

SENATE BILL NO. 1151

September 30, 2020, Introduced by Senator CHANG and referred to the Committee on Health Policy and Human Services.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 17703, 17708, 17751, and 17757 (MCL 333.17703, 333.17708, 333.17751, and 333.17757), section 17703 as amended by 2016 PA 528, section 17708 as amended by 2020 PA 4, section 17751 as amended by 2020 PA 136, and section 17757 as amended by 2016 PA 383, and by adding section 17751a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17703. (1) "Deliver" or "delivery" means the actual,

1 constructive, or attempted transfer of a drug or device from 1
2 person to another.

3 (2) "Device" means an instrument, apparatus, or contrivance,
4 including its components, parts, and accessories, intended for use
5 in the diagnosis, cure, mitigation, treatment, or prevention of
6 disease in human beings or other animals, or to affect the
7 structure or function of the body of human beings or other animals.

8 (3) "Dispense" means the preparation, compounding, packaging,
9 or labeling of a drug pursuant to a prescription or other
10 authorization issued by a prescriber **or pursuant to section**
11 **17751a(1)**.

12 (4) "Dispensing prescriber" means a prescriber, other than a
13 veterinarian, who dispenses prescription drugs.

14 (5) Except as otherwise provided in section 17780,
15 "distribute" or "distribution" means to sell, offer for sale,
16 deliver, offer to deliver, broker, give away, or transfer a drug,
17 whether by passage of title or physical movement. The term does not
18 include any of the following:

19 (a) Dispensing or administering a drug.

20 (b) The delivery of a drug, or offering to deliver a drug, by
21 a common carrier in the usual course of business as a common
22 carrier.

23 (c) The delivery of a drug via an automated device under
24 section 17760.

25 (6) "Drug" means any of the following:

26 (a) A substance recognized or for which the standards or
27 specifications are prescribed in the official compendium.

28 (b) A substance intended for use in the diagnosis, cure,
29 mitigation, treatment, or prevention of disease in human beings or

1 other animals.

2 (c) A substance, other than food, intended to affect the
3 structure or a function of the body of human beings or other
4 animals.

5 (d) A substance intended for use as a component of a substance
6 specified in subdivision (a), (b), or (c), but not including a
7 device or its components, parts, or accessories.

8 (7) "Electronic signature" means an electronic sound, symbol,
9 or process attached to or logically associated with a record and
10 executed or adopted by a person with the intent to sign the record.

11 (8) "Electronically transmitted prescription" means the
12 communication of an original prescription or refill authorization
13 by electronic means including computer to computer, computer to
14 facsimile machine, or electronic mail transmission that contains
15 the same information it contained when the prescriber or his or her
16 agent transmitted the prescription. Electronically transmitted
17 prescription does not include a prescription or refill
18 authorization transmitted by telephone or facsimile machine.

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

21 (2) "Prescriber" means a licensed dentist, a licensed doctor
22 of medicine, a licensed doctor of osteopathic medicine and surgery,
23 a licensed doctor of podiatric medicine and surgery, a licensed
24 physician's assistant, a licensed optometrist certified under part
25 174 to administer and prescribe therapeutic pharmaceutical agents,
26 an advanced practice registered nurse as that term is defined in
27 section 17201 who meets the requirements of section 17211a, a
28 licensed veterinarian, or another licensed health professional
29 acting under the delegation and using, recording, or otherwise

1 indicating the name of the delegating licensed doctor of medicine
2 or licensed doctor of osteopathic medicine and surgery.

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

25 (4) ~~"Prescription"~~ **Subject to subsection (5), "prescription**
26 **drug"** means a drug to which 1 or more of the following apply:

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

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

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

3 (5) **For purposes of this part, prescription drug also includes**
4 **a drug dispensed pursuant to section 17751a(1).**

5 (6) ~~(5)~~—"Remote pharmacy" means a pharmacy described in
6 sections 17742a and 17742b.

7 Sec. 17751. (1) ~~A~~**Except as otherwise provided in section**
8 **17751a(1),** a pharmacist shall not dispense a drug requiring a
9 prescription under the federal act or a law of this state except
10 under authority of an original prescription or an equivalent record
11 of an original prescription approved by the board. A pharmacist
12 described in section 17742b(2) may dispense a drug pursuant to an
13 original prescription received at a remote pharmacy if the
14 pharmacist receives, reviews, and verifies an exact digital image
15 of the prescription received at the remote pharmacy before the drug
16 is dispensed at the remote pharmacy.

17 (2) Subject to subsections (1) and (5), a pharmacist may
18 dispense a prescription written and signed; written or created in
19 an electronic format, signed, and transmitted by facsimile; or
20 transmitted electronically or by other means of communication by a
21 physician prescriber, dentist prescriber, or veterinarian
22 prescriber in another state, but not including a prescription for a
23 controlled substance except under circumstances described in
24 section 17763(e), only if the pharmacist in the exercise of his or
25 her professional judgment determines all of the following:

26 (a) Except as otherwise authorized under section 5110, 17744a,
27 or 17744b, if the prescriber is a physician or dentist, that the
28 prescription was issued pursuant to an existing physician-patient
29 or dentist-patient relationship.

1 (b) That the prescription is authentic.

2 (c) That the prescribed drug is appropriate and necessary for
3 the treatment of an acute, chronic, or recurrent condition.

4 (3) A pharmacist or a prescriber shall dispense a prescription
5 only if the prescription falls within the scope of practice of the
6 prescriber.

7 (4) A pharmacist shall not knowingly dispense a prescription
8 after the death of the prescriber or patient.

9 (5) A pharmacist shall not dispense a drug or device under a
10 prescription transmitted by facsimile or created in electronic
11 format and printed out for use by the patient unless the document
12 is manually signed by the prescriber. This subsection does not
13 apply to any of the following:

14 (a) A prescription that is transmitted by a computer to a
15 facsimile machine if that prescription complies with section 17754
16 or 17754a.

17 (b) A prescription that is received by a remote pharmacy and
18 made available to a pharmacist described in section 17742b(2) for
19 review and verification in the manner required under subsection
20 (1).

21 (6) After consultation with and agreement from the prescriber,
22 a pharmacist may add or change a patient's address, a dosage form,
23 a drug strength, a drug quantity, a direction for use, or an issue
24 date with regard to a prescription. A pharmacist shall note the
25 details of the consultation and agreement required under this
26 subsection on the prescription or, if the drug is dispensed at a
27 remote pharmacy, on the digital image of the prescription described
28 in subsection (1), and shall maintain that documentation with the
29 prescription as required in section 17752. A pharmacist shall not

1 change the patient's name, controlled substance prescribed unless
2 authorized to dispense a lower cost generically equivalent drug
3 product under section 17755, or the prescriber's signature with
4 regard to a prescription.

5 (7) A prescription that is contained within a patient's chart
6 in a health facility or agency licensed under article 17 or other
7 medical institution and that is transmitted to a pharmacy under
8 section 17744 is the original prescription. If all other
9 requirements of this part are met, a pharmacist shall dispense a
10 drug or device under a prescription described in this subsection. A
11 pharmacist may dispense a drug or device under a prescription
12 described in this subsection even if the prescription does not
13 contain the quantity ordered. If a prescription described in this
14 subsection does not contain the quantity ordered, the pharmacist
15 shall consult with the prescriber to determine an agreed-upon
16 quantity. The pharmacist shall record the quantity dispensed on the
17 prescription and shall maintain that documentation with the
18 prescription as required in section 17752.

19 (8) If, after consulting with a patient, a pharmacist
20 determines in the exercise of his or her professional judgment that
21 dispensing additional quantities of a prescription drug is
22 appropriate for the patient, the pharmacist may dispense, at one
23 time, additional quantities of the prescription drug up to the
24 total number of dosage units authorized by the prescriber on the
25 original prescription for the patient and any refills of the
26 prescription. Except for a controlled substance included in
27 schedule 5 that does not contain an opioid, this subsection does
28 not apply to a prescription for a controlled substance.

29 **Sec. 17751a. (1) A pharmacist may dispense an emergency supply**

1 of a prescription drug other than a controlled substance for a
2 resident of this state without a prescription if a qualified
3 executive order is in effect at the time the emergency supply of
4 the prescription drug is requested, and, in the pharmacist's
5 professional judgment, a failure to dispense the emergency supply
6 of the prescription drug might interrupt the patient's ongoing care
7 and have a significant adverse effect on the patient's well-being.
8 All of the following apply for purposes of this subsection:

9 (a) The pharmacist shall inform the patient that the
10 prescription drug was dispensed under this subsection.

11 (b) The pharmacist shall notify the prescriber, in writing and
12 within a reasonable period of time, that the pharmacist dispensed
13 an emergency supply of the prescription drug for the patient under
14 this subsection.

15 (c) Before dispensing the emergency supply of the prescription
16 drug, the pharmacist shall make a reasonable effort to communicate
17 with the prescriber regarding dispensing the prescription drug and
18 make a record of the effort made and the reason for dispensing a
19 prescription drug under this subsection.

20 (2) Notwithstanding section 17755, while a qualified executive
21 order is in effect, a pharmacist who receives a prescription for a
22 prescription drug that is listed as in shortage in the drug
23 shortage database maintained by the United States Food and Drug
24 Administration may substitute the prescribed drug for a
25 prescription drug that is therapeutically equivalent. If a
26 pharmacist substitutes a prescription drug under this subsection,
27 the pharmacist shall notify the patient of the substitution and
28 notify the prescriber who issued the prescription within a
29 reasonable period of time after making the substitution. This

1 subsection does not apply to a prescription for a controlled
2 substance.

3 (3) As used in this section:

4 (a) "Emergency supply" means up to a 60-day supply.

5 (b) "Qualified executive order" means an executive order
6 issued by the governor in which all of the following apply:

7 (i) The executive order is issued during a declared state of
8 emergency under any of the following:

9 (A) The emergency management act, 1976 PA 390, MCL 30.401 to
10 30.421.

11 (B) 1945 PA 302, MCL 10.31 to 10.33.

12 (C) Section 1 of article V of the state constitution of 1963.

13 (ii) The executive order is issued due to circumstances that
14 present a widespread danger to public health.

15 (iii) The executive order directs residents of this state to
16 remain in their residences, with limited exceptions, for at least 2
17 weeks.

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

28 (2) A pharmacist engaged in the business of selling drugs at
29 retail shall conspicuously display the notice described in

1 subsection (3) at each counter over which prescription drugs are
2 dispensed.

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

5 NOTICE TO CONSUMERS

6 ABOUT PRESCRIPTION DRUGS

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

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

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

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

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

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

29 (4) The notice required under subsection (2) must also contain

1 the address and phone number of the board and the department. The
2 text of the notice must be in at least 32-point bold type and must
3 be printed on paper at least 11 inches by 17 inches in size. The
4 notice may be printed on multiple pages.

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

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

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

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

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

19 (d) The quantity dispensed, if applicable.

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

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

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

24 (h) The name of the prescriber or, if prescribed under the
25 prescriber's delegatory authority, the name of the delegatee. **If**
26 **the prescription drug was dispensed by a pharmacist pursuant to**
27 **section 17751a(1), the name of the pharmacist.**

28 (i) Except as otherwise authorized under section 5110, 17744a,
29 17744b, or 17744e, the name of the patient for whom the drug was

1 prescribed **or dispensed**.

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

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

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