

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 47**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7333a (MCL 333.7333a), as amended by 2016 PA
383.

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 must provide an appropriate electronic format
7 for the reporting of data including, but not limited to, patient
8 identifiers, and the name of the controlled substance dispensed,
9 the date of dispensing, the quantity dispensed, the prescriber, and

1 the dispenser. The department shall require a veterinarian,
 2 pharmacist, or dispensing prescriber to utilize the electronic data
 3 transmittal process developed by the department or the department's
 4 contractor. The department shall not require a veterinarian,
 5 pharmacist, or dispensing prescriber to pay a new fee dedicated to
 6 the operation of the electronic monitoring system or to incur any
 7 additional costs solely related to the transmission of data to the
 8 department. ~~The rules promulgated under this subsection must exempt~~
 9 ~~both of the following circumstances from the reporting~~
 10 ~~requirements:~~

11 ~~—— (a) The administration of a controlled substance directly to a~~
 12 ~~patient.~~

13 ~~—— (b) The dispensing from a health facility or agency licensed~~
 14 ~~under article 17 of a controlled substance by a dispensing~~
 15 ~~prescriber in a quantity adequate to treat a patient for not more~~
 16 ~~than 48 hours.~~ **THE DISPENSING OF A CONTROLLED SUBSTANCE IN ANY OF**
 17 **THE FOLLOWING IS EXEMPT FROM THE REPORTING REQUIREMENTS:**

18 **(A) A HOSPITAL THAT IS LICENSED UNDER ARTICLE 17 THAT**
 19 **ADMINISTERS THE CONTROLLED SUBSTANCE TO AN INDIVIDUAL WHO IS AN**
 20 **INPATIENT.**

21 **(B) A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 IF**
 22 **THE CONTROLLED SUBSTANCE IS DISPENSED BY A DISPENSING PRESCRIBER IN**
 23 **A QUANTITY ADEQUATE TO TREAT THE PATIENT FOR NOT MORE THAN 48**
 24 **HOURS.**

25 **(C) A VETERINARY HOSPITAL OR CLINIC THAT ADMINISTERS THE**
 26 **CONTROLLED SUBSTANCE TO AN ANIMAL THAT IS AN INPATIENT.**

27 (2) Notwithstanding any practitioner-patient privilege, the

1 director of the department may provide data obtained under this
2 section to all of the following:

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

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

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

11 (d) A state-operated Medicaid program.

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

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

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

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

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

27 (3) Except as otherwise provided in this part, a person shall

1 use information submitted under this section only for bona fide
2 drug-related criminal investigatory or evidentiary purposes or for
3 the investigatory or evidentiary purposes in connection with the
4 functions of a disciplinary subcommittee or 1 or more of the
5 licensing or registration boards created in article 15.

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

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

19 (6) The department, in consultation with the Michigan board of
20 pharmacy, the Michigan board of medicine, the Michigan board of
21 osteopathic medicine and surgery, the department of state police,
22 and appropriate medical professional associations, shall examine
23 the 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 must not include any requirement that sequential
26 numbers, bar codes, or symbols be affixed, printed, or written on a
27 prescription form or that the prescription form be a state produced

1 prescription form. In examining the need for rules for the
2 production of a prescription form on paper that minimizes the
3 potential for forgery, the department shall consider and identify
4 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 (7) The department may enter into 1 or more contractual
10 agreements for the administration of this section.

11 (8) 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 (9) The data and any report containing any patient identifiers
17 obtained from the data are not public records and are not subject
18 to **DISCLOSURE UNDER** the freedom of information act, 1976 PA 442,
19 MCL 15.231 to 15.246.

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

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

5 (11) BEFORE DISPENSING OR PRESCRIBING BUPRENORPHINE, OR A DRUG
6 CONTAINING BUPRENORPHINE OR METHADONE, TO A PATIENT IN A SUBSTANCE
7 USE DISORDER PROGRAM, A PRESCRIBER SHALL OBTAIN AND REVIEW DATA
8 CONCERNING THAT PATIENT FROM THE DEPARTMENT UNDER SUBSECTION (2). A
9 PRESCRIBER DISPENSING BUPRENORPHINE, OR A DRUG CONTAINING
10 BUPRENORPHINE OR METHADONE, TO A PATIENT IN A SUBSTANCE USE
11 DISORDER PROGRAM SHALL ALSO REPORT THE DATA REQUIRED IN SUBSECTION
12 (1), IF FEDERAL LAW DOES NOT PROHIBIT THE REPORTING OF DATA
13 CONCERNING THE PATIENT, TO THE DEPARTMENT. AS USED IN THIS
14 SUBSECTION:

15 (A) "APPROVED SERVICE PROGRAM" MEANS THAT TERM AS DEFINED IN
16 SECTION 100A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1100A.

17 (B) "SUBSTANCE USE DISORDER PROGRAM" MEANS A PROGRAM AS THAT
18 TERM IS DEFINED IN SECTION 260 OF THE MENTAL HEALTH CODE, 1974 PA
19 258, MCL 330.1260, AN APPROVED SERVICE PROGRAM, A NONREGULATED
20 SUBSTANCE USE DISORDER SERVICES PROGRAM, A FEDERAL CERTIFIED
21 SUBSTANCE USE DISORDER SERVICES PROGRAM, OR A FEDERALLY REGULATED
22 SUBSTANCE USE DISORDER SERVICES PROGRAM.

23 (12) R 338.3162E OF THE MICHIGAN ADMINISTRATIVE CODE IS
24 RESCINDED.

25 (13) ~~(11)~~As used in this section:

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

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

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