Act No. 383
Public Acts of 2016
Approved by the Governor
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STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016

Introduced by Reps. Forlini, Schor, LaVoy, Lucido, Driskell, Glardon and Canfield

ENROLLED HOUSE BILL No. 5326

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 7109, 7321, 7333a, 7422, 17708, 17757, and 18813 (MCL 333.7109, 333.7321, 333.7333a, 333.7422, 333.17708, 333.17757, and 333.18813), section 7109 as amended by 2001 PA 233, section 7321 as amended by 1988 PA 245, section 7333a as amended by 2012 PA 44, section 7422 as added by 2014 PA 313, section 17708 as amended by 2016 PA 49, section 17757 as amended by 2014 PA 525, and section 18813 as added by 2016 PA 47, and by adding section 17744e.

The People of the State of Michigan enact:

Sec. 7109. (1) "Person" means a person as defined in section 1106 or a governmental entity.

(2) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(3) "Practitioner" means any of the following:

(a) A prescriber or pharmacist, a scientific investigator as defined by rule of the administrator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, including an individual in charge of a dog pound or animal shelter licensed or registered by the department of agriculture and rural development under 1969 PA 287, MCL 287.331 to 287.340, or a class B dealer licensed by the United States Department of Agriculture under the animal welfare act, Public Law 89-544, 7 USC 2131 to 2147, 2149, and 2151 to 2159 and the department of agriculture and rural development under 1969 PA 224, MCL 287.381 to 287.395, for the limited purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on animals.

(b) A pharmacy, hospital, or other institution or place of professional practice licensed, registered, or otherwise permitted to distribute, prescribe, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(4) "Prescriber" means that term as defined in section 17708.

(5) "Prescription form" means a printed form, that is authorized and intended for use by a prescribing practitioner to prescribe controlled substances or other prescription drugs and that meets the requirements of rules promulgated by the administrator, and all of the following requirements:

(a) Bears the preprinted, stamped, typed, or manually printed name, address, and telephone number or pager number of the prescribing practitioner.

(b) Includes the manually printed name of the patient, the address of the patient, the prescribing practitioner's signature, and the prescribing practitioner's drug enforcement administration registration number.

(c) Includes the quantity of the prescription drug prescribed, in both written and numerical terms.

(d) Includes the date the prescription drug was prescribed.

(e) Complies with any rules promulgated by the department under section 7333a(6).

(6) "Production" means the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(7) "Sign" means to affix one's signature manually to a document or to use an electronic signature.

(8) "Ultimate user" means an individual who lawfully possesses a controlled substance for personal use or for the use of a member of the individual's household, or for administering to an animal owned by the individual or by a member of the individual's household.

Sec. 7321. (1) Subject to subsection (2), a person licensed to manufacture, distribute, prescribe, or dispense controlled substances under this article shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the administrator promulgates, unless exempted by those rules.

(2) Beginning May 1, 1989, and annually thereafter, each person licensed under this article to manufacture, distribute, prescribe, or dispense controlled substances shall inventory all schedule 2 to 5 controlled substances possessed by the person at the time of the inventory. A person described in this subsection may conduct the annual inventory required under this subsection not more than 30 days before May 1, but shall conduct the inventory not later than 60 days after May 1. A person described in this subsection shall retain the inventory required under this subsection for not less than 2 years after the date of the inventory's creation and shall make the inventory available for inspection by the department at the request of the department.

Sec. 7333a. (1) The department shall establish, by rule, an electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances dispensed in this state by veterinarians, and by pharmacists and dispensing prescribers licensed under part 177 or dispensed to an address in this state by a pharmacy licensed in this state. The rules must provide an appropriate electronic format for the reporting of data including, but not limited to, patient identifiers, and the name of the controlled substance dispensed, the date of dispensing, the quantity dispensed, the prescriber, and the dispenser. The department shall require a veterinarian, pharmacist, or dispensing prescriber to utilize the electronic data transmittal process developed by the department or the department's contractor. The department shall not require a veterinarian, pharmacist, or dispensing prescriber to pay a new fee dedicated to the operation of the electronic monitoring system or to incur any additional costs solely related to the transmission of data to the department. The rules promulgated under this subsection must exempt both of the following circumstances from the reporting requirements:

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

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

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

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person that is authorized to prescribe, administer, or dispense controlled substances.

(b) An employee or agent of the department.

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

(d) A state-operated Medicaid program.

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

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

(g) An individual with whom the department has contracted under subsection (7).

(h) A practitioner or other person that is authorized to prescribe controlled substances for the purpose of determining if prescriptions written by that practitioner or other person have been dispensed.

(i) The health care payment or benefit provider for the purposes of ensuring patient safety and investigating fraud and abuse.

(3) Except as otherwise provided in this part, a person shall use information submitted under this section only for bona fide drug-related criminal investigatory or evidentiary purposes or for the investigatory or evidentiary purposes in connection with the functions of a disciplinary subcommittee or 1 or more of the licensing or registration boards created in article 15.

(4) A person that receives data or any report under subsection (2) containing any patient identifiers of the system from the department shall not provide it to any other person except by order of a court of competent jurisdiction.

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

(6) The department, in consultation with the Michigan board of pharmacy, the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, the department of state police, and appropriate medical professional associations, shall examine the need for and may promulgate rules for the production of a prescription form on paper that minimizes the potential for forgery. The rules must not include any requirement that sequential numbers, bar codes, or symbols be affixed, printed, or written on a prescription form or that the prescription form be a state produced prescription form. In examining the need for rules for the production of a prescription form on paper that minimizes the potential for forgery, the department shall consider and identify the following:

(a) Cost, benefits, and barriers.

(b) Overall cost-benefit analysis.

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

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

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

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

(10) The department may issue a written request to a health care payment or benefit provider to determine if the provider has accessed the electronic monitoring system as provided in subsection (2)(i) in the previous calendar year and, if so, to determine the number of inquiries the provider made in the previous calendar year and any other information the department requests in relation to the provider's access to the electronic monitoring system. A health care payment or benefit provider shall respond to the written request on or before the March 31 following the request. The department shall collaborate with health care payment or benefit providers to develop a reasonable request and reporting form for use under this subsection.

(11) As used in this section:

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

(b) "Health care payment or benefit provider" means a person that provides health benefits, coverage, or insurance in this state, including a health insurance company, a nonprofit health care corporation, a health maintenance organization, a multiple employer welfare arrangement, a Medicaid contracted health plan, or any other person providing a plan of health benefits, coverage, or insurance subject to state insurance regulation.

Sec. 7422. A person that complies with section 17744b or 17744e is not in violation of this article with regard to the prescribing, dispensing, possessing, or administering an opioid antagonist as authorized in either of those sections.

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

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

(3) "Prescription" means an order by a prescriber to fill, compound, or dispense a drug or device written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication. An order transmitted in other than written or hard-copy form must be electronically recorded, printed, or written and immediately dated by the pharmacist, and that record is considered the original prescription. In a health facility or agency licensed under article 17 or other medical institution, an order for a drug or device in the patient's chart is considered for the purposes of this definition the original prescription. For purposes of this part, prescription also includes a standing order issued under section 17744e. Subject to section 17751(2) and (5), prescription includes, but is not limited to, an order for a drug, not including a controlled substance except under circumstances described in section 17763(e), written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber who is licensed to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine in another state.

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

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

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

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

Sec. 17744e. (1) Notwithstanding any provision of this act to the contrary, the chief medical executive in the office of chief medical executive created within the department of health and human services may issue a standing order that does not identify particular patients at the time it is issued for the purpose of a pharmacist dispensing opioid antagonists to individuals under this section.

(2) Notwithstanding any provision of this act to the contrary, a pharmacist may dispense an opioid antagonist to any individual pursuant to a standing order issued by the chief medical executive under subsection (1) and the rules promulgated under this section.

(3) The chief medical executive who issues a standing order for an opioid antagonist under this section or a pharmacist who dispenses an opioid antagonist as authorized under this section is not liable in a civil action for damages resulting from the dispensing of the opioid antagonist or the administration of or failure to administer the opioid antagonist.

(4) The department, in consultation with the department of health and human services and local health departments, shall promulgate rules regarding dispensing, training, and referral to implement this section.

Sec. 17757. (1) Upon a request made in person or by telephone, a pharmacist engaged in the business of selling drugs at retail shall provide the current selling price of a drug dispensed by that pharmacy or comparative current selling prices of generic and brand name drugs dispensed by that pharmacy. The information must be provided to the person making the request before a drug is dispensed to the person. A person that makes a request for price information under this subsection is not obligated to purchase the drug for which the price or comparative prices are requested.

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

(3) The notice required under subsection (2) must be in substantially the following form:

NOTICE TO CONSUMERS
ABOUT PRESCRIPTION DRUGS

Under Michigan law, you have the right to find out the price of a prescription drug before the pharmacist fills the prescription. You are under no obligation to have the prescription filled here and may use this price information to shop around at other pharmacies. You may request price information in person or by telephone.

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

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

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

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

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

(4) The notice required under subsection (2) must also contain the address and phone number of the board and the department. The text of the notice must be in at least 32-point bold type and must be printed on paper at least 11 inches by 17 inches in size. The notice may be printed on multiple pages.

(5) The department shall provide a copy of the notice required under subsection (2) to each licensee. The department shall provide additional copies if needed. A person may duplicate or reproduce the notice if the duplication or reproduction is a true copy of the notice as produced by the department, without any additions or deletions.

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

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

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

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

(d) The quantity dispensed, if applicable.

(e) The name and address of the pharmacy.

(f) The serial number of the prescription or a reference to the standing order issued under section 17744e.

(g) The date the prescription was originally dispensed.

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

(i) Except as otherwise authorized under section 5110, 17744a, 17744b, or 17744e, the name of the patient for whom the drug was prescribed.

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

(7) The items required under subsection (6)(a), (b), and (c) may be omitted from a receipt by a pharmacist only if the omission is expressly required by the prescriber. The pharmacist shall retain a copy of each receipt furnished under subsection (6) for 90 days. The inclusion of the items required under subsection (6) on the prescription container label is a valid receipt to the purchaser. Including the items required under subsection (6) on the written prescription form and retaining the form constitutes retention of a copy of the receipt.

(8) The department, in consultation with the board, may promulgate rules to implement this section.

Sec. 18813. (1) Beginning January 1, 2020, a licensee seeking renewal of a veterinarian's license shall, if requested, furnish the department with satisfactory evidence that during the 3 years immediately preceding application for renewal, he or she attended at least 45 hours of continuing education courses or programs approved by the board.

(2) Beginning January 1, 2020, a licensee seeking renewal of a veterinary technician's license shall, if requested, furnish the department with satisfactory evidence that during the 3 years immediately preceding application for renewal, he or she attended at least 15 hours of continuing education courses or programs approved by the board.

(3) The license cycle for a veterinarian's license and a veterinary technician's license is 3 years.

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

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor