

**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,

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

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

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

18 **ALL OF THE FOLLOWING APPLY FOR THE PURPOSES OF THE**
 19 **REPORTING TO THE ELECTRONIC MONITORING SYSTEM:**

20 **(A) THE DISPENSING OF A CONTROLLED SUBSTANCE IN ANY OF THE**
 21 **FOLLOWING IS EXEMPT FROM THE REPORTING REQUIREMENTS:**

22 **(i) A HOSPITAL THAT IS LICENSED UNDER ARTICLE 17 THAT**
 23 **ADMINISTERS THE CONTROLLED SUBSTANCE TO AN INPATIENT.**

24 **(ii) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), A HEALTH**
 25 **FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 IF THE CONTROLLED**
 26 **SUBSTANCE IS DISPENSED BY A DISPENSING PRESCRIBER IN A QUANTITY**
 27 **ADEQUATE TO TREAT THE PATIENT FOR NOT MORE THAN 48 HOURS.**

(B) A DISPENSING PRESCRIBER SHALL REPORT THE DATA REQUIRED BY

1 THIS SECTION IF THE DISPENSING PRESCRIBER DISPENSES BUPRENORPHINE,
2 OR A DRUG CONTAINING BUPRENORPHINE AND METHADONE, IN A SUBSTANCE
3 USE DISORDER PROGRAM AND THE PATIENT PROVIDES CONSENT IN A MANNER
4 CONSISTENT WITH SECTION 262 OF THE MENTAL HEALTH CODE, 1974 PA 258,
5 MCL 330.1262, AND FEDERAL LAW, TO HAVE THE DATA REPORTED INTO THE
6 ELECTRONIC MONITORING SYSTEM FOR THE PURPOSES DESCRIBED IN THIS
7 SECTION. A DISPENSING PRESCRIBER WHO RECEIVES THE CONSENT DESCRIBED
8 IN THIS SUBDIVISION SHALL MAINTAIN THE PATIENT'S CONSENT FORM AND
9 MAKE IT AVAILABLE TO THE DEPARTMENT UPON THE DEPARTMENT'S REQUEST.
10 AS USED IN THIS SUBDIVISION:

11 (i) "APPROVED SERVICES PROGRAM" MEANS THAT TERM AS DEFINED IN
12 SECTION 100A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1100A.

13 (ii) "SUBSTANCE USE DISORDER PROGRAM" MEANS A PROGRAM AS THAT
14 TERM IS DEFINED IN SECTION 260 OF THE MENTAL HEALTH CODE, 1974 PA
15 258, MCL 330.1260, AN APPROVED SERVICE PROGRAM, A NONREGULATED
16 SUBSTANCE USE DISORDER SERVICES PROGRAM, A FEDERAL CERTIFIED
17 SUBSTANCE USE DISORDER SERVICES PROGRAM, OR A FEDERALLY REGULATED
18 SUBSTANCE USE DISORDER SERVICES PROGRAM.

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

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

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

27 (c) A state, federal, or municipal employee or agent whose

1 duty is to enforce the laws of this state or the United States
2 relating to drugs.

3 (d) A state-operated Medicaid program.

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

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

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

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

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

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

25 (4) A person that receives data or any report under subsection
26 (2) containing any patient identifiers of the system from the
27 department shall not provide it to any other person except by order

1 of a court of competent jurisdiction.

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

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

24 (a) Cost, benefits, and barriers.

25 (b) Overall cost-benefit analysis.

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

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

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

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

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

24 (11) **R 338.3162E OF THE MICHIGAN ADMINISTRATIVE CODE IS**
25 **RESCINDED.**

26 (12) ~~(11)~~—As used in this section:

27 (a) "Department" means the department of licensing and

1 regulatory affairs.

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

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