

SUBSTITUTE FOR  
SENATE BILL NO. 1247

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7109 and 7333a (MCL 333.7109 and 333.7333a),  
section 7109 as amended by 2016 PA 383 and section 7333a as amended  
by 2017 PA 252.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 7109. (1) "Person" means a person as defined in section  
2 1106 or a governmental entity.

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

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

6           (a) A prescriber or pharmacist, a scientific investigator as  
7 defined by rule of the administrator, or other person licensed,  
8 registered, or otherwise permitted to distribute, dispense, conduct

1 research with respect to, or administer a controlled substance in  
2 the course of professional practice or research in this state,  
3 including an individual in charge of a dog pound or animal shelter  
4 licensed or registered by the department of agriculture and rural  
5 development under 1969 PA 287, MCL 287.331 to 287.340, or a class B  
6 dealer licensed by the United States Department of Agriculture  
7 under the animal welfare act, Public Law 89-544, 7 USC 2131 to  
8 2147, 2149, and 2151 to 2159 and the department of agriculture and  
9 rural development under 1969 PA 224, MCL 287.381 to 287.395, for  
10 the limited purpose of buying, possessing, and administering a  
11 commercially prepared, premixed solution of sodium pentobarbital to  
12 practice euthanasia on animals.

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

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

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

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

27 (b) Includes the manually printed name of the patient, the

1 address of the patient, the prescribing practitioner's signature,  
2 and the prescribing practitioner's drug enforcement administration  
3 registration number.

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

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

7 (e) Complies with any rules promulgated by the department  
8 under section ~~7333a(6)~~. **7333A(8)**.

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

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

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

18 Sec. 7333a. (1) The department shall establish, by rule, an  
19 electronic system for monitoring schedule 2, 3, 4, and 5 controlled  
20 substances dispensed in this state by veterinarians, and by  
21 pharmacists and dispensing prescribers licensed under part 177 or  
22 dispensed to an address in this state by a pharmacy licensed in  
23 this state. The rules must provide an appropriate electronic format  
24 for the reporting of data including, but not limited to, patient  
25 identifiers, and the name of the controlled substance dispensed,  
26 the date of dispensing, the quantity dispensed, the prescriber, and  
27 the dispenser. The department shall require a veterinarian,

1 pharmacist, or dispensing prescriber to utilize the electronic data  
2 transmittal process developed by the department or the department's  
3 contractor. The department shall not require a veterinarian,  
4 pharmacist, or dispensing prescriber to pay a new fee dedicated to  
5 the operation of the electronic monitoring system or to incur any  
6 additional costs solely related to the transmission of data to the  
7 department. The dispensing of a controlled substance in any of the  
8 following is exempt from the reporting requirements:

9 (a) A hospital that is licensed under article 17 that  
10 administers the controlled substance to an individual who is an  
11 inpatient.

12 (b) A health facility or agency licensed under article 17 if  
13 the controlled substance is dispensed by a dispensing prescriber in  
14 a quantity adequate to treat the patient for not more than 48  
15 hours.

16 (c) A veterinary hospital or clinic that administers the  
17 controlled substance to an animal that is an inpatient.

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

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

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

26 (c) ~~A~~ **SUBJECT TO SUBSECTION (4)**, A state, federal, or  
27 municipal employee or agent whose duty is to enforce the laws of

1 this state or the United States relating to drugs.

2 (d) A state-operated Medicaid program.

3 (e) ~~A~~**SUBJECT TO SUBSECTION (4)**, A state, federal, or  
4 municipal employee who is the holder of a search warrant or  
5 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)~~**(9)**.

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~~**OBTAINED FROM THE DEPARTMENT** under ~~this~~  
21 ~~section~~**SUBSECTION (2)** only for ~~bona fide~~ drug-related criminal  
22 investigatory or evidentiary purposes or for the investigatory or  
23 evidentiary purposes in connection with the functions of a  
24 disciplinary subcommittee or 1 or more of the licensing or  
25 registration boards created in article 15.

26 **(4) THE DIRECTOR OF THE DEPARTMENT SHALL PROVIDE A LAW**  
27 **ENFORCEMENT OFFICER WHO IS EMPLOYED BY THE DEPARTMENT OF STATE**

1 POLICE WITH ACCESS TO AN APPLICATION PROGRAM INTERFACE FOR  
2 MONITORING SCHEDULE 2, 3, 4, AND 5 CONTROLLED SUBSTANCES FOR THE  
3 PURPOSES OF THE LAW ENFORCEMENT ACCESS TO MICHIGAN AUTOMATED  
4 PRESCRIPTION SYSTEM DATA ACT. PATIENT TREATMENT INFORMATION  
5 PROVIDED THROUGH THE APPLICATION PROGRAM INTERFACE UNDER THIS  
6 SUBSECTION MUST BE DEIDENTIFIED TO PROTECT THE IDENTITY AND PRIVACY  
7 OF PATIENTS IN ACCORDANCE WITH FEDERAL AND STATE LAW, INCLUDING,  
8 BUT NOT LIMITED TO, REGULATIONS PROMULGATED UNDER THE HEALTH  
9 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW  
10 104-191, RELATED TO DEIDENTIFICATION AND PRIVACY STANDARDS BUT NOT  
11 INCLUDING DATA BREACH NOTIFICATIONS OR ANY OTHER REQUIREMENT. THE  
12 APPLICATION PROGRAM INTERFACE MUST DISCLOSE PRESCRIBER AND  
13 DISPENSER DATA TO THE LAW ENFORCEMENT OFFICER.

14 (5) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF  
15 STATE POLICE, SHALL PROMULGATE RULES THAT IT CONSIDERS NECESSARY  
16 THAT ENSURE THAT ANY DATA PROVIDED BY THE DIRECTOR OF THE  
17 DEPARTMENT UNDER SUBSECTION (2) IS PROVIDED ONLY TO THE EXTENT  
18 NECESSARY, THAT MINIMIZE THE INAPPROPRIATE USE OF THE DATA PROVIDED  
19 UNDER SUBSECTION (2), AND THAT MINIMIZE THE RISK OF A BREACH OF THE  
20 DATA IN THE ELECTRONIC MONITORING SYSTEM.

21 (6) ~~(4)~~—A person that receives data or any report under  
22 subsection (2) containing any patient identifiers of the system  
23 from the department shall not provide it to any other person except  
24 by order of a court of competent jurisdiction.

25 (7) ~~(5)~~—Except as otherwise provided in this subsection,  
26 reporting under subsection (1) is mandatory for a veterinarian,  
27 pharmacist, and dispensing prescriber. However, the department may

1 issue a written waiver of the electronic reporting requirement to a  
2 veterinarian, pharmacist, or dispensing prescriber who establishes  
3 grounds that he or she is unable to use the electronic monitoring  
4 system. The department shall require the applicant for the waiver  
5 to report the required information in a manner approved by the  
6 department.

7       (8) ~~(6)~~—The department, in consultation with the Michigan  
8 board of pharmacy, the Michigan board of medicine, the Michigan  
9 board of osteopathic medicine and surgery, the department of state  
10 police, and appropriate medical professional associations, shall  
11 examine the need for and may promulgate rules for the production of  
12 a prescription form on paper that minimizes the potential for  
13 forgery. The rules must not include any requirement that sequential  
14 numbers, bar codes, or symbols be affixed, printed, or written on a  
15 prescription form or that the prescription form be a state produced  
16 prescription form. In examining the need for rules for the  
17 production of a prescription form on paper that minimizes the  
18 potential for forgery, the department shall consider and identify  
19 the following:

20       (a) Cost, benefits, and barriers.

21       (b) Overall cost-benefit analysis.

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

24       (9) ~~(7)~~—The department may enter into 1 or more contractual  
25 agreements for the administration of this section.

26       (10) ~~(8)~~—The department, all law enforcement officers, all  
27 officers of the court, and all regulatory agencies and officers, in

1 using the data **OBTAINED UNDER THIS SECTION** for investigative or  
2 prosecution purposes, shall consider the nature of the prescriber's  
3 and dispenser's practice and the condition for which the patient is  
4 being treated.

5 (11) ~~(9)~~—The data and any report containing any patient  
6 identifiers obtained from the data **OBTAINED UNDER THIS SECTION** are  
7 not public records and are not subject to disclosure under the  
8 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

9 (12) ~~(10)~~—The department may issue a written request to a  
10 health care payment or benefit provider to determine if the  
11 provider has accessed the electronic monitoring system as provided  
12 in subsection (2)(i) in the previous calendar year and, if so, to  
13 determine the number of inquiries the provider made in the previous  
14 calendar year and any other information the department requests in  
15 relation to the provider's access to the electronic monitoring  
16 system. A health care payment or benefit provider shall respond to  
17 the written request on or before the March 31 following the  
18 request. The department shall collaborate with health care payment  
19 or benefit providers to develop a reasonable request and reporting  
20 form for use under this subsection.

21 (13) ~~(11)~~—Before dispensing or prescribing buprenorphine, or a  
22 drug containing buprenorphine or methadone, to a patient in a  
23 substance use disorder program, a prescriber shall obtain and  
24 review data concerning that patient from the department under  
25 subsection (2). A prescriber dispensing buprenorphine, or a drug  
26 containing buprenorphine or methadone, to a patient in a substance  
27 use disorder program shall also report the data required in



1 subsection (1), if federal law does not prohibit the reporting of  
2 data concerning the patient, to the department. As used in this  
3 subsection:

4 (a) "Approved service program" means that term as defined in  
5 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

6 (b) "Substance use disorder program" means a program as that  
7 term is defined in section 260 of the mental health code, 1974 PA  
8 258, MCL 330.1260, an approved service program, a nonregulated  
9 substance use disorder services program, a federal certified  
10 substance use disorder services program, or a federally regulated  
11 substance use disorder services program.

12 ~~———— (12) R 338.3162e of the Michigan Administrative Code is~~  
13 ~~rescinded.~~

14 (14) ~~(13)~~ 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 contracted health plan, or  
22 any other person providing a plan of health benefits, coverage, or  
23 insurance subject to state insurance regulation.

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

26 Enacting section 2. This amendatory act does not take effect  
27 unless Senate Bill No. 1245 of the 99th Legislature is enacted into

1 law.