HOUSE BILL No. 5603

May 27, 2014, Introduced by Reps. LaVoy and Kivela and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled

"Public health code,"

by amending section 7333a (MCL 333.7333a), as amended by 2012 PA 44.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 ~~shall~~ **MUST** provide an appropriate electronic

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format for the reporting of ~~data~~ **INFORMATION** including, but not limited to, patient identifiers, the name of the controlled substance dispensed, date of dispensing, quantity dispensed, prescriber, and dispenser. The department shall require a veterinarian, pharmacist, or dispensing prescriber to utilize the electronic ~~data~~ **INFORMATION** transmittal process developed by the department or the department's contractor. ~~A~~ **THE DEPARTMENT SHALL NOT REQUIRE A** veterinarian, pharmacist, or dispensing prescriber ~~shall not be required~~ to pay a new fee dedicated to the operation of the electronic monitoring system ~~and shall not~~ **OR TO** incur any additional costs solely related to the transmission of ~~data~~ **INFORMATION** to the department. The rules promulgated under this subsection ~~shall~~ **MUST** exempt both of the following circumstances from the reporting requirements **UNDER THIS SECTION**:

(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~~ **INFORMATION** 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 who 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.~~**INFORMATION.**

(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 (8).

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

(i) Until December 31, 2016, the health care payment or benefit provider for the purposes of ensuring patient safety and investigating fraud and abuse.

(J) A PRESCRIPTION MONITORING PROGRAM IN ANOTHER JURISDICTION. THE DIRECTOR SHALL NOT TRANSMIT INFORMATION UNDER THIS SUBDIVISION UNLESS HE OR SHE HAS ENTERED INTO AN AGREEMENT WITH THE PRESCRIPTION MONITORING SYSTEM IN THE JURISDICTION. THE AGREEMENT MUST PROVIDE FOR THE MUTUAL EXCHANGE OF INFORMATION AND LIMIT THE USE OF THE INFORMATION ONLY AS AUTHORIZED IN AND SUBJECT TO THE

SAME RESTRICTIONS OF THIS SECTION.

(3) Except as otherwise provided in this part, **A PERSON SHALL USE** information submitted under this section ~~shall be used~~ 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 who receives ~~data~~ **INFORMATION** or any report under ~~subsection (2) containing any patient identifiers of the system~~ **THIS SECTION** from the department **THAT CONTAINS ANY PATIENT IDENTIFIERS** shall not provide ~~it~~ **THAT INFORMATION** to any other person ~~or entity~~ except by order of a court of competent jurisdiction.

(5) Except as otherwise provided in this subsection, reporting under ~~subsection~~ **SUBSECTIONS** (1) **AND (12)** is mandatory for a veterinarian, pharmacist, **PRESCRIBER,** and dispensing prescriber**, AS APPLICABLE**. However, the department may issue a written waiver of the electronic reporting requirement to a veterinarian, pharmacist, **PRESCRIBER,** 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) In addition to the information required to be reported annually under section 7112(3), the controlled substances advisory commission shall include in the report information on the implementation and effectiveness of the electronic monitoring

system.

(7) The department, in consultation with the controlled substances advisory commission, the Michigan board of pharmacy, the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, the Michigan 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 ~~shall~~ **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.

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

(9) The department, all law enforcement officers, all officers of the court, and all regulatory agencies and officers, in using the ~~data~~ **INFORMATION** 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.

(10) The ~~data~~ **INFORMATION** and any report containing any patient identifiers obtained from the ~~data~~ **INFORMATION** are not

public records and are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) Beginning February 1, 2013 and through February 1, 2016, the department may issue a written request to a health care payment or benefit provider to determine if the provider has accessed the electronic 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 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.

(12) THE DEPARTMENT SHALL INCLUDE IN THE ELECTRONIC MONITORING SYSTEM ESTABLISHED UNDER SUBSECTION (1) A SYSTEM FOR MONITORING SCHEDULE 2 AND SCHEDULE 3 CONTROLLED SUBSTANCES PRESCRIBED IN THIS STATE AND, SUBJECT TO SUBSECTION (2)(J), SHARING THAT INFORMATION WITH PRESCRIPTION MONITORING PROGRAMS IN OTHER JURISDICTIONS. THE DEPARTMENT SHALL PROVIDE A FORMAT FOR PRESCRIBERS WHO PRESCRIBE SCHEDULE 2 OR SCHEDULE 3 CONTROLLED SUBSTANCES FOR THE REPORTING OF INFORMATION INCLUDING, BUT NOT LIMITED TO, PATIENT IDENTIFIERS, THE NAME OF THE SCHEDULE 2 OR SCHEDULE 3 CONTROLLED SUBSTANCE PRESCRIBED, DATE OF PRESCRIBING, QUANTITY PRESCRIBED, AND PRESCRIBER. THE DEPARTMENT SHALL REQUIRE A PRESCRIBER TO UTILIZE THE ELECTRONIC INFORMATION TRANSMITTAL PROCESS DEVELOPED BY THE

DEPARTMENT OR THE DEPARTMENT'S CONTRACTOR. THE DEPARTMENT SHALL NOT REQUIRE A PRESCRIBER TO PAY A NEW FEE DEDICATED TO THE OPERATION OF THE REPORTING REQUIREMENTS UNDER THIS SUBSECTION OR TO INCUR ANY ADDITIONAL COSTS SOLELY RELATED TO THE TRANSMISSION OF INFORMATION TO THE DEPARTMENT. THE DEPARTMENT MAY PROMULGATE RULES IT CONSIDERS NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THIS SUBSECTION.

(13) ~~(12)~~ 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.