the previous calendar year and, if so, to determine the number of
25 inquiries the provider made in the previous calendar year and any
26 other information the department requests in relation to the
27 provider's access to the electronic **MONITORING** system. A health

1 care payment or benefit provider shall respond to the written
2 request on or before the March 31 following the request. The
3 department shall collaborate with health care payment or benefit
4 providers to develop a reasonable request and reporting form for
5 use under this subsection.

6 (12) FOR THE 2015-2016 STATE FISCAL YEAR, \$2,470,000.00 IS
7 APPROPRIATED FROM THE GENERAL FUND TO THE DEPARTMENT TO MODERNIZE
8 AND REPLACE THE ELECTRONIC MONITORING SYSTEM DESCRIBED IN
9 SUBSECTION (1) TO IMPROVE THE ELECTRONIC MONITORING SYSTEM'S
10 EFFICIENCY, FUNCTIONALITY, AND REPORTING CAPABILITY AND TO
11 IMPLEMENT OTHER IMPROVEMENTS TO THE ELECTRONIC MONITORING SYSTEM
12 THAT THE MICHIGAN PRESCRIPTION DRUG AND OPIOID ABUSE TASK FORCE
13 RECOMMENDS TO THE DEPARTMENT.

14 (13) ~~(12)~~As used in this section:

15 (a) "Department" means the department of licensing and
16 regulatory affairs.

17 (b) "Health care payment or benefit provider" means a person
18 that provides health benefits, coverage, or insurance in this
19 state, including a health insurance company, a nonprofit health
20 care corporation, a health maintenance organization, a multiple
21 employer welfare arrangement, a ~~medicaid~~**MEDICAID** contracted health
22 plan, or any other person providing a plan of health benefits,
23 coverage, or insurance subject to state insurance regulation.

24 Sec. 7422. A person that complies with section 17744b **OR**
25 **17744E** is not in violation of this article with regard to the
26 prescribing, dispensing, possessing, or administering an opioid
27 antagonist as authorized in ~~that section~~**.EITHER OF THOSE SECTIONS.**

1 Sec. 17708. (1) "Preceptor" means a pharmacist approved by the
2 board to direct the training of an intern in an approved pharmacy.

3 (2) "Prescriber" means a licensed dentist, a licensed doctor
4 of medicine, a licensed doctor of osteopathic medicine and surgery,
5 a licensed doctor of podiatric medicine and surgery, a licensed
6 optometrist certified under part 174 to administer and prescribe
7 therapeutic pharmaceutical agents, a licensed veterinarian, or
8 another licensed health professional acting under the delegation
9 and using, recording, or otherwise indicating the name of the
10 delegating licensed doctor of medicine or licensed doctor of
11 osteopathic medicine and surgery.

12 (3) "Prescription" means an order by a prescriber to fill,
13 compound, or dispense a drug or device written and signed; written
14 or created in an electronic format, signed, and transmitted by
15 facsimile; or transmitted electronically or by other means of
16 communication. An order transmitted in other than written or hard-
17 copy form must be electronically recorded, printed, or written and
18 immediately dated by the pharmacist, and that record ~~constitutes~~**IS**
19 **CONSIDERED** the original prescription. In a health facility or
20 agency licensed under article 17 or other medical institution, an
21 order for a drug or device in the patient's chart ~~constitutes~~**IS**
22 **CONSIDERED** for the purposes of this definition the original
23 prescription. **FOR PURPOSES OF THIS PART, PRESCRIPTION ALSO INCLUDES**
24 **A STANDING ORDER ISSUED BY THE CHIEF MEDICAL EXECUTIVE UNDER**
25 **SECTION 17744E.** Subject to section 17751(2) and (5), prescription
26 includes, but is not limited to, an order for a drug, not including
27 a controlled substance as defined in section 7104 except under

1 circumstances described in section 17763(e), written and signed;
2 written or created in an electronic format, signed, and transmitted
3 by facsimile; or transmitted electronically or by other means of
4 communication by a physician prescriber, dentist prescriber, or
5 veterinarian prescriber licensed to practice dentistry, medicine,
6 osteopathic medicine and surgery, or veterinary medicine in another
7 state.

8 (4) "Prescription drug" means a drug to which 1 or more of the
9 following apply:

10 (a) The drug is dispensed pursuant to a prescription.

11 (b) The drug bears the federal legend "CAUTION: federal law
12 prohibits dispensing without prescription" or "Rx only".

13 (c) The drug is designated by the board as a drug that may
14 only be dispensed pursuant to a prescription.

15 **SEC. 17744E. (1) THE CHIEF MEDICAL EXECUTIVE DESIGNATED UNDER**
16 **SECTION 2202 MAY ISSUE A STANDING ORDER THAT DOES NOT IDENTIFY A**
17 **PARTICULAR PATIENT AT THE TIME IT IS ISSUED FOR THE PURPOSE OF A**
18 **PHARMACIST DISPENSING AN OPIOID ANTAGONIST TO AN INDIVIDUAL UNDER**
19 **THIS SECTION.**

20 (2) NOTWITHSTANDING ANY PROVISION OF THIS ACT TO THE CONTRARY,
21 A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST TO ANY INDIVIDUAL
22 PURSUANT TO A STANDING ORDER ISSUED BY THE CHIEF MEDICAL EXECUTIVE
23 UNDER SUBSECTION (1) AND THE RULES PROMULGATED UNDER THIS SECTION.

24 (3) THE CHIEF MEDICAL EXECUTIVE DESIGNATED UNDER SECTION 2202
25 WHO ISSUES A STANDING ORDER FOR AN OPIOID ANTAGONIST UNDER THIS
26 SECTION OR A PHARMACIST WHO DISPENSES AN OPIOID ANTAGONIST AS
27 AUTHORIZED UNDER THIS SECTION IS NOT LIABLE IN A CIVIL ACTION FOR A

1 PROPERLY STORED AND DISPENSED OPIOID ANTAGONIST THAT WAS A
2 PROXIMATE CAUSE OF INJURY OR DEATH TO AN INDIVIDUAL DUE TO THE
3 ADMINISTRATION OF OR FAILURE TO ADMINISTER THE OPIOID ANTAGONIST.

4 (4) THE DEPARTMENT OF HEALTH AND HUMAN SERVICES SHALL
5 PROMULGATE RULES TO IMPLEMENT THIS SECTION.

6 Sec. 17757. (1) Upon a request made in person or by telephone,
7 a pharmacist engaged in the business of selling drugs at retail
8 shall provide the current selling price of a drug dispensed by that
9 pharmacy or comparative current selling prices of generic and brand
10 name drugs dispensed by that pharmacy. The information ~~shall~~**MUST**
11 be provided to the person making the request before a drug is
12 dispensed to the person. A person ~~who~~**THAT** makes a request for
13 price information under this subsection is not obligated to
14 purchase the drug for which the price or comparative prices are
15 requested.

16 (2) A pharmacist engaged in the business of selling drugs at
17 retail shall conspicuously display the notice described in
18 subsection (3) at each counter over which prescription drugs are
19 dispensed.

20 (3) The notice required under subsection (2) ~~shall~~**MUST** be in
21 substantially the following form:

22 NOTICE TO CONSUMERS
23 ABOUT PRESCRIPTION DRUGS

24 Under Michigan law, you have the right to find out the price
25 of a prescription drug before the pharmacist fills the
26 prescription. You are under no obligation to have the prescription

1 filled here and may use this price information to shop around at
2 other pharmacies. You may request price information in person or by
3 telephone.

4 Every pharmacy has the current selling prices of both generic
5 and brand name drugs dispensed by the pharmacy.

6 Ask your pharmacist if a lower-cost generic drug is available
7 to fill your prescription. A generic drug contains the same
8 medicine as a brand name drug and is a suitable substitute in most
9 instances.

10 A generic drug may not be dispensed by your pharmacist if your
11 doctor has written "dispense as written" or the initials "d.a.w."
12 on the prescription.

13 If you have questions about the drugs that have been
14 prescribed for you, ask your doctor or pharmacist for more
15 information.

16 To avoid dangerous drug interactions, let your doctor and
17 pharmacist know about any other medications you are taking. This is
18 especially important if you have more than 1 doctor or have
19 prescriptions filled at more than 1 pharmacy.

20 (4) The notice required under subsection (2) ~~shall~~**MUST** also
21 contain the address and phone number of the board and the
22 department. The text of the notice ~~shall~~**MUST** be in at least 32-
23 point bold type and ~~shall~~**MUST** be printed on paper at least 11
24 inches by 17 inches in size. The notice may be printed on multiple
25 pages.

26 (5) The department shall provide a copy of the notice required
27 under subsection (2) to each licensee. The department shall provide

1 additional copies if needed. A person may duplicate or reproduce
2 the notice if the duplication or reproduction is a true copy of the
3 notice as produced by the department, without any additions or
4 deletions.

5 (6) The pharmacist shall furnish to the purchaser of a
6 prescription drug at the time the drug is delivered to the
7 purchaser a receipt evidencing the transactions that contains all
8 of the following:

9 (a) The brand name of the drug, if applicable.

10 (b) The name of the manufacturer or the supplier of the drug,
11 if the drug does not have a brand name.

12 (c) The strength of the drug, if significant.

13 (d) The quantity dispensed, if applicable.

14 (e) The name and address of the pharmacy.

15 (f) The serial number of the prescription **OR A REFERENCE TO**
16 **THE STANDING ORDER ISSUED UNDER SECTION 17744E.**

17 (g) The date the prescription was originally dispensed.

18 (h) The name of the prescriber or, if prescribed under the
19 prescriber's delegatory authority, the name of the delegatee.

20 (i) Except as otherwise authorized under section 5110, 17744a,
21 ~~or~~ 17744b, **OR 17744E**, the name of the patient for whom the drug was
22 prescribed.

23 (j) The price for which the drug was sold to the purchaser.

24 (7) The items required under subsection (6)(a), (b), and (c)
25 may be omitted from a receipt by a pharmacist only if the omission
26 is expressly required by the prescriber. The pharmacist shall
27 retain a copy of each receipt furnished under subsection (6) for 90

1 days. The inclusion of the items required under subsection (6) on
2 the prescription container label is a valid receipt to the
3 purchaser. Including the items required under subsection (6) on the
4 written prescription form and retaining the form constitutes
5 retention of a copy of the receipt.

6 (8) The board may promulgate rules to implement this section.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.